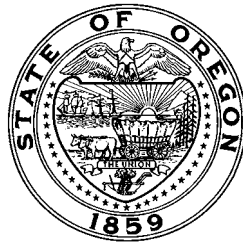


OREGON BULLETIN

Supplements the 2003 *Oregon Administrative Rules Compilation*

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Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule's "History"

State agencies operate in a dynamic environment of ever-changing laws, public concerns and legislative mandates which necessitate ongoing rulemaking. To track the changes to individual rules, and organize the rule filing forms for permanent retention, the Administrative Rules Unit has developed a "history" for each rule which is located at the end of rule text. An Administrative Rule "history" outlines the statutory authority, statutes being implemented and dates of each authorized modification to the rule text. Changes are listed in chronological order and identify the agency, filing number, year, filing date and effective date in an abbreviated format. For example: "OSA 4-1993, f. & cert. ef. 11-10-93; Renumbered from 164-001-0005" documents a rule change made by the Oregon State Archives (OSA). The history notes that this was the 4th filing from the Archives in 1993, it was filed on November 10, 1993 and the rule changes became effective on the same date. The rule was renumbered by this rule change and was formerly known as rule 164-001-0005. The most recent change to each rule is listed at the end of the "history."

Locating the Most Recent Version of an Administrative Rule

The annual, bound *Oregon Administrative Rules Compilation* contains the full text of all permanent rules filed through November 15 of the previous year. Subsequent changes to individual rules are listed in the OAR Revision Cumulative Index which is published monthly in the *Oregon Bulletin*. Changes to individual Administrative rules are listed in the OAR Revision Cumulative Index by OAR number and include the effective date, the specific rulemaking action and the issue of the *Oregon Bulletin* which contains the full text of the amended rule. The *Oregon Bulletin* publishes the full text of permanent and temporary administrative rules submitted for publication.

Locating Administrative Rules Unit Publications

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

2002-2003 Oregon Bulletin Publication Schedule

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

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

Each agency that engages in rulemaking must appoint a rules coordinator and file an "Appointment of Agency Rules Coordinator" form, ARC 910-1997, with the Administrative Rules Unit, Archives Division, Secretary of State. Agencies which delegate rulemaking authority to an officer or employee within the agency must also file a "Delegation of Rulemaking Authority" form, ARC 915-1997. It is the agency's responsibility to monitor the rulemaking authority of selected employees and to keep the appropriate forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process. Forms ARC 910-1997 and ARC 915-1997 are available from the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Publication Authority

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

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EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 02 - 25

IMPLEMENTING THE PROTOCOL GOVERNING SITING AND PERMITTING OF INTERSTATE ELECTRIC TRANSMISSION LINES

Because recent changes to transmission access requirements have created a more regional electric power market in the western U.S., and

Because states have generally exercised authority to site electric transmission lines, and expanding wholesale electricity markets point out the need for closer cooperation between states and federal agencies, tribal governments and local governments in the efficient permitting and siting of new interstate transmission lines, and

Because a protocol has been established to enable affected states, local governments, federal agencies and tribal governments to participate in a systematic, coordinated, joint review of interstate transmission lines in the western U.S., and

Because it is the intent of the Western Governors to work with affected states, local governments, federal agencies and tribal governments to expedite the siting and construction of needed transmission facilities to better ensure an adequate, affordable and reliable electricity supply to western consumers, and

Because a coordinated review of proposed interstate transmission facilities will better serve interstate needs, enable the construction of needed transmission and ensure the public interest is protected, as long as it is linked with pro-active regional transmission planning considering both transmission and non-transmission alternatives and appropriate systems of financing, and

Because a Memorandum of Understanding has been entered into between the U.S. Department of Energy, U.S. Department of the Interior, U.S. Department of Agriculture, U.S. Environmental Protection Agency, Council on Environmental Quality and the Western Governors' Association regarding Energy Development and Conservation in the Western United States, signed in 2001.

THEREFORE, IT IS ORDERED AND DIRECTED:

That when an interstate electric transmission facility going through Oregon is proposed, the Oregon Energy Facility Siting Council and other Oregon agencies that have a role in environmental siting and permitting will:

- Create an efficient environmental review process that results in documents that can be shared and used by all entities with jurisdiction in the siting and permitting process,
- Establish and periodically review, joint time lines for the conduct and timely completion of the review process and regulatory decisions,
- Establish a common understanding of the information needs, regulatory requirements and public interest issues prior to the environmental review process,
- Eliminate duplication of pre-application, scoping and permit review meetings among participating state, local, tribal and federal authorities,
- Create an understandable, streamlined review process that is structured, user friendly and predictable,
- Provide for early notification and sharing of information among affected states, local governments, federal agencies, tribal governments and project sponsors, and

- Preserve and protect the authority of each affected state, local government, tribal government and federal agency.

To implement this review process, the Oregon Energy Facility Siting Council and other Oregon review agencies shall adopt the following elements as part of a joint, coordinated review of specific proposed interstate transmission facilities:

- The Administrator of the Energy Resources Division, Oregon Office of Energy (OOE) will participate in a Project Team made up of representatives of each state to coordinate the review of the proposed project.
- The reviewing Oregon agencies shall notify OOE of any analysis related to need for the project, and OOE shall use this information in any review of need for the proposed facility done by the Project Team.
- The reviewing Oregon agencies shall, to the extent practicable, participate in joint activities, a system of record keeping, planning, evaluating and monitoring the proposed transmission facility.
- The reviewing Oregon agencies shall participate in the preparation and review of environmental assessments and impact statements, evaluation of project impacts, public involvement efforts, project construction and operation monitoring and any other activities necessary to determine compliance with applicable requirements, and
- The reviewing Oregon agencies shall, to the extent practicable, comply with timelines, information requests, procedures and policies of the Project Team established under the Protocol Governing the Siting and Permitting of Interstate Electric Transmission Lines in the Western United States.

Done at Salem, Oregon this 1st day of December, 2002

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

ATTEST:

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 02 - 26

DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN CURRY COUNTY DUE TO CONDITIONS CAUSED BY DROUGHT AND LOW WATER CONDITIONS.

Under ORS 401.055, I find that the weather pattern, ongoing drought and low water conditions in Curry County have the imminent potential for causing a natural and economic disaster of catastrophic proportions. The projected outlook will not significantly alleviate the current conditions, and it is anticipated that those conditions will continue to worsen. This will have profound consequences on the county's agricultural and natural resources, as well the likelihood for stark energy and economic impacts.

State agencies including the Department of Agriculture, the Department of Water Resources, and Oregon Emergency Management are addressing the current conditions.

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

EXECUTIVE ORDERS

IT IS HEREBY ORDERED AND DIRECTED:

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

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

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

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

Done at Salem, Oregon this 1st day of December, 2002

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

ATTEST:

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 02 - 27

DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN COOS COUNTY DUE TO CONDITIONS CAUSED BY DROUGHT AND LOW WATER CONDITIONS.

Under ORS 401.055, I find that the weather pattern, ongoing drought and low water conditions in Coos County have the imminent potential for causing a natural and economic disaster of catastrophic proportions. The projected outlook will not significantly alleviate the current conditions, and it is anticipated that those conditions will continue. This will have profound consequences on the county's agri-

cultural and natural resources, as well the likelihood for stark economic impacts.

State agencies including the Department of Agriculture, the Department of Water Resources, and Oregon Emergency Management are addressing the current conditions.

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

IT IS HEREBY ORDERED AND DIRECTED:

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

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

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

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

Done at Salem, Oregon this 1st day of December, 2002

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

ATTEST:

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

CHANCE TO COMMENT ON... PROPOSED NO FURTHER ACTION UNION PACIFIC RAILROAD BARNES YARD SITE IN PORTLAND, OREGON

COMMENTS DUE: January 31, 2003

PROJECT LOCATION: Union Pacific Railroad Barnes Yard Facility, 10627 North Swift Court, 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) requests public comment on its proposal for no further action regarding soil and groundwater contamination at the Union Pacific Railroad Barnes Yard site, removal of the site from the confirmed release list, and termination of the Letter Agreement with DEQ.

HIGHLIGHTS: The Union Pacific Railroad Barnes Yard site is a one mile long railroad switching yard located in north Portland between Columbia Boulevard and the Wapato Wetlands. The primary concern for the site was the potential for migration of hazardous substances to the Wapato Wetlands. The investigation at the site included several phases of soil and groundwater sampling in both targeted locations and the yard in general. The targeted locations included the locomotive ready track, the underground stormwater storage tank, the locations of two historical fuel spills and surface water drainage ditches. Samples were analyzed for total petroleum compounds (TPH), metals, volatile organics, PAHs and semi-volatile organics. The potential for migration to the Wapato Wetlands of contamination from soils found in the ready track area with TPH concentrations greater than 10,000 mg/kg remained the only concern for the site following the initial sampling events.

The following was concluded from the focused investigation in the ready track area: the groundwater flows away from, rather than towards, the wetlands and the areas of soil contamination with concentrations greater than 10,000 mg/kg are limited and not continuous, reducing the potential for mobility. Union Pacific Railroad requested that the contaminated soils be left in place to protect track stability. DEQ concluded that, if no additional contamination was released in the area, the existing contamination could remain in place without compromising public health and the environment. An upgrade of the ready track area has been completed. The upgrade included decommissioning the underground stormwater storage tank, vacuuming the ready track surface and installing a polyester pad system to replace the existing ready track drip collection system. An operation and maintenance plan is in effect. Because the ready track area has been upgraded to minimize future releases, DEQ is proposing no further action at the site.

HOW TO COMMENT: A December 9, 2002 Staff Memorandum contains a detailed description of DEQ's proposed NFA. This Staff Memorandum along with other documents in the site file and administrative record, are available for public review (by appointment at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon). Appointments to review these files can be made by calling 503-229-6729, toll free at 1-800-452-4011, or TTY at 503-229-5471.

Written comments must be received by 5:00 PM on January 31, 2003. Please send written comments to:

Deborah Bailey
Project Manager
DEQ Northwest Region
2020 SW Fourth Avenue, Suite 400
Portland, OR 97201-4987
Fax: 503-229-6945

E-Mail: bailey.deborah.a@deq.state.or.us

Specific questions regarding the proposed no further action should be directed to Ms. Bailey at 503-229-6811 or the toll free or TTY numbers above. A public meeting will be held to receive verbal comments if requested by 10 or more persons, or by a group with a membership of 10 or more. A separate public notice announcing the date,

time, and location of any public meeting would be published in this publication.

THE NEXT STEP: DEQ will consider all public comments received by the January 31, 2003 deadline. The DEQ Director will make a final decision on the no further action after consideration of public comments. The final decision will be announced in a press release.

ACCESSIBILITY: 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 Public Affairs at (503) 229-5317.

A CHANCE TO COMMENT ON... PROPOSED APPROVAL OF CLEANUP AT THE COLUMBIA COUNTY TRANSFER STATION

COMMENTS DUE: February 4, 2003

PROJECT LOCATION: 2285 Gable Road in St Helens, Oregon

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) proposes to approve a cleanup of petroleum hydrocarbon-contaminated soils at the Waste Management Columbia County Transfer Station (CCTS) located at 2285 Gable Road in St Helens, Oregon.

BACKGROUND: The CCTS began operations as a garbage transfer station in 1984. The transfer station receives household wastes from commercial operators and residences. The majority of the garbage is deposited inside the building, sorted if possible, and prepared for shipping to the landfill. Recycling areas are available for waste oil, cardboard, metals, batteries, and tires. Collection of hazardous waste(s) is not allowed under the solid waste permit for the facility.

HIGHLIGHTS: Petroleum hydrocarbon contaminated soil was discovered during the upgrading of the waste oil above-ground storage tank and secondary containment system in 2000. 30-cubic yards of soil and rock were excavated in the vicinity of the AST, and transported off-site for disposal. Confirmation sampling from the soil removal and additional investigations indicate that the residual petroleum contamination and low concentrations of volatile organic compounds in soil and perched water does not pose an unacceptable risk to human health or the environment. The No Further Action determination DEQ proposes will state that in the unlikely event that the residual contamination is excavated; the contaminated soil will be properly managed and disposed.

HOW TO COMMENT: You may review the project file, by appointment, at DEQ's Northwest Region Office, 2020 SW 4th Ave, Suite 400 in Portland beginning January 2, 2003. To schedule an appointment, call (503) 229-6729. Written comments should be sent to the Bruce Brody-Heine, project manager, at DEQ, Northwest Region, 2020 SW 4th Ave, Suite 400, Portland, Oregon 97201 by February 4, 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 public comments received. DEQ will then make a final decision regarding the soil cleanup and NFA.

PUBLIC NOTICE PROPOSED APPROVAL OF CLEANUP AT FORMER CATTLE DIP STATION KLAMATH MARSH NATIONAL WILDLIFE REFUGE KLAMATH COUNTY, OREGON

COMMENTS DUE: January 31, 2003

PROJECT LOCATION: Approx. 1/2 mile south of Military Crossing Road and Silver Lake Hwy

OTHER NOTICES

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to approve cleanup actions at the former cattle dip station (site). The site is located approximately 1/2 mile south of the intersection of Military Crossing Road and Silver Lake Highway. The site is located in the southwest quarter of Section 19, Township 30 South, Range 10 East, in Klamath County. The site consists of approximately 5 acres of the total 40,576 acres of the Klamath Marsh National Wildlife Refuge.

HIGHLIGHTS: The DEQ Voluntary Cleanup Program has reviewed results of the remedial actions performed during the summer of 2002 at the site. A total of 607.1 tons of soil contaminated with DDD, DDE, DDT, and/or toxaphene above 75 ppm was excavated from the site and transported to Beatty, Nevada for treatment by thermal desorption. Approximately 1,300 cubic yards of soil with concentrations between 1 ppm and 75 ppm were placed in the excavation at a minimum depth of 3 feet below the original grade. A total of six feet of clean soil was placed over the excavation, raising the grade three feet above the original level. The cap has been seeded and will be evaluated over the next year to insure the vegetation is established. Since the cap is an institutional control, the site will remain listed on the Confirmed Release List and Inventory List for tracking. The site is also listed on CERCLIS (Identification No. OR 0002363299) which provides additional tracking of remedial actions performed at the site.

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 January 31, 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 issuing a record of decision for the site.

PROPOSED APPROVAL OF SOIL CLEANUP AT THE UNION PACIFIC RAILROAD (UPRR) SOIL PILE SITE, PORTLAND, OREGON

COMMENTS DUE: February 3, 2003

PROJECT LOCATION: The Union Pacific Rail Road (UPRR) right-of-way between McLoughlin Avenue (99E) and Eastmoreland Golf Course, Portland, Oregon.

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) proposes approval of the cleanup of petroleum- and polychlorinated biphenyl (PCB)-contaminated soil at the site.

HIGHLIGHTS: The UPRR site consists of an approximately 3000 foot by 100 foot strip of land on the west side of the existing rail track where a total of six soil/debris piles originating from the Brooklyn Yard Rail Switching formerly were stockpiled. Contaminants detected in the piles include total petroleum hydrocarbons and associated constituents, PCBs and lead. Four of the piles, with a total volume of about 32,000 cubic yards, were located north of Bybee Boulevard and were properly characterized and disposed off-site. The remaining two piles are located south of Bybee Boulevard. Testing of these piles, and in underlying soil, showed they did not pose a risk to human health or the environment. An ecological risk evaluation was also conducted to assess possible impacts to ecological receptors in the Crystal Springs Creek area through soil runoff from the piles and adjacent areas. PCBs were detected in soil contained within a small drainage leading to the creek, below levels of concern for human health, but above ecological screening levels. UPRR conducted a soil removal to address this contamination. Confirmation sampling showed that the remaining soil was within acceptable limits for protection of ecological receptors.

HOW TO COMMENT: The staff memorandum and other files will be available for public review beginning Thursday, January 2, 2003. To schedule an appointment to review the site files call (503) 229-6729. The DEQ project manager is Mark Pugh (503) 229-5587. Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, OR 97201 by Monday, February 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 public comments and DEQ's Northwest Region Cleanup Manager will make and publish the final decision after consideration of these comments.

NOTICE OF AMENDED ENVIRONMENTAL CLEANUP ACTION PORT OF PORTLAND TERMINAL 1 SOUTH 2100 NW FRONT AVENUE, PORTLAND, OREGON

PROJECT LOCATION: 2100 NW Front Avenue, Portland, Oregon.

Pursuant to Oregon Revised Statute (ORS) 465.320, the Oregon Department of Environmental Quality (DEQ) is issuing this notice regarding the amendment of the Record of Decision (ROD) for the Port of Portland Terminal 1 South facility. Notice of the proposed amendment was published on November 1, 2002. A public comment period began November 1, 2002 and ended on December 2, 2002. No comments were received.

AMENDMENT: DEQ amended the ROD to revise soil cleanup levels for polycyclic aromatic hydrocarbons (PAHs) to reflect risks to urban residents consistent with the planned future use of the Terminal 1 South (T1S) property. The amended remedial action is considered protective of human health and the environment, effective, permanent, implementable, and cost-reasonable and therefore, meets the requirements of the Oregon Environmental Cleanup Laws.

INFORMATION: The ROD amendment and the administrative record for the site are available for public review by appointment at DEQ's Northwest Region Office. To schedule an appointment call (503) 229-6729. For additional information, contact DEQ Project Manager, Rod Struck at (503) 229-5562 or by email at rodney.struck@deq.state.or.us.

NOTICE OF RECORD OF DECISION FOR THE CASCADE PLATING & MACHINE SITE

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

NOTICE: The Oregon Department of Environmental Quality (DEQ) is providing public notice that DEQ has issued a Record of Decision (ROD) for the Cascade Plating & Machine site. DEQ is the regulatory agency that helps protect and preserve Oregon's environment. DEQ is responsible for protecting and enhancing Oregon's water and air quality, for cleaning up spills and releases of hazardous materials, and for managing the proper disposal of hazardous and solid wastes. One way DEQ does this is by requiring 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 ROD describes the environmental concerns at the site, and outlines the cleanup, or remedy actions, at the site. The ROD was signed by DEQ on November 1, 2002.

HIGHLIGHTS: CP&M has been operating at this location since approximately 1969. The site experienced a release of chromic acid plating solution at some undetermined time prior to May 1989. The suspected cause of the release was a faulty exhaust fume/air scrubber, as well as a leaking concrete containment structure for an electroplating tank

OTHER NOTICES

The contaminant of concern is chromium. Chromium VI is listed by the EPA as a Group A carcinogen (known human carcinogen). It is considered carcinogenic if it is inhaled. Inhalation of chromium VI particulates causes respiratory cancer and can cause other nasal damage. Research studies on oral exposure to chromium VI indicate adverse effects only when very high exposure concentrations were reached.

Most of the highly contaminated soil (i.e., hot spots) was removed from the site. This removed a major source of contaminants leaching to the groundwater, and reduced the health risk posed by soil and dust. The extraction of chromium from the groundwater occurred as part of the groundwater pump and treat system that operated from 1992 until 1999. During that time over 6.5 million gallons of groundwater containing over 179 pounds (lbs.) of chromium were removed from the shallow aquifer, treated, and discharged to the City of Eugene Publicly Owned Treatment Works. However, some of the highly contaminated soil remains since it was too close to, or underneath, the building.

A Record of Decision is a document that describes the human health and environmental concerns at a site and identifies the selected remedy, or cleanup actions, for addressing these concerns. Human health and environmental concerns at the site include chromium contaminated soil and groundwater. The details of the selected remedy specified in the ROD consist of multiple components. As required by ORS 465.320, DEQ invited public comment on the proposed cleanup action in May 2001. No comments were received.

The selected remedy includes a combination of institutional controls and a year of follow up groundwater monitoring after the pump and treat system was discontinued. The institutional controls include requirements that 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 (i.e. paved) and that the area remains industrial land use in the future. Furthermore, it prohibits the installation or use of water supply wells on the site.

In addition, the selected remedy requires that the records of the Water Resources Department (WRD) be reviewed to determine whether any new wells have been installed within the locality of facility. WRD records will be reviewed by CP&M every five years for a period of ten years thereafter. CP&M will report the results of this record review to DEQ.

The year of groundwater monitoring must ensure 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 does not exceed 6.5 ppm, which was considered protective of human health and the environment. DEQ has chosen 2.6 ppm chromium as the appropriate site-specific cleanup levels because groundwater within the locality of facility is used for irrigation and recreational use and not for drinking.

Several of the remedial components specified in the ROD have been implemented. CP&M initiated the required one year of groundwater monitoring after DEQ prepared the Staff Report in April of

2001. The samples have been collected and the WRD records for well logs have been submitted. The Department is currently reviewing this data. In addition, the area along the western portion of the site has been paved.

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 plan. In 1997 they were issued a notice of non-compliance for failure to perform testing to demonstrate compliance with 40 CFR 6.342; failure to demonstrate compliance with chromium plating maximum requirements; and recordkeeping problems. A stipulated final order was issued to address the non-compliance.

WHO IS AFFECTED? Property owners and residents in the vicinity of the existing facility.

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 _ 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 _ mile area.

WHAT LEGAL REQUIREMENTS APPLY? Oregon Administrative Rules in Division 122 establish the need for certain removal and remedial action, if necessary, to assure public health, safety and welfare, and the environment in the event of a release of a hazardous substance.

WHAT HAPPENS NEXT? DEQ will review the monitoring report, and based on the review, may issue a conditional "no further action" letter. Prior to the issuance of this letter, DEQ will issue another public notice with a request for comments on this proposed action.

FOR ADDITIONAL INFORMATION: The ROD, as well as other pertinent documents concerning the CP&M site, are available for public review at the address listed below:

DEQ, Western Region-Eugene Office
1102 Lincoln Street, Suite 210,
Eugene, OR 97401

For public transit information: the DEQ office is three blocks west of the LTD main downtown Eugene bus station off of 11th St. 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 1-800-452-4011 (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 additional information or if you have questions regarding this site, contact the DEQ project manager, Teresa Danovich, at (541) 686-7838 ext. 273 or by email at danovich.teresa.m@deq.state.or.us.

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 Chiropractic Examiners
Chapter 811

Stat. Auth.: ORS 684, 58
Stats. Implemented: ORS 684.150
Proposed Amendments: 811-010-0095, 811-015-0010, 811-035-0001, 811-035-0005
Last Date for Comment: 1-16-03
Summary: 811-010-0095: Removes reference to the Oregon Chiropractic Practice and Utilization Guidelines (OCPUG) from the Peer Review section. 811-015-0010: Removes reference to OCPUG from the Excessive Treatment section. 811-035-0001: Removes reference to OCPUG from the Definitions section. 811-035-0005: Removes reference to OCPUG from the Duties and Obligations of Chiropractic Physicians to Their Patients section.
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

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Board of Licensed Professional Counselors and Therapists
Chapter 833

Date:	Time:	Location:
2-21-03	1:30-2:30	1st Flr. Conference Rm. 3218 Pringle Rd. SE, #160 Salem, OR

Hearing Officer: Julia M. Cooley
Stat. Auth.: ORS 675.715 & 675.785
Stats. Implemented: ORS 183.335, 183.341, 675.715 & 675.785
Proposed Amendments: 833-020-0015, 833-020-0040, 833-020-0060, 833-020-0090, 833-020-0111, 833-025-0001, 833-025-0005, 833-025-0006, 833-040-0001, 833-040-0010
Proposed Repeals: 833-020-0130
Last Date for Comment: 2-21-03
Summary: Amendments update rules to extend pre-internship hour credits to applicants; to permit more graduate level post-degree supplemental training; to eliminate redundancy in describing our graduate degree standards; to eliminate a conflict between clock and credit hour requirements; to reflect changes in the computerized LPC and LMFT tests, and clarify exam procedures. The changes have no fiscal impact.

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

Rules Coordinator: Julia M. Cooley

Address: Board of Licensed Professional Counselors and Therapists, 3218 Pringle Rd. SE, Suite 160, Salem, OR 97302-6312
Telephone: (503) 378-2216

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Board of Massage Therapists
Chapter 334

Stat. Auth.: ORS 183, 687.121 & SB 1127
Stats. Implemented:
Proposed Amendments: Rules in 334-010, 334-001-0060
Last Date for Comment: 1-21-03
Summary: A meeting was held on November 7, 2002 for public comment concerning the notice of proposed rulemaking. The rule changes are housekeeping, CEU changes and fee additions.
Rules Coordinator: Michelle Sherman
Address: Board of Massage Therapists, 3218 Pringle Rd. SE, Suite 250, Salem, OR 97302
Telephone: (503) 365-8657

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Board of Naturopathic Examiners
Chapter 850

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.100
Proposed Adoptions: 850-010-0195
Last Date for Comment: 1-22-03
Summary: This rule with clarify the requirements of renewal for Naturopathic physicians.
Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St. - Suite 407, Portland, OR 97232
Telephone: (503) 7341-4045

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Board of Nursing
Chapter 851

Date:	Time:	Location:
2-13-03	9 a.m.	800 NE Oregon St. Rm. 120-C Portland, OR 97232

Hearing Officer: Rolf Olson, Board President
Stat. Auth.: ORS 678.385
Stats. Implemented: ORS 678.375 & 678.385
Proposed Amendments: 851-050-0131
Last Date for Comment: 2-13-02, 9 a.m.
Summary: The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. The amendments add the November and December 2002 and January 2003 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: KC Cotton
Address: Board of Nursing, 800 NE Oregon St. - Suite 465, Portland, OR 97232-2162
Telephone: (503) 731-4754

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Date:	Time:	Location:
2-13-03	9 a.m.	800 NE Oregon St. Rm. 120 (Willamette River Suite) Portland, OR 97232

Hearing Officer: Rolf Olson, Board President
Stat. Auth.: ORS 678.021 & 678.031
Stats. Implemented: ORS 678.021 & 678.031
Proposed Adoptions: 851-031-0085

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 851-031-0005, 851-031-0006, 851-031-0010, 851-031-0030, 851-031-0045, 851-031-0060, 851-031-0070, 851-031-0080, 851-031-0086, 851-031-0090

Proposed Repeals: 851-031-0025

Last Date for Comment: 2-13-02, 9 a.m.

Summary: These rules establish the standards for licensure of Registered Nurses and Licensed Practical Nurses. These rules refine the general eligibility, limits on eligibility, and requirements for licensure of Registered Nurses and Licensed Practical Nurses.

A rule hearing was held in November 2002 regarding these rules, however the rules were never filed as permanent. Since that time, additional information regarding the section on transcripts has been brought to the attention of the Board. Therefore a new hearing was set and time for public comment extended.

These rules propose elimination of the transcript section and in lieu of that a Board policy will be developed. No other significant changes have been made since the November 2002 rule hearing.

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

Rules Coordinator: KC Cotton

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

Telephone: (503) 731-4754

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**Department of Agriculture
Chapter 603**

Date:	Time:	Location:
1-27-03	7 p.m.	Scandia Hall 175 W 5th St. Junction City, OR 97448
1-29-03	7 p.m.	Lorane Grange Hall 80342 Old Lorane Rd. Lorane, OR 97451

Hearing Officer: Lynda Horst

Stat. Auth.: ORS 561.190, 561.191, 568.900 - 568.933; Other Auth.:OAR 603-090

Stats. Implemented: ORS 568.900 - 568.933

Proposed Adoptions: 603-095-2600, 603-095-2620, 603-095-2640, 603-095-2660

Last Date for Comment: 2-15-03

Summary: The rules effectuate the implementation of the Upper Willamette Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

Rules Coordinator: Sherry Kudna

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

Telephone: (503) 986-4619

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

Stat. Auth.: ORS 479.560

Stats. Implemented: ORS 479.560 & 479.870

Proposed Amendments: 918-309-0000

Last Date for Comment: 1-17-03, 5 p.m.

Summary: Amends rule to allow for compliance action against individuals providing false information or false signature on permit applications.

Rules Coordinator: Louann P. Rahmig

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97309

Telephone: (503) 373-7438

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

Date:	Time:	Location:
1-29-03	9:30 a.m.	Conference Rm. F 350 Winter St. NE Salem, OR

Hearing Officer: Lewis Littlehales

Stat. Auth.: ORS 731.244 & 746.135

Stats. Implemented: ORS 746.135

Proposed Adoptions: 836-051-0700

Last Date for Comment: 2-7-03

Summary: This rulemaking proposes to adopt a standard authorization form to be used by insurers and other persons that ask applicants for insurance to take a genetic test in connection with the applicants. Insurers and other persons that use genetic testing are required by statute to reveal the use of the test to applicants and to obtain their specific authorization. Legislation enacted in 2001 requires the Director of the Department of Consumer and Business Services to prescribe the authorization form. The authorization form requirement primarily applies to life insurance because genetic testing is prohibited in connection with health insurance coverage.

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

Rules Coordinator: Sue Munson

Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE - Suite 440-1, Salem, OR 97301

Telephone: (503) 947-7272

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**Department of Environmental Quality
Chapter 340**

Date:	Time:	Location:
1-21-03	2 p.m.	Salem Public Library Loucks Auditorium
1-22-03	10 a.m.	Smullin Education Center Medford, OR
1-24-03	10 a.m.	Bend Public Library Brooks Resources Room

Hearing Officer: Jim Billings, Andy Ullrich, Walt West

Stat. Auth.: ORS 454.626, 454.780, 468.020, 468B.020 & 468B.035

Stats. Implemented: ORS 468.005, 468B.005, 468.065, 468B.015, 468B.015, 468B.035, 468B.050

Proposed Amendments: 340-045-0010, 340-045-0015, 340-045-0033

Last Date for Comment: 1-31-03, 5 p.m.

Summary: This rulemaking proposes the adoption of a new general permit for small municipal storm sewer systems (MS4s). Federal regulations require certain small MS4s (mostly municipalities) to obtain permits to minimize and control storm water pollution discharged to surface waters by these municipal systems. The proposed general permit will implement these federal requirements. Other parts of this rulemaking propose to add definitions and clarify existing rules, rather than add new regulatory requirements.

To submit comments or request additional information, please contact Kevin Masterson at the Department of Environmental Quality (DEQ), 811 SW Sixth Avenue, toll free in Oregon at 800-452-4011 or (503) 229-5615, masterson.kevin@deq.state.or.us, (503) 229-5408 (FAX), or visit DEQ's website <http://www.deq.state.or.us/news/index.asp>

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

Rules Coordinator: Rachel Sakata

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

Telephone: (503) 229-5659

NOTICES OF PROPOSED RULEMAKING

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

Date:	Time:	Location:
1-22-03	9 a.m.	28 West 6th Medford, OR
1-23-03	9 a.m.	HSB 137A 500 Summer St. NE Salem, OR
1-28-03	1:30 p.m.	1555 SW Southgate Place Pendleton, OR

Hearing Officer: Barbara Carranza
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419.015 - 419.045
Proposed Adoptions: 413-020-0275, 413-020-0280, 413-020-0285, 413-020-0290
Last Date for Comment: 1-28-03

Summary: Permanent rules will be filed to outline efficient and timely collaboration between child welfare and law enforcement agencies in both the reporting and investigation of reported child abuse and neglect. These rules describe the "cross reporting" responsibility and procedures for staff performing child welfare functions. "Third Party Abuse" is specifically defined and the rule requires that local multi-disciplinary teams develop protocols for such cases. Specific supervisory review time frames are outlined. These permanent "Cross Reporting" rules will replace temporary rule amendments regarding Screening that were filed on October 1, 2002 (413-020-0335). These rules are expected to be filed effective March 18, 2003 when the temporary rules will expire.

**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

Date:	Time:	Location:
1-22-03	10 a.m.	28 West 6th Medford, OR
1-23-03	10:30 a.m.	HSB 137A 500 Summer St. NE Salem, OR
1-28-03	2:30 p.m.	1555 SW Southgate Place Pendleton, OR

Hearing Officer: Barbara Carranza
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419B.005, 184.805 & 418.015
Proposed Adoptions: 413-030-0121, 413-030-0123, 413-030-0125, 413-030-0127, 413-030-0129, 413-030-0131, 413-030-0133
Proposed Amendments: 413-030-0100, 413-030-0110, 413-030-0120

Proposed Repeals: 413-030-0130

Last Date for Comment: 1-28-03

Summary: The Child Protective Services (CPS) Program is revising the Eligibility Rules to provide a definitional framework for determining Types of Abuse. Former "CPS Eligibility" rules are being revised and will be called "Types of Abuse." Several areas have been more clearly defined. Clarification has been provided regarding what may be considered punishment. You may review the draft rules and four attachments at the DHS Child Welfare Policy Website. They are posted under "Draft Policies/Rules." The link is: http://170.104.12.72/intranet/scf_manuals/Draft/jan03/jan_memo.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

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

Date:	Time:	Location:
1-21-03	2:30-4:30 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 Adoptions: Rules in 410-120
Proposed Amendments: 410-120-1360, 410-120-1520, 410-120-1540, 410-120-1560, 410-120-1580, 410-120-1600, 410-120-1640, 410-120-1660, 410-120-1680
Last Date for Comment: 1-21-03

Summary: The General Rules program Administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-120-aaaa is being adopted to describe the department's current method for claim refund/recoupment process, how recoupment happens, where to send refund checks, etc. Rule 410-120-bbbb and 410-120-cccc are being adopted to allow providers "levels of appeal" to request reconsideration of claim disputes. Rule 410-120-1360 is being revised to add confidentiality language for fee-for-service providers related to medical record keeping. Rules 410-120-1520 and 410-120-1540 are being revised to clarify that these rules are based upon recoveries due to provider audits. Rule 410-120-1560, 410-120-1580, 410-120-1600, 410-120-1640, 410-120-1660 and 410-120-1680 are being revised to clarify the administrative review process.

**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

Date:	Time:	Location:
1-21-03	2:30-4:30 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: 1-21-03

Summary: The General Rules program Administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-120-1200 is being amended to eliminate dental, chemical dependency, durable medical equipment and supplies, and mental health from the OHP Standard Benefit package.

**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

Date:	Time:	Location:
1-21-03	2:30-4:30 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

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 410-121-0060, 410-121-0190, 410-121-0200

Last Date for Comment: 1-21-03

Summary: The Pharmaceutical services program Administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rules are being revised as follows: OAR 410-121-0060 — to state emergent or urgent procedure to obtain a limited amount of drug; 410-121-0190 — to correct the billing code and type of service for billing clozapine; Rule 410-121-0200 — to reference the OMAP Home Enteral/Parenteral Nutrition and IV services guide for billing instructions.

**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:	Time:	Location:
1-21-03	2:30-4:30 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: 410-121-0140, 410-121-0160

Last Date for Comment: 1-21-03

Summary: The Pharmaceutical services program Administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rules 410-121-0140 and 410-121-0160 are being revised to change the dispensing fee and the AWP rate of reimbursement for institutional pharmacies (UD Modified UD), effective 2/1/03; and, change the dispensing fee for institutional pharmacies again plus the rate of AWP reimbursement for all pharmacies, effective 3/1/03. For the AWP rate of reimbursement, other maximums still apply.

**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:	Time:	Location:
1-21-03	2:30-4:30 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 Adoptions: 410-122-xxxx

Proposed Amendments: 410-122-0180, 410-122-0190, 410-122-0200, 410-122-0202, 410-122-0203, 410-122-0205, 410-122-0207, 410-122-0208, 410-122-0209, 410-122-0210, 410-122-0240, 410-122-0300, 410-122-0320, 410-122-0340, 410-122-0360, 410-122-0365, 410-122-0375, 410-122-0420, 410-122-0470, 410-122-0500, 410-122-0510, 410-122-0525, 410-122-0540, 410-122-0560, 410-122-0580, 410-122-0600, 410-122-0620, 410-122-0625, 410-122-0630, 410-122-0660, 410-122-0678, 410-122-0680

Proposed Repeals: 410-122-0370, 410-122-0460, 410-122-0665, 410-122-0670, 410-122-0675

Last Date for Comment: 1-21-03

Summary: The Durable Medical Equipment and Medical Supplies administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. A new rule is being adopted to include pediatric wheelchairs. Rules (see attached)

are being revised to reflect the 2003 CPT and HCPCS code changes; change OMAP unique codes to match the new HCPCS codes; and to add, delete and change descriptions of current HCPCS codes to match CMS. Rules listed above are being deleted to remove most orthotic and prosthetic codes from the rule, instruct the use of Medicare criteria and limitations for those codes and the use of the current HCFCS guide for the descriptions.

**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:	Time:	Location:
1-21-03	2:30-4:30 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: 410-125-0080

Last Date for Comment: 1-21-03

Summary: The Hospital services program Administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-125-0080 is being revised to clarify language regarding prior authorization requirements for in-state or contiguous hospital transfers.

**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:	Time:	Location:
1-21-03	2:30-4:30 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: 410-129-0200, 410-129-0240, 410-129-0260

Last Date for Comment: 1-21-03

Summary: The Speech-Language Pathology and Audiology services program Administrative rules govern Office of Medical Assistance Program (OMAP) payments for services provided to clients. Rules are being revised to reflect the 2003 CPT and HCPCS code changes and change OMAP unique codes to match the new HCPCS codes.

**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:	Time:	Location:
1-21-03	2:30-4:30 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

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 410-130-0100, 410-130-0160, 410-130-0180, 410-130-0200, 410-130-0240, 410-130-0250, 410-130-0400, 410-130-0540, 410-130-0562, 410-130-0580, 410-130-0585, 410-130-0660, 410-130-0680, 410-130-0700, 410-130-0760, 410-130-0780, 410-130-0800, 410-130-0940

Last Date for Comment: 1-21-03

Summary: The Medical-Surgical services program Administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rules are being revised to reflect the 2003 CPT and HCPCS code changes and "crosswalk" OMAP unique codes to CPT and HCPCS codes due to HIPAA requirements. Rule 410-130-0180 is being revised to assure clients meet criteria defined on the HSC Prioritized List of Health Services and to clarify policy regarding billing for "take-home" drugs. Rule 410-130-0400 is being revised to allow consistent payment regardless of procedure. Rule 410-130-0580 is being revised to clarify language regarding clients signature on consent form. Rule 410-130-0700 is being revised to update covered/non-covered supplies consistent with Durable Medical Supplies. Rule 410-130-0800 is being revised to remove a statement regarding flu vaccine coverage for high risk children. These and other rules listed above will also be revised as necessary to take care of housekeeping corrections.

**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:	Time:	Location:
1-21-03	2:30-4:30 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: 410-136-0300

Last Date for Comment: 1-21-03

Summary: The Medical Transportation services program Administrative rules govern Office of Medical Assistance Program (OMAP) payments for services provided to clients. Rule 410-136-0300 is being revised to clarify retroactive authorization in both brokerage contract areas and non-brokerage contract areas.

**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:	Time:	Location:
1-21-03	2:30-4:30 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: 410-141-0000, 410-141-0520

Last Date for Comment: 1-21-03

Summary: The Oregon Health Plan services program Administrative rules govern Office of Medical Assistance Program (OMAP) payments for services provided to clients. Rules 410-141-0000 and 410-141-0520 are being revised to indicate the removal of chemical dependency services related to OHP Expansion changes proposed to be effective February 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:	Time:	Location:
1-21-03	2:30-4:30 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: 410-148-0020 - 410-148-0300

Last Date for Comment: 1-21-03

Summary: The Home Enteral/Parenteral Nutrition and IV services program administrative rules govern Office of Medical Assistance Program (OMAP) payments for services provided to clients. HIPAA regulations require the use of standard billing codes. Rules are being revised to delete references to all local or OMAP unique billing codes and replace them with the standard HCPCS codes.

**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

.....

Date:	Time:	Location:
1-21-03	2:30-4:30 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: 410-141-0080, 410-141-0260, 410-141-0261, 410-141-0264

Last Date for Comment: 1-21-03

Summary: The Oregon Health Plan services program Administrative rules govern Office of Medical Assistance Program (OMAP) payments for services provided to clients. Rule 410-141-0080 is being revised to establish a process to disenroll violent members from managed care plan enrollment. Rules 410-141-0260, 410-141-0261 and 410-141-0264 are being revised to correct minor house-keeping errors.

**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

.....

Date:	Time:	Location:
1-21-03	2:30-4:30 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 Adoptions: 410-123-1085, 410-123-1220, 410-123-1240, 410-123-1260, 410-146-0075, 410-146-0080, 410-147-0085, 410-147-0120

Proposed Amendments: 410-123-1280, 410-123-1290, 410-123-1300, 410-123-1310, 410-123-1320, 410-123-1330, 410-123-1340, 410-123-1360, 410-123-1380, 410-123-1400, 410-123-1420, 410-123-1440, 410-123-1460, 410-123-1480, 410-123-1500

Last Date for Comment: 1-21-03

NOTICES OF PROPOSED RULEMAKING

Summary: The Administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Revisions to rules listed above (Rule 410-177-0085 will be adopted February 1, 2003) will reflect the new Standard Benefit package population, future Standard Benefit cuts, billing changes, updates with new or deleted CPT/HCPCS codes, and other necessary housekeeping corrections. Note: Rules will indicate a variety of future revisions and corresponding effective dates. Rules in the Dental program are being deleted to remove from rule unnecessary information such as definitions, codes and code descriptions and some rules are repealed as a result of combining rule information.

**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

Date:	Time:	Location:
1-21-03	2:30-4:30 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: 410-132-0000 - 410-132-0200

Last Date for Comment: 1-21-03

Summary: The Private Duty Nursing services program Administrative rules govern Office of Medical Assistance Program (OMAP) payments for services provided to clients. Rules are being revised to reflect the 2003 CPT and HCPCS code changes and change OMAP unique codes to match the new HCPCS codes.

**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

Date:	Time:	Location:
1-21-03	2:30-4:30 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: 410-150-0000 - 410-150-0300

Last Date for Comment: 1-21-03

Summary: The Administrative Exam and Billing services program Administrative rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rules are being revised to change OMAP unique procedure codes to National CPT and HCPCS codes relative to HIPAA regulations.

**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 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-121-0300
Proposed Repeals: 410-121-0300(T)
Last Date for Comment: 1-22-03

Summary: The rules of Pharmacy Services govern Office of Medical Assistance Programs (OMAP) payment to providers for pharmaceutical services provided for clients of the Medical Assistance Programs. Effective December 1, 2002, OMAP temporarily amended rule 410-121-0300 to file the rule by reference to the CMS Federal Upper Limits for drug payments listing and immediately revise drug products information for this listing, in compliance with federal regulations. This is the Notice of Proposed Rulemaking to permanently amend this 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

Department of Human Services, Public Health Chapter 333

Date:	Time:	Location:
1-24-03	1 p.m.	Rm. 140 State Office Bldg. 800 NE Oregon St. Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 441 & 442

Stats. Implemented: ORS 441.020 & 442.015

Proposed Adoptions: 333-700-0000, 333-700-0005, 333-700-0010, 333-700-0015, 333-700-0020, 333-700-0025, 333-700-0030, 333-700-0035, 333-700-0040, 333-700-0045, 333-700-0050, 333-700-0055, 333-700-0060, 333-700-0065, 333-700-0070, 333-700-0075, 333-700-0080, 333-700-0085, 333-700-0090, 333-700-0095, 333-700-0100, 333-700-0105, 333-700-0110, 333-700-0115, 333-700-0120, 333-700-0125, 333-700-0130

Last Date for Comment: 1-24-03, 5 p.m.

Summary: Establishes licensure requirements for Outpatient Renal Dialysis Facilities.

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

Rules Coordinator: Jana Fussell

Address: Department of Human Services, Public Health, 800 NE Oregon St., Portland, OR 97232

Telephone: (503) 731-4320

Department of Human Services, Self-Sufficiency Programs Chapter 461

Date:	Time:	Location:
1-22-03	10 a.m.	Rm. 254 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 411.060; Other Auth.: HB 5100

Stats. Implemented: ORS 411.060

Proposed Amendments: 461-115-0530, 461-180-0090

Last Date for Comment: 1-22-03

Summary: Rule 461-115-0530 is being amended to change the certification period policy so clients eligible for the Oregon Health Plan under the OHP-OPU program are certified eligible for six months, the month containing the effective date for starting medical benefits and the following five months. In another rule (OAR 461-180-0090) change, the effective date for starting medical benefits under the OHP-OPU program is being changed to the first of the month following the month the Department of Human Services determines the client is eligible for the program.

Rule 461-180-0090 is being amended to change the policy for determining the effective date for starting medical benefits for clients eligible under the OHP-OPU program of the Oregon Health Plan.

NOTICES OF PROPOSED RULEMAKING

(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

Stat. Auth.: ORS 409.021 & 411.060

Stats. Implemented: ORS 25.020, 25.080, 25.082, 25.287, 25.396, 107.108, 107.135, 110 & 416.425

Proposed Amendments: 461-200-1160, 461-200-1180, 461-200-1500, 461-200-3420, 461-200-3620, 461-200-5020, 461-200-5040, 461-200-5060, 461-200-5120, 461-200-5125, 461-200-7140

Last Date for Comment: 2-7-03

Summary: The proposed amendment to OAR 461-200-1160 is to clarify that when the Child Support Program receives a party's written request to retract a claim of risk, the program will terminate (or ask the court to terminate) a previously entered finding and order for nondisclosure. The proposed amendment also clarifies that information previously protected by an order for nondisclosure of information becomes subject to disclosure when the order for nondisclosure is terminated. The proposed amendment also provides that if a court has made a finding of risk and order for nondisclosure of information, the Child Support Program will use the party's residence, mailing or contact address as an address of record, if no address of record is provided within 30 days of notice. Finally, the proposed amendment makes the phrase "finding of risk and order for nondisclosure of information" consistent throughout the rule.

The proposed amendment to OAR 461-200-1180 is to provide that when the Child Support Program has sent a document to a party's address of record and the document is returned because the address is not good, the program will use the party's residence, mailing or contact address as the new address of record. The amendment also clarifies that the party may retract an address of record.

The proposed rewrite of OAR 461-200-1500 is to provide for a more equitable method of distributing federal incentives by calculating and distributing the incentives based on performance in four program areas: support order establishment, current support collections, cases receiving an arrears payment, and cost effectiveness.

The proposed amendments to OAR 461-200-3420 are to make the two types of modification processes, periodic reviews and change of circumstances, as similar as legally and procedurally possible. The proposed amendments define a request for a review as a written request with necessary supporting documents and more clearly states that the Child Support Program will not conduct a review for a change of circumstances request unless the requesting party provides documentation supporting the claim.

The proposed amendment to OAR 461-200-3620 is a technical amendment to clarify that hearings officers of the Oregon Hearing Officer Panel do not have the authority to issue administrative subpoenas under ORS 25.082. The authority for hearings officers to issue subpoenas and order discovery is found in the Oregon APA and not in chapter 25.

The proposed amendments to OAR 461-200-5020 remove the references to when accounting services will be provided (as those provisions are covered under OAR 461-200-1070) and add a reference to OAR 461-200-5060, billings for support payments, to clarify when billings will occur.

The proposed amendment to OAR 461-200-5040 is to address what actions the Child Support Program will take when the support provisions in the body of a support order do not match the money judgment summary. The proposal is for Child Support Program to take action to correct the discrepancy for administrative orders and advise the parties to take action to correct the discrepancy when the

order is judicial. However, the Child Support Program may choose to take action when the order is judicial if the child support rights have been assigned to the state. In all scenarios, the Child Support Program will enforce per the judgment register Oregon Judicial Information Network until the discrepancy is corrected.

The proposed amendments to OAR 461-200-5060 remove the references to discontinuing billings after a period of five months of non-payment and allow the Division of Child Support to discontinue billings in those cases where income withholding or electronic funds transfer are being and have been paid for a period of six months or more, unless the obligor requests otherwise or the enforcing agency determines otherwise.

As of Fall term 2002, Oregon state schools of higher education have contracted with a clearinghouse to certify student enrollment. In order to accommodate this new process, the proposed amendments to OAR 461-200-5120 and OAR 461-200-5125 allow for the acceptance of the clearinghouse enrollment verification certificate in lieu of Oregon state schools of higher education completing a portion of the child attending school compliance form developed by the Department. Temporary rules were adopted on November 1, 2002.

The proposed amendment to OAR 461-200-7140 is a technical amendment to clarify that whenever possible and allowed under Oregon law, administrative process (ORS 416.400 to 416.470) will be used in conjunction with the Uniform Interstate Family Support Act to establish, enforce and modify support orders.

Rules Coordinator: Michelle Kутten

Address: Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E47, Salem, OR 97301-1066

Telephone: (503) 986-6240

Department of Justice Chapter 137

Date:	Time:	Location:
1-21-03	7-9 p.m.	DCS, Human Services Bldg. Lobby 118 2nd Ave SE Albany, OR 97321
1-22-03	7-9 p.m.	McKenzie Center 2885 Chad Dr. Conference Rm. 1 Eugene, OR 97408
1-22-03	7-9 p.m.	Medford DCS Office 39 N Central Ave Medford, OR 97501
1-22-03	6-9 p.m.	Pendleton City Hall Community Rm. 500 SW Dorion Ave Pendleton, OR 97801
1-22-03	7-9 p.m.	Douglas County Library Public Meeting Rm. 1409 NE Diamond Lake Blvd Roseburg, OR 97470
1-27-03	7-9 p.m.	DCS 10142 SE Washington St. (inside Mall 205) Portland, OR 97216
1-27-03	7-9 p.m.	Oak Hills Mall Siuslaw Rm. 1495 Edgewater NW Salem, OR 97304
1-28-03	7-9 p.m.	DCS, Cascade Rm. 1001 SW Emkay Dr. Ste A Bend, OR 97701
1-29-03	7-9 p.m.	Newmark Center Conference Rm. 228 2110 Newmark Coos Bay, OR 97420
1-29-03	7-9 p.m.	Medford DCS Office 39 N Central Ave Medford, OR 97501

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Bev Brauer, Dale Slater, James Brenner, Dawn Reynolds, Debra Mosher, Merry Larsen, Kathy Duff, Rebecca Robinson, Traci Pankey

Stat. Auth.: ORS 25.270 - 25.290 & 180.340

Stats. Implemented: ORS 25.270 - 25.290 & 107.135

Proposed Adoptions: 137-050-0333, 137-050-0455, 137-050-0465

Proposed Amendments: 137-050-0320, 137-050-0330, 137-050-0335, 137-050-0340, 137-050-0350, 137-050-0360, 137-050-0390, 137-050-0400, 137-050-0405, 137-050-0410, 137-050-0420, 137-050-0430, 137-050-0450, 137-050-0475, 137-050-0490

Proposed Repeals: 137-050-0365, 137-050-0460, 137-050-0470

Last Date for Comment: 1-31-02

Summary: The Division needs to adopt these rules to codify changes to the child support guidelines. The Family Support Act of 1988 (P.L. 100-485) requires states to adopt guidelines for the establishment and modification of child support orders and requires states to review those guidelines at least once every four years, taking into consideration economic studies of the cost of raising children. The Department of Justice, Division of Child Support, designated by ORS 25.270 as the agency responsible for promulgation of the support guidelines, first adopted the guidelines in October 1989. In late 2001, the Department commissioned two studies, one to review the Oregon Schedule of Basic Child Support Obligations and recent economic data, and one to review recent Oregon-specific economic data. The Department formed an advisory committee of child support practitioners and parent advocacy groups to review the findings of the study and the criteria and methodology contained in the guidelines. These rules contain the revisions to the guidelines resulting from the Department's review.

Proposed Adoptions: The proposed adoption of OAR 137-050-0333 is to remove the rebuttal criteria from OAR 137-050-0330 and create a rule specifically for rebuttals. Textual changes were made to subsections (c), (g), (i) and (j). Section (3) was deleted.

The proposed adoption of OAR 137-050-0455 is to explain how parenting time credit shall be calculated and credited against the calculation of child support obligations. The new rule addresses the presumption that a parent is responsible for the costs of caring for the child while exercising parenting time. The new rule also outlines a Parenting Time Table, listing the percentage range of parenting time with a corresponding adjustment percentage to be used in determining the parenting time credit.

The proposed adoption of OAR 137-050-0465 is to ensure that parents who are at or near the poverty level have sufficient income to support themselves after the payment of child support. The new rule also enables child support practitioners to determine if a low income adjustment applies.

Proposed Amendments: The proposed amendments to OAR 137-050-0320 are to organize the definitions in alphabetical order, add definitions for Social Security benefits, Veteran's benefits, Low Income Adjustment, Parent 1, Parent 2, parenting time, and primary physical custody, and clarify other definitions pertaining to the child support guidelines. The amendments add mandatory contributions to labor organizations to the allowable adjustments one can make to adjusted gross income.

The proposed amendments to OAR 137-050-0330 are to clarify how to compute individual child support obligations by explaining each step of the calculation process.

The proposed amendment to OAR 137-050-0335 is to clarify that the guidelines changes will apply to an amended notice, motion or petition.

The proposed amendment to OAR 137-050-0340 is to clarify how adoption assistance payments, guardianship assistance payments, and foster care subsidies should be treated when determining a parent's gross income. The proposed amendment also reflects the language formerly found in OAR 137-050-0350 regarding the treatment of expense reimbursements and in-kind payments, as it is more appropriately found in this rule.

The proposed amendment to OAR 137-050-0350 is to remove the reference to expense reimbursements or in-kind payments, as these are now addressed in OAR 137-050-0340.

The proposed amendment to OAR 137-050-0360 is to clarify that it is a rebuttable presumption that a parent can be gainfully employed on a full-time basis. The amendment also clarifies how child support practitioners should calculate income due to unemployment compensation or worker's compensation and defines full-time employment.

The proposed amendment to OAR 137-050-0390 makes a minor clarification to the language regarding the calculation of gross income of a parent entitled to receive spousal support.

The proposed amendments to OAR 137-050-0400 are to clarify the language on how to calculate a nonjoint child credit.

The proposed amendment to OAR 137-050-0405 changes the calculation of credit for Social Security or Veteran's benefit payments received on behalf of a child. Benefits will now be added to the gross income of the parent for whom the benefit was paid, and if the benefits were paid on behalf of the noncustodial parent, the benefit will be subtracted from the net child support obligation. Previously, a pro-rata credit was given without taking into account for which parent's disability the benefits were paid.

The proposed amendment to OAR 137-050-0410 is to clarify how to calculate a credit for health care coverage provided for a joint child. The amendment also allows credit prior to enrollment if costs are determinable at the time, allows credit when costs are incurred by a spouse or domestic partner, and defines health care coverage.

The proposed amendments to OAR 137-050-0420 clarify that child care costs may be incurred by either parent and thus either parent may be entitled to credit for those costs. The amendment also clarifies when child care costs for a child will be allowed and defines disabled child.

The proposed amendment to OAR 137-050-0430 is to clarify when a parent is entitled to credit for recurring medical expenses incurred on behalf of a joint child. The amendment also defines recurring medical expenses.

The proposed amendments to OAR 137-050-0450 clarify when parenting time shall be considered in the child support calculation. The amendments also define how child support practitioners shall determine the amount of parenting time to be used in the calculation. Finally, the amendments eliminate references to shared physical custody.

The proposed amendment to OAR 137-050-0475 is to clarify the updated self-support reserve amount and correct references to amended rule numbers.

The proposed amendments to OAR 137-050-0490 are to clarify how to calculate the basic child support obligation using the updated child support scale and replaces the old child support scale in its entirety.

Proposed Repeals: OAR 137-050-0365 is being repealed as the intent of this rule was unclear to child support practitioners and is now being clarified in OAR 137-050-0360.

OAR 137-050-0460 is being repealed due to the amendments in OAR 137-050-0450, which result in a new way of calculating credit for parenting time. Under the new way of calculating child support obligations, this rule will no longer be valid.

OAR 137-050-0470 is being repealed due to the determination that there should be no set minimum order amount. By utilizing the calculations as found in OAR 137-050-0465 and 137-050-0475, child support practitioners will be able to arrive at a fair and reasonable child support obligation.

Finally, this rulemaking proposed changes to other rules in the series which make up the child support guidelines as recommended by the Advisory Committee appointed to give input regarding this rulemaking.

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

Rules Coordinator: Shani Fuller

NOTICES OF PROPOSED RULEMAKING

Address: Department of Justice, 1162 Court St. NE, Salem, OR 97305
Telephone: (503) 986-6232

**Department of Transportation,
Rail Division
Chapter 741**

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Date: 1-24-03 **Time:** 9:30 a.m. **Location:** Trial Div.
West Conference Rm.
1162 Court St. NE
Salem, OR

Hearing Officer: Linda Grimms
Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, Or Laws 1999, ch 849
Proposed Adoptions: 137-003-0036, 137-003-0573
Last Date for Comment: 1-31-03

Summary: These proposed rules implement the nondisclosure requirements of the federal law know as HIPAA (Health Insurance Portability and Accountability Act of 1996), OAR 137-003-0036 is a part of the Model Rules for Contested Cases. It will apply to hearings not conducted by the Hearing Officer Panel, if adopted by an agency. OAR 137-003-0573 is a Hearing Panel Rule. It will apply to hearings before the Hearings Officer Panel. The first subsection of each rule outlines the intent of the rule — to comply with HIPAA. The second subsection defines “Individually Identifiable Health Information” consistent with the federal law. The third subsection requires a hearing officer, upon request, to issue an order protecting Individually Identifiable Health Information from further disclosure if the information is needed to conduct a contested case hearing. The fourth subsection outlines the key components of a protective order by the hearing officer. The fifth subsection explains; that the rule is not intended to expand access to Individually Identifiable Health Information. The sixth, seventh, and eighth subsections explain how hearing officers and agencies should handle Protected Information in Proposed Orders and in Final Orders, and after hearings, to conform to federal confidentiality requirements. The ninth subsection explains that the rule is not intended to create or defeat any other claim or defense related to admissibility or confidentiality of health information. The tenth subsection explains that the rule applies to any appropriate contested case pending or initiated on or after April 14, 2003, the effective date of the confidentiality provisions of HIPAA.
**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 Transportation
Chapter 731**

Stat. Auth.: ORS 184.616, 184.619, 279.051 & 279.712
Stats. Implemented: ORS 279.049, 279.051 & 279.712
Proposed Amendments: 731-010-0030
Last Date for Comment: 2-7-03

Summary: The amendment to OAR 731-010-0030 adopts the new Department of Administrative Services’ (DAS) rules, OAR 125-025, governing the “Consultant Selection Procedures: Architects, Engineers, and related Professional Consultants.” OAR 125-025 rules were amended and renumbered from OAR 125-065 on January 1, 2002. The Department of Transportation is not adopting OAR 125-025-0100 relating to the use of the DAS standards contract and amendment forms. ODOT has developed and uses its own contract forms that were negotiated between the American Council of Engineering Companies and ODOT.

Rules Coordinator: Brenda Trump
Address: Department of Transportation, 1905 Lana Ave. NE, Salem, OR 97314
Telephone: (503) 945-5278

Stat. Auth.: ORS 823 & 824
Stats. Implemented: ORS 824.052
Proposed Repeals: 741-500-0010, 741-500-0020, 741-500-0030, 741-500-0040, 741-500-0050
Last Date for Comment: 2-7-03

Summary: The U.S. Department of Defense requested that ODOT repeal these rules because they are unnecessary and time consuming in the event of a national emergency. Oregon is one of the last two states to have rules requiring placards for over-dimensional loads. Class I railroads operating in Oregon currently have a very sophisticated database of all lines and any impairments or encroachments that may require safety measures when handling a wide load. Specific instructions are issued in the event of the movement of excessive load measurement cars, such as clearance bulletins, speed restrictions, specific routing, and train make-up.

Rules Coordinator: Brenda Trump
Address: Department of Transportation, Rail Division, 1905 Lana Ave. NE, Salem, OR 97314
Telephone: (503) 945-5278

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**Employment Department
Chapter 471**

Date: 1-28-03 **Time:** 8 a.m. **Location:** Employment Dept.
Auditorium
875 Union NE
Salem, OR 97311

Hearing Officer: Richard Luthé
Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.610
Proposed Amendments: 471-030-0015, 471-030-0030, 471-030-0050, 471-030-0076, 471-031-0010, 471-031-0030, 471-031-0040, 471-031-0055, 471-031-0075, 471-031-0095
Last Date for Comment: 1-28-03, 5 p.m.

Summary: The Employment Department is proposing to amend various rules within OAR Chapter 471 as needed to remove references to specific genders.

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

Rules Coordinator: Richard L. Luthé
Address: Employment Department, 875 Union St. NE - Room 312, Salem, OR 97311
Telephone: (503) 947-1724

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Date: 1-28-03 **Time:** 12 p.m. **Location:** Employment Dept.
Auditorium
875 Union NE
Salem, OR 97311

Hearing Officer: Richard Luthé
Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657
Proposed Amendments: 471-010-0040
Last Date for Comment: 1-28-03, 5 p.m.

Summary: This rule is being amended to clarify the time of receipt for documents faxed to the Employment Department.

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

Rules Coordinator: Richard L. Luthé
Address: Employment Department, 875 Union St. NE - Room 312, Salem, OR 97311
Telephone: (503) 947-1724

NOTICES OF PROPOSED RULEMAKING

Date: 1-28-03
Time: 2 p.m.
Location: Employment Dept.
 Auditorium
 875 Union NE
 Salem, OR 97311

Hearing Officer: Richard Luthé
Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657
Proposed Adoptions: 471-010-0000
Last Date for Comment: 1-28-03, 5 p.m.

Summary: The Employment Department is proposing to adopt this rule to clarify that the "Employment Department", as referred to in ORS Chapter 657, is to be known as the "Oregon Employment Department".

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

Rules Coordinator: Richard L. Luthé
Address: Employment Department, 875 Union St. NE - Room 312, Salem, OR 97311
Telephone: (503) 947-1724

Date: 1-28-03
Time: 10 a.m.
Location: Employment Dept.
 Auditorium
 875 Union NE
 Salem, OR 97311

Hearing Officer: Richard Luthé
Stat. Auth.: ORS 657.610
Stats. Implemented: ORS 657.610 & 657.705 - 657.725
Proposed Adoptions: 471-020-0035, 471-020-0040
Last Date for Comment: 1-28-03, 5 p.m.

Summary: The Employment Department is proposing to adopt new Employment Service rules as part of the Department's 3 Year Rule Review process.

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

Rules Coordinator: Richard L. Luthé
Address: Employment Department, 875 Union St. NE - Room 312, Salem, OR 97311
Telephone: (503) 947-1724

Landscape Contractors Board Chapter 808

Date: 1-17-03
Time: 1 p.m.
Location: Roth's IGA
 West Salem
 Glen Creek Room

Hearing Officer: Robbin Pearce
Stat. Auth.: ORS 670 & 671
Stats. Implemented: ORS 671 & 183
Proposed Amendments: 808-001-0000, 808-001-0005, 808-001-0020, 808-003-0015, 808-003-0020, 808-003-0035, 808-003-0040, 808-003-0045, 808-003-0060, 808-003-0065, 808-003-0095, 808-003-0105, 808-003-0130
Proposed Repeals: 808-001-0040
Last Date for Comment: 1-21-03

Summary: 808-001-0000 Housekeeping to be in compliance with rulemaking requirements of ORS 183, 808-001-0005 Updates adoption dates for model rules, 808-001-0020 Clarifies payment type, amounts charged, refund requests must be in writing and when fees are refundable, 808-001-0040 Eliminates requirement to publish yearly roster.

808-003-0015 Clarifies requirement amount for surety bond and insurance, and when license will be issued, 808-003-0020 Clarifies partnership and other business entities must be registered with Corporation Division, 808-003-0035 Eliminates previous requirements no longer in effect, 808-003-0040 Clarifies when "all phase license holder" may not install backflow prevention equipment, 808-003-0045 Clarifies which exam(s) or sections must be taken to upgrade

license, and when business must notify agency of change in phase of license and when individual must notify agency of departure from employment from landscape business and business must stop performing at level unless employ licensed contractor at that level. 808-003-0060 Eliminates previous exam requirements no longer in effect; housekeeping, 808-003-0065 Clarifies exam score is for each section of an exam, 808-003-0095 Clarifies requirement for landscape businesses to submit Certificate of Insurance with agency listed as the certificate holder, 808-003-0105 Clarifies owner must be licensed if business does not employ a licensed landscape contractor, and license will be suspended if bond is canceled, 808-003-0130 Housekeeping; add requirement for "no-show" fee if applicant misses scheduled appointment.

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

Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 235 Union St. NE, Salem, OR 97301
Telephone: (503) 986-6561

Date: 1-17-03
Time: 1 p.m.
Location: Roth's IGA
 West Salem
 Glen Creek Room

Hearing Officer: Robbin Pearce
Stat. Auth.: ORS 670 & 671.703; Other Auth.: HB 2202 (2001)
Stats. Implemented: ORS 671.703

Proposed Adoptions: 808-004-0590, 808-008-0030, 808-008-0085, 808-008-0090, 808-008-0425, 808-008-0430, 808-009-0200
Proposed Amendments: 808-004-0440, 808-004-0560, 808-008-0020, 808-008-0040, 808-008-0060, 808-008-0080, 808-008-0100, 808-008-0110, 808-008-00120, 808-008-0140, 808-008-0160, 808-008-0180, 808-008-0220, 808-008-0300, 808-008-0400, 808-008-0420, 808-008-0440, 808-008-0460, 808-008-0480, 808-009-0020, 808-009-0160, 808-009-0400, 808-009-0420

Last Date for Comment: 1-21-03
Summary: 808-004-0440 - Clarifies how claims with contracts that include mediation or arbitration will be processed; 808-004-0560 - Implements arbitration as the default hearing procedure and clarifies that hearings under this rule may be held as an arbitration or a contested case hearing. 808-004-0590 - Adopts procedure for referring a case for arbitration or a contested case hearing to the Hearing Officer Panel, allows parties to request contested case in place of arbitration, clarifies when a claim should be decided in court, an untimely request for contested case hearing, and the effective date for hearings to be held as arbitration.

808-008-0020 - Implements arbitration as the default hearing procedure, 808-008-0030 - Incorporates Hearing Officer Panel Rules regarding contested case hearings, 808-008-0040 - Clarifies when agency may refuse to arbitrate a dispute, 808-008-0060 - Clarifies when a party may request a different arbitrator, 808-008-0080 - Clarifies the Hearing Officer Panel may not perform the duties of the agency, 808-008-0085 - Adopts procedures for service of documents, 808-008-0090 - Establishes procedure if Hearing Officer Panel receives a request to hear a claim as a contested case or notice that the claim has been removed to court, 808-008-0100 - Clarifies who may require an on-site meeting before arbitration, 808-008-0110 - Clarifies requirement to provide a declaration of damages and an amended declaration of damages, 808-008-0120 - Clarifies that the Hearing Officer Panel will schedule arbitration, Sections (2), (3) and (4) moved to 808-008-0110, 808-008-0140 - Clarifies who determines when the arbitrator should be disqualified, 808-008-0160 - Clarifies who may substitute arbitrator, 808-008-0180 - Clarifies that legal entities may appear or be represented by an attorney in a hearing, 808-008-0220 - Clarifies postponement option, 808-008-0300 - Establishes that award is not made solely based on a party failing to appear at the hearing, 808-008-0400 - Clarifies the initial notice of arbitration is sent by the agency and when items are considered

NOTICES OF PROPOSED RULEMAKING

delivered or served, 808-008-0420 - Clarifies when the arbitration award may be issued, that all issues must be discussed in the arbitration award, that no award may be greater than the total alleged owed, when arbitrator can reduce the amount of an award, language regarding effective date of award and procedure if sum of items of damages does not equal the total amount requested, 808-008-0425 - Clarifies the procedures for filing a petition for reconsideration, for arbitrator to respond to petition for reconsideration, and for granting or denying reconsideration, 808-008-0430 - Clarifies form for filing a petition for reconsideration, 808-008-0440 - Clarifies when an arbitration award becomes effective for purposes of payment from a contractor's bond, 808-008-0460 - Clarifies the effect of a party filing exceptions with the circuit court on delivery of an unpaid award to a contractor's surety company, 808-008-0480 - Clarifies agency administrator or person designated by the agency administrator may interpret and apply rules.

808-009-0020 - Clarifies good cause to postpone the scheduled hearing, 808-009-0160 - Clarifies Hearing Officer proposed order may require respondent to perform specific tasks, when a proposed order does not become a final order and procedures if the sum of items of damages does not equal the total amount requested, 808-009-0200 - Clarifies when the hearing officer will return the claim to the agency after a settlement is reached at the hearing, 808-009-0400 - Amends days prior to Board meeting date written arguments to proposed order will be accepted, 808-009-0420 - Amends days prior to Board meeting date written arguments to proposed order will be accepted.

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

Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 235 Union St. NE, Salem, OR 97301
Telephone: (503) 986-6561

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Occupational Therapy Licensing Board
Chapter 339

Stat. Auth.: ORS 675.320(10) & 675.320(11)

Stats. Implemented: ORS 675.320(11)

Proposed Amendments: 339-020-0020

Last Date for Comment: 1-28-03

Summary: These amendments further define continuing education categories. They amend number of points awarded.

Rules Coordinator: Peggy G. Smith

Address: Occupational Therapy Licensing Board, 800 NE Oregon St. #21, Suite 407, Portland, OR 97232

Telephone: (503) 731-4048

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Parks and Recreation Department
Chapter 736

Stat. Auth.: ORS 390.180(1)(c)

Stats. Implemented: ORS 390.180(1)(c)

Proposed Amendments: 736-018-0045

Last Date for Comment: 1-24-03

Summary: ORS 390.180(1)(c) requires the Director of the Oregon Parks and Recreation Department (OPRD) to adopt administrative rules that establish a master plan for each state park. Accordingly, OPRD is adopting a master plan for Clay Myers State Natural Area at Whalen Island. Master plans for state parks are adopted as state rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the new master plan as a state rule.

The master plan responds to the most current information on park resource conditions and public recreation needs as they pertain to this park. The plan was formulated through a year-long process involving meetings with the general public, a steering committee, affected state and federal agencies and Tillamook County. The County approved a rezone of the park property following public hearings before the County Planning Commission and Board of Commis-

sioners held in June and July, 2002, and granted conditional use approval of the master plan proposals in August, 2002.

Rules Coordinator: Angie Steppe

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

Telephone: (503) 378-4168, ext. 223

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Stat. Auth.: ORS 390.180(1)(c)

Stats. Implemented: ORS 390.180(1)(c)

Proposed Amendments: 736-018-0045

Last Date for Comment: 1-24-03

Summary: ORS 390.180(1)(c) requires the Director of the Oregon Parks and Recreation Department (OPRD) to adopt administrative rules that establish a master plan for each state park. Accordingly, state park master plans are adopted as rules under OAR 736-018-0045.

The master plan for Cove Palisades State Park, first adopted in 1981, was recently amended to reflect current information on park resource conditions and public recreation needs. The amended master plan was adopted through the administrative rule-making process and became effective as a rule on March 22, 2002, although the notice of rule-making hearings had been filed and published nearly one year earlier, in 2001. That amendment to OAR 736-018-0045 erroneously stated that the new master plan was adopted in 2001, rather than in 2002. Therefore, the purpose of this proposed amendment to OAR 736-018-0045 is to correct the date of adoption of the Cove Palisades State Park Master Plan.

Rules Coordinator: Angie Steppe

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

Telephone: (503) 378-4168, ext. 223

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Public Utility Commission
Chapter 860

Date:

2-4-03

Time:

1:30 p.m.

Location:

Public Utility Commission
Main Hearing Rm. (1st Flr.)
550 Capitol St. NE
Salem, OR

Hearing Officer: Michael Grant

Stat. Auth.: ORS 183, 756, 757, 759 & Ch. 290 OL 1987

Stats. Implemented: ORS 756.040, 757.005, 757.061, 757.225, 757.255, 757.045 & Ch. 290 OL 1987

Proposed Adoptions: 860-021-0201, 860-034-0141, 860-036-0041, 860-037-0036

Proposed Amendments: 860-021-0021, 860-021-0125, 860-021-0130, 860-021-0200, 860-021-0205, 860-021-0206, 860-021-0210, 860-021-0420, 860-034-0090, 860-034-0110, 860-034-0140, 860-034-0160, 860-036-0040, 860-036-0050, 860-036-0075, 860-036-0115, 860-036-0125, 860-037-0035, 860-037-0045, 860-037-0070, 860-037-0110

Last Date for Comment: 1-21-03

Summary: The Commission previously published notice of two proposed rulemakings, dockets AR 427 and AR 428, in the October 1, 2001 Bulletin. The proposed rule changes arose from comments received from interested persons during the Commission's triennial review of rules under ORS 183.545.

During workshops and comments, interested parties proposed additional rule changes that greatly expanded the scope of the initial rulemakings. Given the additional rulemaking proposals, a large degree of overlap now exists between the two dockets.

For these reasons, the Commission has decided to close these dockets AR 427 and 428 and consolidate the proposed changes in a new docket, AR 452. The Commission will conduct a rulemaking hearing on February 4, 2003 to allow interested persons the opportunity to comment on the unified rulemaking docket and proposed rule changes.

NOTICES OF PROPOSED RULEMAKING

The proposed rules amend and/or reorganize the requirements for establishing credit for residential utility service, interruption of utility service, meter testing, payment arrangements for deposits, and make other housekeeping changes.

A copy of the proposed rules may be obtained by contacting the Administrative Hearings Division at 503-378-6102 or at <http://www.puc.state.or.us/pucoar/proposed/452rule.pdf>

**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

Date:	Time:	Location:
2-19-03	9:30 a.m.	Public Utility Commission Main Hearing Rm. 550 Capitol St. NE Salem, OR

Hearing Officer: Michael Grant

Stat. Auth.: ORS 183 & 757

Stats. Implemented: ORS 757.210 & 757.259

Proposed Amendments: 860-022-0070

Last Date for Comment: 1-21-03

Summary: The proposed amendment to OAR 860-022-0070 would remove the current subsection (7) to allow the annual earnings review for gas utilities required by the rule to continue.

**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 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 756.500 - 756.575, 756.518(2)
Proposed Adoptions: 860-014-0023
Last Date for Comment: 1-21-03
Summary: Defines "major proceeding" for purposes of ORS 756.518(2); describes other ways a case may qualify as a major proceeding; describes procedure for designating a case a major proceeding and for participation in oral argument.
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, 756, 757 & 759
Stats. Implemented: ORS 756.040, 756.055, 756.500 - 756.575
Proposed Amendments: 860-012-0035
Last Date for Comment: 1-21-03
Summary: Due to the limitation set forth in the current rule, whenever any party requires a protective order that deviates from the standard language, the Commission, rather than the ALJ, must issue the order, even if no party to the proceeding objects to the proposed language. The proposed amendment would delegate general authority to ALJs to issue protective orders with language appropriate to the circumstances without first obtaining Commission approval.
Rules Coordinator: Lauri Salsbury
Address: Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551
Telephone: (503) 378-4372

Water Resources Department Chapter 690

Date:	Time:	Location:
1-29-03	10 a.m.	Water Resources Dept. Conference Rm. C 158 12th St. NE Salem, OR 97301
1-30-03	7 p.m.	Pendleton Convention Ctr. Conf. Rm. West-1 1601 Westgate Pendleton, OR 97801

Hearing Officer: Tom Paul, Doug Parrow

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 450.695, 536.050 & 540.505 - 540.670

Proposed Adoptions: Rules in division 380

Proposed Ren. & Amends: Rules in division 15 to division 380

Last Date for Comment: 2-17-03

Summary: Under ORS 540.510, most changes in the place of use, point of diversion, or character of use of a water right may only be made after approval of the proposed change by the Water Resources Department. In determining whether to approve a proposed change, the Department must evaluate the effects of the change on other water rights and may not allow the change if it would result in injury to another water right. The Department is proposing that the Water Resources Commission adopt water right transfer rules under a new OAR Chapter 690, Division 380. The existing water right transfer rules are in OAR Chapter 690, Division 15. The Department has worked with a Rules Advisory Committee in developing these proposed rules that reorganize the existing rules, clarify and streamline transfer application processing, and incorporate statutory changes enacted in 1999 and 2001 into the rules.

Under the proposed rules, processing of water right transfer applications would be changed. Currently, the Department provides opportunity to protest transfer applications prior to evaluating the proposal to determine if the transfer would be injurious to other rights. The draft rules would modify the process to provide for a comment period on receipt of a transfer application. The Department would consider any comments received in making a preliminary determination of whether the application should be approved and, then, would provide a notice of the opportunity to protest the application and the Department's determination. Under the statutes and rules, the Department is required to initiate a contested case if a protest is filed.

The draft rules also incorporate water right cancellation proceedings into the transfer review process if protestants or the Department identify forfeiture for non-use as an issue. Currently, the Department places a hold on transfer processing and initiates a separate cancellation proceeding if issues are raised through the Department's evaluation or through protests regarding the validity of a water right proposed for transfer. The proposed rules would combine the transfer and cancellation proceedings. However, the draft rules would not preclude individuals from filing affidavits alleging non-use and cancellation of a water right proposed for transfer outside of the protest period.

The proposed rules also implement statutory changes from the 1999 and 2001 Legislative sessions. These changes include:

- SB 301 (1999) allowing transfer of a surface water rights to ground water and substitution of a primary right for a supplemental right.
- HB 3356 (1999) allowing the Department to waive transfer fees and to assist in satisfying survey or final proof requirements for fish-friendly transfers.
- SB 644 (2001) allowing an expedited notice and waiting period for substitution of supplemental ground water right for primary water right during droughts and modifying procedures for irrigation district temporary transfers.

NOTICES OF PROPOSED RULEMAKING

- SB 870 (2001) allowing water right holders to consent to injury and establishing procedures and requirements for the Department to consent to injury to instream water rights.

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

Rules Coordinator: Adam Sussman

Address: Water Resources Department, 158 12th St. NE, Salem, OR 97310

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

ADMINISTRATIVE RULES

Board of Architect Examiners Chapter 806

Adm. Order No.: BAE 9-2002

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

Certified to be Effective: 12-12-02

Notice Publication Date: 11-1-02

Rules Amended: 806-010-0095

Subject: This amendment fixes 60 days as the amount of time in which to file address changes with the Board, and includes the requirement that architectural firms, as well as architects, keep their address current with the Board.

Rules Coordinator: Carol Halford—(503) 378-4270

806-010-0095

Filing of Current Mailing Address

Each person holding a certificate of registration to practice architecture in Oregon and each firm registered to practice architecture in Oregon shall file a proper and current mailing address with the Board at its office in Salem, and shall notify the Board in writing of all changes of mailing address within 60 days of such a change.

Stat. Auth.: ORS 670 & ORS 671

Stats. Implemented: ORS 671.080

Hist.: AE 1-1981, f. & ef. 3-5-81; AE 1-1987, f. & ef. 3-30-87; BAE 9-2002, f. & cert. ef. 12-12-02

Board of Examiners for Engineering and Land Survey Chapter 820

Adm. Order No.: BEELS 4-2002

Filed with Sec. of State: 12-3-2002

Certified to be Effective: 12-3-02

Notice Publication Date: 9-1-02

Rules Amended: 820-010-0305

Subject: Amends omissions on fee structure text as filed November 13, 2002. Restores correct text as adopted by the Board.

Rules Coordinator: Edward B. Graham—(503) 362-2666

820-010-0305

Fees

(1) In addition to the fees established by this rule, each examination applicant shall submit an amount equal to the actual cost of the test materials (printed test booklets, answer sheets, solution pamphlets, scoring services) that the Board purchases from the test vendor. Where applicable, the initial activation and certificate fee must be included. The total amount for each specific application is compiled in a fee schedule published separately. The amount to be submitted shall be equal to a total of items (a) through (d) in this section. Actual dollar amounts for administration, initial activation, renewal and certificate are listed in sections (2) and (3) of these rules:

(a) Fee to cover cost of test materials (amount published separately).

(b) Fee for examination administration. May include foreign proctor fee in (2)(e) below.

(c) Fee for initial activation equal to one year renewal (one time fee applies to PE and PLS only; not applicable to reexamination).

(d) Fee for issuance of first certificate (one time fee applies to PE and PLS only).

(2) Fees for examination administration:

(a) Fundamentals of engineering examination — \$25.

(b) Fundamentals of land surveying examination — \$25.

(c) Professional engineering (PE) or professional land surveying (PLS) examination \$50 per each eight hour session.

(d) Oregon law portion of PLS examination — \$60.

(e) Notwithstanding subsections (a) and (c) of this section, an additional fee of \$35 for the fundamentals of engineering examination and an additional fee of \$50 for any professional engineering examination shall be paid by the applicant when said examinations are administered in a foreign country.

(f) Certified Water Right Examiner test — \$20.

(3) Fees for certification, registration, and renewal:

(a) First registered professional engineer certificate — \$5.

(b) First registered professional land surveyor certificate — \$5.

(c) Registration of nonresident engineer under ORS 672.125 (comity) — \$110.

(d) Registration of nonresident land surveyor under ORS 672.125 (comity) — \$110.

(e) Temporary permit issued under ORS 672.135 — \$25.

(f) Re-issuance of lost or mutilated certificate — \$25.

(g) Re-issuance of lost or mutilated pocket card — \$5.

(h) Issuance of certificate without examination based on experience as provided under ORS 672.255 — \$225.

(i) Re-score of an Oregon specific examination — \$50.

(j) Annual renewal of a professional engineering certificate — \$40.

(k) Annual renewal of a professional land surveyor certificate — \$40.

(l) Annual renewal of inactive professional engineering or professional land surveying certificate as defined in OAR 820-010-0010(18) which meets the requirements for exemption under OAR 820-010-0365(6) — \$20.

(m) Annual renewal of water right examiner certificate — \$10.

(n) The penalty for late payment of a renewal fee under subsections (j), (k), or (l) of this section shall be equal to the accumulated total of the amount of the delinquent renewal. The late penalty becomes due and payable 30 days after the date of expiration.

Stat. Auth.: ORS 670.310, ORS 672.097, ORS 672.099 & ORS 672.255

Stats. Implemented: ORS 672.002 - ORS 672.325

Hist.: EE 2-1980, f. & ef. 5-14-80; EE 4-1981, f. & ef. 12-14-81; EE 2-1984(Temp), f. & ef. 5-7-84; EE 2-1984(Temp), f. & ef. 5-7-84; EE 4-1984, f. & ef. 12-11-84; EE 2-1987, f. & ef. 7-2-87; EE 3-1987, f. & ef. 8-25-87; EE 2-1989, f. 1-3-89, cert. ef. 1-15-89; EE 1-1990(Temp), f. & cert. ef. 5-21-90; EE 1-1991(Temp), f. 8-14-91, cert. ef. 9-1-91; EE 2-1991, f. & cert. ef. 9-23-91; EE 1-1992, f. & cert. ef. 2-3-92; EE 2-1992, f. & cert. ef. 2-4-92; EE 4-1992, f. & cert. ef. 7-22-92; EE 2-1993(Temp), f. & cert. ef. 2-22-93; EE 3-1993, f. & cert. ef. 6-3-93; EE 2-1994, f. & cert. ef. 7-22-94; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 2-1997, f. & cert. ef. 8-6-97; BEELS 3-1998, f. & cert. ef. 5-11-98; BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2000, f. 3-17-00, cert. ef. 3-20-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 3-2002, f. & cert. ef. 11-13-02; BEELS 4-2002, f. & cert. ef. 12-3-02

Board of Geologist Examiners Chapter 809

Adm. Order No.: BGE 5-2002(Temp)

Filed with Sec. of State: 12-2-2002

Certified to be Effective: 12-2-02 thru 5-31-03

Notice Publication Date:

Rules Suspended: 809-050-0030

Subject: Suspends rule requiring Registration for Public Testimony, pending permanent repeal.

Rules Coordinator: Susanna R. Knight—(503) 566-2837

809-050-0030

Registration Requirement for Public Testimony

(1) Registration as a geologist in the State of Oregon is required of a person who presents public testimony on geologic issues if the person states or in any way implies that the person is a registered geologist or certified in a specialty, such as engineering geology.

(2) Registration as a geologist in the State of Oregon is required of a person who presents public testimony on geologic issues if:

(a) The testimony is related to public welfare or safeguarding of life, health, property and the environment; and

(b) The person performs any consultation, investigation, surveys, evaluation, planning, mapping, or inspection of geologic work; and

(c) The person uses the title "geologist" or any title or description tending to convey the impression that the person is a geologist.

(3) Registration as a geologist in the State of Oregon is required if, for purposes of public testimony, a person prepares or provides geological maps, plans, reports or documents to a third party so that the third party may testify.

(4) Notwithstanding subsections (1), (2), and (3) of this rule, registration as a geologist in the State of Oregon is not required if a person:

(a) Presents public testimony on geological issues while in compliance with ORS 672.535 and states the manner of the compliance; or

(b) Presents public testimony on geological issues while in compliance with ORS 672.545 and states the manner of the compliance; or

(c) States personal opinions during public testimony on geological issues, but does not engage in the public practice of geology as defined in ORS 672.505(7) in order to arrive at those opinions, and does not claim to be a geologist.

Stat. Auth.: ORS 672

Stats. Implemented:

Hist.: GE 1-1986, f. & ef. 1-3-86; BGE 2-2002, f. & cert. ef. 4-15-02; Suspended by BGE 5-2002(Temp), f. & cert. ef. 12-2-02 thru 5-31-03

ADMINISTRATIVE RULES

Board of Investigators Chapter 220

Adm. Order No.: BI 1-2002

Filed with Sec. of State: 12-9-2002

Certified to be Effective: 1-1-03

Notice Publication Date: 11-1-02

Rules Amended: 220-005-0010

Subject: Amend fee category language (from operative to provisional investigator, and registration to license). Increases initial and biennial renewal licensing fees for provisional investigators from \$275 to \$550.

Rules Coordinator: Kelly Paige—(503) 731-4359

220-005-0010

Fees

For the purpose of implementing ORS Chapter 703.401 through 703.995, fees charged shall be:

(1) Application Fees:

- (a) Private Investigators: \$40.00;
- (b) Provisional Investigators: \$40.00;
- (c) Exam Retakes: \$25.00;
- (2) Background Checks:

- (a) Oregon State Police Check: \$15.00;
- (b) FBI Fingerprint Check: \$24.00.

(3) Private Investigator Fees:

- (a) Initial License: \$550.00;
- (b) Biennial License Renewal: \$550.00;
- (c) Inactive License: \$50.00;
- (d) Late Renewal: \$25.00.

(4) Provisional Investigator Fees:

- (a) Initial Registration: \$550.00;
- (b) Biennial Registration Renewal: \$550.00;
- (c) Inactive: \$25.00;
- (d) Late Renewal: \$25.00;

(e) Upgrade to Private Investigator License: \$0 to \$275.00 (the difference between the Private Investigator license fee, and the last initial or renewal fee paid, pro-rated for the remaining term of the license).

(5) Miscellaneous Fees:

- (a) Mailing Lists:
 - (A) PI/Operative: \$50.00;
 - (B) Exam Candidates: \$20.00;
 - (C) Investigation Firms: \$50.00;
 - (D) Other mailing lists by request: up to \$50.00.
- (b) Certificates copies: \$2.50;
- (c) Replacement ID Cards: \$10.00;
- (d) Wall Certificate: \$10.00.

Stat. Auth.: ORS 703.480(3)

Stats. Implemented: ORS 703.425, ORS 703.435, ORS 703.445 & ORS 703.480

Hist.: BI 1-1998(Temp), f. & cert. ef. 3-6-98 thru 9-2-98; BI 4-1998, f. & cert. ef. 9-2-98; BI 1-2000, f. 2-23-00, cert. ef. 2-25-00; BI 1-2002, f. 12-9-02, cert. ef. 1-1-03

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Board of Licensed Professional Counselors and Therapists Chapter 833

Adm. Order No.: BLPCT 2-2002(Temp)

Filed with Sec. of State: 12-13-2002

Certified to be Effective: 12-16-02 thru 6-13-03

Notice Publication Date:

Rules Amended: 833-020-0015, 833-020-0040, 833-020-0060, 833-020-0090, 833-020-0111, 833-025-0001, 833-025-0005, 833-025-0006, 833-040-0001, 833-040-0010

Rules Suspended: 833-020-0130

Subject: Amendments update rules to extend pre-internship hour credits to applicants; to permit more graduate level post-degree supplemental training; to eliminate redundancy in describing our graduate degree standards; to eliminate a conflict between clock and credit hour requirements; to reflect changes in the computerized LPC and LMFT tests, and clarify exam procedures. The changes have no fiscal impact.

Rules Coordinator: Julia M. Cooley—(503) 378-2216

833-020-0015

Methods of Application

(1) Applications for licensure must be made indicating one of the following methods for compliance with the supervised work requirements for licensure.

(a) Intern Registration Method. The intern registration method is required for applicants who seek acceptance of post-degree supervised work experience completed in Oregon after June 30, 2002. The intern registration method requires applicant to obtain Board approval of a proposed plan for completing required hours of supervised work experience. No less than 1,000 hours of supervised work experience must be completed under an approved plan. Hours of supervised work experience completed pursuant to OAR 833-020-0150, that were not part of an approved plan, may be credited toward the supervised work experience requirement under this method.

(b) Direct Method. The direct method is required for applicants who seek acceptance of supervised work experience completed in another jurisdiction or in Oregon before June 30, 2002, or a combination thereof. The direct method requires the applicant to document no less than the total minimum number of supervised work experience hours required for licensure, all of which must have been completed prior to the date of application for licensure.

(A) For applicants seeking the professional counselor license, the hours must meet the standards set forth in OAR 833-020-0050 and may be comprised of pre-degree hours plus post-degree hours:

- (i) Completed in Oregon prior to June 30, 2002;
- (ii) Completed in another state or country prior to application; or
- (iii) Be a combination of hours completed in Oregon prior to June 30, 2002 and completed in another state prior to application.

(B) For applicants seeking the marriage and family therapist license, the hours must meet the standards set forth in OAR 833-020-0100 and may be comprised of post-degree hours:

- (i) Completed in Oregon prior to June 30, 2002;
- (ii) Completed in another state or country prior to application; or
- (iii) Be a combination of hours completed in Oregon prior to June 30, 2002 and completed in another state prior to application.

(c) Reciprocity Method. The reciprocity method is required for applicants who seek acceptance of supervised work experience previously used to obtain a comparable license in another jurisdiction. The reciprocity method requires the applicant to document that the experience requirements under which the applicant obtained a comparable license held in another state are equivalent to the standards required for Oregon licensure as a professional counselor or as a marriage and family therapist pursuant to OAR 833-020-0140.

(d) Re-Licensure Method. The re-licensure method is required for applicants who have previously been licensed by the Board. The re-licensure method requires the applicant, as a previous Board licensee, to request a new license with a new license number, but without documenting further supervised work experience pursuant to OAR 833-020-0022.

(2) Applicants may request permission to change their method of application without re-application, if they do so within the year allowed to complete application. The date of original application will not change; however, applicants may not change the type of license requested without re-application.

(3) Applicants who filed applications and fees prior to June 30, 2002 may complete their applications under the method selected and rules in place at time of application. Applicants, whose applications have not been open for more than one year or who have been granted an extension of time by the Board, may continue to obtain supervised work experience for the purpose of qualifying for licensure after June 30, 2002 without registering as an intern and working under an approved plan until the year or extension ends.

Stat. Auth.: ORS. 675.785

Stats. Implemented: ORS 675.715, ORS 675.720, ORS 675.725, ORS 675.735

Hist.: BLPCT 1-2002, f. & cert. ef. 3-1-02; BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

833-020-0040

Educational Qualifications for Licensure as a Professional Counselor

To qualify for licensure as a professional counselor under ORS 675.715(2), an applicant shall hold one of the following:

(1) A graduate degree in counseling received from a program of no less than 72 quarter or 48 semester hours approved by the Council for Accreditation of Counseling and Related Educational Programs (CACREP);

ADMINISTRATIVE RULES

(2) A graduate degree in counseling received from a program of no less than 72 quarter or 48 semester hours approved by the Council on Rehabilitation Education (CORE);

(3) A graduate degree determined by the Board to be comparable in both content and quality by meeting the academic and training program standards for graduate degrees set out in OAR 833-025-0001; or

(4) A graduate degree determined by the Board to meet a majority of the graduate degree standards defined in OAR 833-025-0001(2) and the degree coursework standards set forth in OAR 833-020-0005 including additional graduate training as set forth in OAR 833-025-0006 that together meet the graduate degree standards which require a total of no less than 72 quarter or 48 semester hours of graduate academic coursework related to a degree in counseling.

Stat. Auth.: ORS 675.715 & ORS 675.785

Stats. Implemented: ORS 675.715 & ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 1-1991, f. 9-30-91, cert. ef. 10-1-91; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

833-020-0060

Examination Requirement for Licensure as a Professional Counselor

All applicants for licensure as a professional counselor shall be required to pass an examination consisting of two separate sections: a competency section and an Oregon law and rules section.

(1) To qualify for licensure as a professional counselor under ORS 675.715(5), an applicant shall pass one of the following competency examinations within 10 years from the date of application for licensure:

- (a) National Counselor Examination (NCE);
- (b) Certified Clinical Mental Health Counselor Examination;
- (c) Certified Rehabilitation Counselor Examination; or
- (d) Other exams as approved by the Board.

(2) The Board uses the National Counselor Examination (NCE) as the state examination.

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

(a) Submit an application;

(b) Meet the graduate program and coursework requirements prescribed in OAR 833-020-0040.

(4) Upon review and acceptance of an applicant's educational qualifications, the Board will send written notification of approval to take the competency examination.

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

(6) Passing scores will be:

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

(b) Will be established by the agency verifying passage of its examination for applicants who took a state competency exam before making application for Oregon licensure.

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

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

(9) Applicants by reciprocity do not need to take the state competency examination.

(10) Applicants by direct method, who have not passed an approved examination within 10 years application, shall be required to take the NCE.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.715 & ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

833-020-0090

Educational Requirements for Licensure as a Marriage and Family Therapist

To qualify for licensure as a marriage and family therapist under ORS 675.715(2), an applicant shall hold one of the following:

(1) A graduate degree in marriage and family therapy received from a program of no less than 72 quarter or 48 semester hours approved by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE); or

(2) A graduate degree determined by the Board to be comparable in both content and quality by meeting the academic and training program standards for graduate degrees set out in OAR 833-025-0001; or

(3) A graduate degree determined by the Board to meet a majority of the graduate degree standards defined in OAR 833-025-0001(2) and the degree coursework standards set forth in OAR 833-020-0005 including additional graduate training as set forth in OAR 833-025-0006 that together meet the graduate degree standards which require a total of no less than 72 quarter or 48 semester hours of graduate academic coursework related to a degree in marriage and family therapy.

Stat. Auth.: ORS 675.715 & ORS 675.785

Stats. Implemented: ORS 675.715 & ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 1-1991, f. 9-30-91, cert. ef. 10-1-91; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

833-020-0111

Examination Requirement for Licensure as a Marriage and Family Therapist

All applicants for licensure as a marriage and family therapist shall be required to pass an examination consisting of two separate examination sections: a competency section and an Oregon law and rules section.

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

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

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

(a) Submit an application;

(b) Meet the graduate program and coursework requirements prescribed in OAR 833-020-0090.

(c) Meet the supervised work experience requirements prescribed in OAR.

(4) Upon review and acceptance of an applicant's educational qualifications and supervised work experience, the Board will send written notification of approval to take the competency examination.

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

(6) Passing scores will be:

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

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

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

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

(9) Applicants by reciprocity do not need to take the state competency examination.

(10) Applicants by direct method, who have not passed an approved examination within 10 years of application, shall be required to take the AMFTRB examination following official acceptance of their education and experience documentation.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.715 & ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; BLPCT 2-2001, f. 9-19-01, cert. ef. 10-1-01; BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

833-020-0130

State Examination

The state examination may consist of two sections, a professional competency section developed by the Board or a national examination developed for counselors or marriage and family therapists and an Oregon laws and rules section. Sections may be administered and scored separately; however, the Board requires both be passed before the examination requirement for licensure is considered fulfilled.

(1) Applicants who have not taken and passed an approved competency examination within the last 10 years shall apply and be approved as meeting the education and experience requirements before submitting payment for and being authorized to take the competency examination.

ADMINISTRATIVE RULES

(2) First-time applicants for state competency examination shall submit a completed application by the published cutoff date prior to the next scheduled examination in order to sit for that examination. Applicants who submit and complete application after the cutoff will be offered an opportunity to sit for the following examination. Information on the next examination scheduled will be available from the Board office.

(3) Payment for the examination or re-examination shall be made within the timeframes established by the Board or designated testing service.

(4) Examination candidates shall be required to produce authorization documents and picture identification or a prior approved substitute for picture identification before being allowed entrance to a board-administered examination.

(5) An examination candidate will be disqualified for obtaining help or information from notes, tests, or other individuals to answer the questions of the examination. A candidate will also be disqualified for attempting to, or for removing test-related materials or examination question information from the examination site.

(6) The Board will notify examination candidates, in writing, of the results of the examination (passing, failing, score). Results will not be given by any other means.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.715 & ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; BLPCT 2-2001, f. 9-19-01, cert. ef. 10-1-01; Suspended by BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

833-025-0001

Comparable Full Standards and Majority Standards for Graduate Degrees

(1) A graduate degree shall be determined by the Board as comparable in content and quality to degrees from CACREP, COAMFTE, or CORE approved programs, if issued by a degree-granting program that meets the following standards:

(a) The degree was from an institution that:

(A) Was a fully accredited member of one of the regional institutional accreditation bodies at the time the degree was granted;

(B) Offered a minimum of a master's degree;

(C) Was of at least two years' duration, which by standard definition is at least 48 semester or 72 quarter hours;

(D) Included coursework requirements set forth in OAR 833-025-0005.

(E) Included a required supervised clinical experience for all students of no less than 600 clock hours; and

(F) Provided a practicum or internship site that:

(i) Had supervisory staff with a minimum of a master's degree in the program emphasis and with pertinent professional experience;

(ii) Made provision for faculty monitoring of operations;

(iii) Kept records of student-client contact hours including summary of student progress by the supervisor; and

(iv) Had a written agreement with the program and student specifying learning objectives.

(v) Had a mechanism for program evaluation.

(2) Pursuant to ORS 675.715(1)(d), a graduate degree shall be determined to meet a majority of the Board's standards, as set forth in section (1) of the administrative rule, if issued by a degree granting program that:

(a) Was from a regionally accredited institution that provided training in counseling or marriage and family therapy;

(b) Offered a minimum of a master's degree;

(c) Was of at least one year in duration, which by standard definition is at least 30 semester or 45 quarter hours;

(d) Included coursework requirements for the degree as set forth in OAR 833-025-0005;

(e) Included a degree-required clinical experience with on-site supervisors having competence in counseling or marriage and family therapy and field supervision;

Stat. Auth.: ORS 675.715

Stats. Implemented: ORS 675.715 & ORS 675.785

Hist.: LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1996, f. 1-3-96, cert. ef. 1-5-96; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

833-025-0005

Standards for Degree Coursework

(1) The curriculum standards for degrees set forth in OAR 833-025-0001(1)(b)(K) are to include as follows:

(a) For counseling degrees leading to a professional counselor license, based on a minimum of 72 quarter or 48 semester hours:

(A) Counseling theory, 3 quarter hours;

(B) Human growth and development, 3 quarter hours;

(C) Social and cultural foundations, 3 quarter hours;

(D) The helping relationship, 3 quarter hours;

(E) Group dynamics processing and counseling, 3 quarter hours;

(F) Lifestyle and career development, 3 quarter hours;

(G) Appraisal of individuals, 3 quarter hours;

(H) Research and evaluation, 3 quarter hours;

(I) Professional orientation, 3 quarter hours;

(J) Clinical/applied experience of at least 600 clock hours; and

(K) Supporting coursework for specialty areas, 24-33 quarter hours.

(b) For marriage and family therapy degrees leading to a marriage and family therapist license, based on 72 quarter or 48 semester hours:

(A) Human development, 6 quarter hours;

(B) Marital and family theoretical foundation studies, 3 quarter hours;

(C) Marital and family therapy assessment, treatment, principles and techniques studies, 12 quarter hours;

(D) Professional studies, 3 quarter hours;

(E) Research methods or statistics, 3 quarter hours;

(F) Clinical/applied experience of at least 600 clock hours; and

(G) Supporting coursework focusing on the systems paradigm for specialty areas, 24-33 quarter hours.

Stat. Auth.: ORS 675.715 & ORS 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

833-025-0006

Additional Graduate Training to Supplement Degree Program

(1) Training used to supplement a degree program pursuant to OAR 833-025-0001(2), shall be taken and successfully completed for graduate credit at an accredited college or university as follows:

(a) For counseling or marriage and family therapy degrees meeting the majority standards requirements of OAR 833-025-0001(2)(a)-(e) as part of a graduate program, or at the graduate level through a counselor or marriage and family therapy program or any other department offering training that meets the competency areas for such a program as defined by CACREP or COAMFTE.

(b) For related degrees leading to the marriage and family therapist license meeting the requirements of OAR 833-025-0001(2)(a)(A)-(D), as part of a structured degree program designed and offered as part of a clearly identified graduate level marriage and family therapy program;

(c) No more than one course of the training which is theoretical in nature may be by distance learning. Skill building coursework must be through attended classes or training.

(2) Regardless of the total number of quarter or semester hours completed by the applicant:

(a) For the professional counselor license: the majority graduate degree standard set forth in OAR 833-025-0001(2)(a)-(e) must be fulfilled. If the coursework standard set forth in OAR 833-025-0005(1)(a)(A)-(K) has not been fulfilled, then additional courses offering knowledge and skills for the practice of professional counseling shall be required to fulfill the coursework standard.

(b) For the marriage and family therapist license: the majority graduate degree standard set forth in OAR 833-025-0001(2)(a)-(e) must be fulfilled. If the coursework standard set forth in OAR 833-025-0005(b)(A)-(G) has not been fulfilled, then additional courses, presented from a systemic approach, shall be required in studies offering knowledge and skills for the practice of marriage and family therapy.

(3) To fulfill the requirements for the clinical/applied experience, the applicant shall:

(a) Complete a practicum or internship for the required credits and to a total of at least 600 clock hours; or

(b) If the applicant has at least five years of full-time post-degree experience, may complete a class in advanced clinical or applied coursework which may not require site placement, but involves both theoretical and experiential components. Completion will waive the requirement that the clinical experience include at least 600 clock hours;

(c) The clinical experience for applicants for licensure of marriage and family therapists shall consist of work in relationship issues, couples, and families.

Stat. Auth.: ORS 675.715 & ORS 675.785

Stats. Implemented: ORS 675.715

Hist.: LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LPCT 1-1998, f. 1-2-98, cert. ef. 1-5-98; BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

ADMINISTRATIVE RULES

833-040-0001

Fees

Fees established by the Board of Licensed Professional Counselors and Therapists are as follows:

- (1) Application for licensure — \$125.
- (2) Initial license — \$100.
- (3) Annual renewal of license — \$125.
- (4) Restoration fee — \$50.
- (5) Examination:

(a) For professional counselor license — Candidates will pay exam and exam administration fees to the prescribed examination providers

(b) For marriage and family therapist license — Candidates will pay exam and exam administration fees to the prescribed examination providers.

- (6) Duplicate license or certificate of licensure — \$.

(7) Verification of licensure or examination scores for applicant or licensee to other licensing or certifying agencies — \$10.

- (8) Annual renewal of registration as intern — \$80.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 1-1991, f. 9-30-91, cert. ef. 10-1-91; LPCT 1-1993, f. 12-30-93, cert. ef. 1-1-94; LCPT 1-1997, f. 10-10-97, cert. ef. 11-1-97; BLPCT 1-2001(Temp), f. & cert. ef. 7-13-01 thru 1-1-02; BLPCT 2-2001, f. 9-19-01, cert. ef. 10-1-01; BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

833-040-0010

Fee Refunds

Overpayment of fees or fees submitted as part of application before required, shall be refunded.

Stat. Auth.: ORS 675.705 - ORS 675.835

Stats. Implemented: ORS 675.785

Hist.: LPCT 1-1990(Temp), f. & cert. ef. 3-6-90; LPCT 2-1990, f. 8-31-90, cert. ef. 9-1-90; LPCT 2-1992, f. 11-30-92, cert. ef. 12-1-92; BLPCT 2-2002(Temp), f. 12-13-02, cert. ef. 12-16-02 thru 6-13-03

Board of Naturopathic Examiners Chapter 850

Adm. Order No.: BNE 6-2002(Temp)

Filed with Sec. of State: 12-6-2002

Certified to be Effective: 12-6-02 thru 6-3-03

Notice Publication Date:

Rules Adopted: 850-010-0055

Subject: This rule is needed to allow NDs, meeting standards as set in this rule, to come to Oregon and temporarily assist the Department of Health, should a disaster emergency be declared by the Governor of Oregon.

Rules Coordinator: Anne Walsh—(503) 731-4045

850-010-0055

Practice in Oregon by Out-of-State Naturopathic Physicians in the Event of an Emergency

(1) In the event of a disaster emergency declared by the Governor of Oregon, the Board of Naturopathic Examiners shall allow naturopathic physicians licensed in another state to provide medical care in Oregon under special provisions during the period of the declared disaster emergency, subject to such limitations and conditions as the Governor may prescribe.

(2) The out-of-state physician shall submit to the Board the following information:

(a) Verification of a permanent, current, and unrestricted license to practice naturopathic medicine in another state which is not the subject of a pending investigation by a state medical board, or another state or federal agency; and

(b) Current federal or state photo identification, i.e., driver license or passport.

(3) The requirement for completing and submitting the information to the Board is waived if the physician is a member of the National Disaster Medical System (NDMS) under the Office of Emergency Preparedness, U.S. Department of Health and Human Services, and submits to the Board a copy of his/her NDMS photo identification.

(4) The physician shall provide the Board documentation demonstrating a request to provide medical care from a hospital, clinic or private medical practice, public health organization, EMS agency, or federal medical facility, or has otherwise made arrangements to provide medical care in Oregon as the result of the declaration of a disaster emergency.

(5) The physician shall not practice in Oregon under the special disaster emergency provisions beyond the termination date of the emergency. Practice in Oregon beyond the termination date of the declared disaster emergency requires licensure through the Board of Naturopathic Examiners.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.160

Hist.: BNE 6-2002(Temp), f. & cert. ef. 12-6-02 thru 6-3-03

Adm. Order No.: BNE 7-2002

Filed with Sec. of State: 12-10-2002

Certified to be Effective: 12-10-02

Notice Publication Date: 11-1-02

Rules Amended: 850-010-0210

Subject: Rule will clarify the programs of continuing education that satisfy requirements for renewal of license.

Rules Coordinator: Anne Walsh—(503) 731-4045

850-010-0210

Programs of Continuing Education

(1) Programs of continuing education (CE) are meant to assist licensed naturopathic physicians maintain the competency and skills necessary to assure the Oregon public a continued high standard of health care.

(a) It is recommended that physicians make request for CE approval at least four weeks in advance, and program providers and sponsors make requests at least eight weeks before approval is needed.

(b) Programs not submitted in a timely manner might not be approved retroactively.

(c) Programs of CE submitted more than 30 days after the presentation will not be considered by the Board for approval.

(2) Any licensed naturopaths using intramuscular (IM) or subcutaneous or intravenous (IV) therapeutic injection of vitamins or minerals, or preventive injections (IM, subcutaneous, or IV) must provide proof of qualifying CE hours prior to using these applications, or proof of qualifying education received at an approved medical institution:

(a) Licensees doing therapeutic IM or therapeutic subcutaneous injections of vitamins or minerals are required to provide proof of a one-time 2-hour qualifying education on this subject.

(b) Licensees doing IV injections of vitamins or minerals must provide proof of a one-time 12-hour qualifying education.

(c) Licensees doing preventive IM, preventive IV, or preventive subcutaneous injections must provide proof of an additional one-time 4 hours of qualifying education in addition to the CE hours noted in OAR 850-010-0210(2)(a) and (b).

(3) A Naturopathic physician holding an active license must provide proof of five hours of Board approved CE in the pharmacology of legend drugs annually.

(4) Approved programs of continuing education for naturopathic physicians must meet the following criteria:

(a) They must not misrepresent or mislead;

(b) They must be presented by qualified professionals including naturopathic physicians or other professionally recognized health care providers or educators;

(c) They must exclude the selling or promotion of commercial products or practice building;

(d) The material covered must pertain to the improvement of the competency and skills of the Naturopathic physician;

(e) Programs must consist of education covering review, new, experimental, research or specialty subjects relevant to the practice of naturopathic medicine.

(5) Credit will not be given for hours received for:

(a) Teaching, except as permitted in OAR 850-010-0210(6)(1);

(b) Community service seminars and activities;

(c) Self-growth/ self-help activities;

(d) Practice building activities;

(e) Medical/or insurance billing presentation;

(f) Nonprofessional health related activities presented by or directed to the lay public;

(g) Proprietary programs, which promote exclusive services and/or products.

(6) At least ten (10) hours of CE must be obtained through participation by attendance at an approved seminar, conference, grand round or other in person activity. Up to 15 of the 25 required hours for CE credit may be given by the Board for courses or activities, which are defined as follows:

ADMINISTRATIVE RULES

(a) Continuing Medical Education (CME) provided by recognized professional health care licensing agencies, hospitals or institutions. A verification of attendance for all CE courses or activities showing hours claimed and /or proof of completion must be signed by the program provider;

(b) Video or audio taped CE courses or seminars. Video or audio taped presentation credit must be documented by a thorough original outline of the presentation with a discussion of the importance of the information to the doctor's practice as well as the name of the presenter and her/his qualifications and the exact date, time, length of taped course or seminar and sponsor of the presentation;

(c) Reading journal articles. Journal credit must include a copy of the article and a thorough original outline of the article, with a discussion on the importance of the information to the doctor's practice. Credit is determined by length of article and complexity of the topic;

(d) Internet activities in accordance with the essential standards of the Accreditation Council for Continuing Medical Education (ACCME) including documentation of completion;

(e) Being an original author of an article or book related to health care. Credit for such activities will be credited in the year the project is completed;

(f) CPR course, with proof of current certification;

(g) Preceptorships for purposes of advancing education in treatment protocols. Preceptorship credit must indicate the date and hours of preceptorship, name of preceptor and qualifications for teaching the subject covered. It must include a thorough original outline of the information studied, a discussion of the importance of the information to the doctor's practice and a written evaluation of the applicant's understanding of the subject by the preceptor;

(h) Participation in a formal protocol writing process associated with an accredited health care institution or government health care agency. A written record of hours of development and research, including the names and addresses of the institutions involved, name of supervisors, and their signatures verifying hours.

(i) Participation in research related to naturopathic medicine directed by an educational or other qualified naturopathic organization. Licensee must document dates of participation, name of research program and a summary of the purpose and outcome of the research;

(j) Participation in accredited graduate level health related programs;

(k) Other courses or activities specifically authorized by the Board.

(l) One time only teaching when subject is specific to higher education in the practice of Naturopathic medicine;

(7) Up to a total of ten (10) hours of credit may be granted for CE obtained by participation on the Naturopathic Physicians Licensing Examinations (NPLEX) committee in the development and writing of the NPLEX examinations;

(8) To be approved as a Program Provider (PP) for the purpose of offering programs of approved CE to licensees the applicant must submit:

(a) An application for approval;

(b) An initial course program;

(c) Title and syllabus or course outline for all offerings in the initial course program;

(d) Date, time and location of programs;

(e) A copy of the curriculum vitae of instructors showing qualifications to present such programs;

(f) Names, addresses, and phone number for all corporate sponsors and responsible persons;

(g) A letter of agreement as provided by the Board, stating the purpose of the program with a disclosure on the financial relationship of presenter to sponsor;

(h) Products for sale or promotion being offered during or in conjunction with the CE program;

(i) A copy of verification that will be provided to attendees; and

(j) The PP is responsible for providing the Board with any substantial changes to PP offerings throughout the year.

(k) The PP is responsible for submitting an application at least eight weeks prior to approval.

(9) A Program Provider must make a new application on a biennial basis from the date of original approval.

(10) A Program Provider that has presented the Board with inaccurate or deliberately misleading information may lose CE approval for up to five years.

(a) If a provider fails to follow the provisions of this rule, the Board may revoke, deny or limit the approval.

(b) A program provider may appeal to the Board if approval has been denied.

(11) At its discretion, the Board may appoint a member of the Board or other designee to audit by attendance the subject matter of any program in order to verify content. This audit will be free of charge to the appointed attendee. Denial of an audit is grounds for disapproval.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.100 & ORS 685.102

Hist.: NE 6, f. 6-1-73, ef. 6-15-73; NE 5-1980, f. & ef. 9-11-80; NE 2-1984, f. & ef. 2-28-84; NE 1-1986, f. & ef. 4-10-86; NE 1-1992, f. & cert. ef. 1-15-92; NE 2-1993, f. & cert. ef. 9-23-93; NE 1-1996, f. & cert. ef. 10-18-96; NE 2-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 2-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 6-2000, f. & cert. ef. 12-6-00; BNE 7-2002, f. & cert. ef. 12-10-02

Board of Radiologic Technology Chapter 337

Adm. Order No.: BRT 2-2002

Filed with Sec. of State: 11-18-2002

Certified to be Effective: 11-18-02

Notice Publication Date: 10-1-02

Rules Adopted: 337-021-0070, 337-021-0080

Rules Amended: 337-010-0030, 337-010-0060, 337-021-0040

Subject: These new or revised rules:

1. Make license and limited permit application fees non-refundable to more accurately reflect the staff time spent in processing them;

2. Make refunds of de minimus amounts of \$25 or less dependent on receiving a written request by the payee;

3. Add a civil penalty of \$1,000 for an employer's knowingly employing or allowing an individual to practice radiologic technology outside the scope of a license or limited permit;

4. Require that after June 30, 2003, limited permit students who wish to sit for the OBRT limited permit examination must have successfully completed a course of instruction both approved by the OBRT and licensed by the Oregon Department of Education or otherwise approved or accredited by the Oregon Department of Higher Education;

5. Make application fees for the limited permit examination refundable only if received by the board in writing up to 30 days before the examination;

6. Make the amount of the civil penalty per violation.

Rules Coordinator: Lianne Thompson—(503) 731-4088, ext. 21

337-010-0030

Limited Permits

(1) Applicants for Limited Permits in Diagnostic Radiologic Technology. Qualifications:

(a)(A) An applicant for a limited permit in diagnostic radiologic technology shall be at least 18 years of age, pay an application fee, and have successfully passed a course of instruction in radiation use and safety specific to diagnostic radiologic technology consisting of not less than 36 hours of instruction approved by the Board in the following subjects:

(i) Nature of x-rays;

(ii) Interaction of x-rays with matter;

(iii) Radiation units;

(iv) Principle of the x-ray machine;

(v) Biological effects of x-ray;

(vi) Principles of radiation protection;

(vii) Low-dose technique;

(viii) Applicable radiation regulations;

(ix) Darkroom and film processing;

(x) Film critique.

(B) Otherwise meeting the requirements stated in the Board's publication "Radiation Use/Safety" dated January 1, 1988, which is incorporated by reference and made a part of this rule.

(b) Have received a course of instruction in laboratory practice approved by the Board meeting the requirements stated in the Board's publication "Behavioral Objectives and Teaching Guides" dated January 1, 1990, which is incorporated by reference and made a part of this rule and taught by a licensed registered technologist specific to each category for which a limited permit is sought and have received the instructor's certification that the applicant has demonstrated all the positions/projections

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described in the Behavioral Objectives for each category. Effective January 1, 1990, the minimum hours in each category are as follows:

- (A) Skull/Sinus, 15 hours;
- (B) Spine, 25 hours;
- (C) Chest/Ribs, 10 hours;
- (D) Upper Extremity, 15hours;
- (E) Lower Extremity, 15 hours;
- (F) Abdomen/Pelvis, 6 hours;
- (G) Foot/Ankle for Podiatric Use, 8 hours.

(c) Have successfully completed a practical experience program approved by the Board specific to each category for which the applicant seeks a limited permit. The practical experience component shall consist of experience with live patients during which radiographs are exposed and the developed radiographs made by the students are evaluated and critiqued by an ARRT-registered, Oregon-licensed radiologic technologist Practical Experience Evaluator. If the Practical Experience Evaluator is not present to observe the student perform the radiographic examination, the following protocol must be used:

(A) Peer positioning must be used to demonstrate the positioning used to achieve the radiographs being evaluated;

(B) The student must provide the radiographic exposure factors used to achieve the radiographs being evaluated.

(d) The student may be evaluated using the Practical Experience Evaluation Form developed by the Board. If the Practical Experience Evaluator chooses to use a method for evaluation other than the Practical Experience Evaluation Form, that method must receive prior approval from the Board. The Practical Experience Evaluator must provide the student with a certificate of completion in the categories in which the student has successfully completed practical experience;

(e) Student status shall begin when an individual has successfully passed a Board-approved course in radiation use/safety and has successfully completed the didactic portion of a positioning/ techniques class relative to the anatomical area he wishes to radiograph. If a student fails the limited permit examination, his student status shall continue for one year from the date of completion of the didactic portion of the corresponding positioning/techniques course. Student status expires at the end of the one-year period specified above; or seven days after the date on which an applicant becomes eligible for a limited permit. Student status may be reinstated by the Board only upon verification of the student's re-enrollment in Board-approved courses in radiation use/safety and positioning/techniques.

(2) Applicants for Limited Permits in X-ray Bone Densitometry: Qualifications:

(a) An applicant for a limited permit in x-ray bone densitometry shall be at least 18 years of age, pay an application fee set by the Board, and have successfully passed a Board approved 24 hour course of instruction which includes not less than 20 hours of radiation use and safety specific to x-ray bone densitometry, and meets the didactic and practical experience requirements stated in the Board's publication "Behavioral Objectives and Teaching Guide: X-Ray Bone Densitometry," dated September 16, 1997 which is incorporated by reference and made a part of this rule.

(b) Student status shall begin when the individual has successfully passed a Board-approved course in x-ray bone densitometry. If a student fails the x-ray bone densitometry limited permit examination, his student status shall continue for one year from the date of course completion. Student status expires at the end of the one-year period specified above; or seven days after the date on which an applicant becomes eligible for a limited permit in x-ray bone densitometry. Student status may be reinstated by the Board only upon verification of the student's re-enrollment in a Board-approved course in x-ray bone densitometry;

(c) Applications for a "grandfathered" limited permit in x-ray bone densitometry will be accepted through June 30, 1992, and must be accompanied by certification of successful completion of a minimum 24 hour training course in x-ray bone densitometry by a manufacturer's application specialist and certification that the applicant has one year of experience operating an x-ray bone densitometer with a minimum of 200 patient hours.

(3) Examination Fees for Limited Permits:

(a) Examinations will be given four times each year: February, May, August, and November. The examination fee is \$20 for each examination category for which the student is tested. This fee, together with the necessary certifications and verifications that the applicant has completed Board-approved courses in radiation use/safety, laboratory practice (positioning and techniques), and a practical experience program must be submitted to

the Board office by January 2 for a February examination; April 1 for a May examination; July 1 for an August examination; and October 1 for a November examination;

(b) The examination shall consist of two parts:

(A) Radiation use and safety which all applicants shall be required to take; and

(B) Laboratory practice (positioning and techniques) in the category or categories for which a limited permit is desired to be obtained.

(c) A score of 75 percent constitutes a minimum passing score for each section of the limited permit examination;

(d) Limited permit examinations will be administered in English without the use of interpreters, translators, readers, books, papers, dictionaries (both English and foreign language), or other outside assistance. Calculators may be used;

(e) The application fee for the limited permit examination is non-refundable unless the board office receives the request in writing at least 30 days prior to the examination date.

(4) Time Frame for Completing Requirements for a Limited Permit: An applicant has a maximum of one year from the time of completion of a limited permit didactic class term to make application for a limited permit or add categories to an existing limited permit.

(5) After June 30, 2003, Limited Permit students who wish to sit for the OBRT Limited Permit Examination must have successfully completed a course of instruction both approved by the board and licensed by the Oregon Department of Education, Private Career School Section or otherwise approved or accredited by the Oregon Department of Higher Education.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 388.555(1)

Stats. Implemented: ORS 688.515(4) & ORS 688.515(8)

Hist.: RT 2-1978, f. & ef. 7-7-78; RT 2-1982, f. & ef. 3-11-82; RT 3-1982, f. & ef. 9-30-82; RT 2-1985, f. & ef. 7-1-85; RT 2-1986, f. 4-29-86, ef. 7-1-86; RT 1-1987, f. & ef. 1-27-87; RT 3-1987, f. & ef. 4-16-87; RT 5-1987, f. & ef. 10-19-87; RT 1-1988, f. & cert. ef. 4-13-88; RT 2-1988, f. & cert. ef. 11-9-88; RT 3-1988, f. & cert. ef. 11-9-88; RT 1-1989, f. & cert. ef. 1-24-89; RT 3-1990, f. & cert. ef. 11-7-90; RT 4-1990, f. & cert. ef. 11-7-90; RT 1-1991, f. & cert. ef. 1-30-91; RT 1-1992, f. & cert. ef. 1-15-92; BRT 4-1998, f. & cert. ef. 7-15-98; BRT 2-2002, f. & cert. ef. 11-18-02

337-010-0060

Imposition of Civil Penalties

(1) When a civil penalty is imposed it does not preclude the imposition of any other disciplinary sanction against the licensee or permittee.

(2) The civil penalty shall be payable to the Board by cash, cashiers check, or money order.

(3) Civil penalties shall be imposed per violation according to the following schedule in the absence of a finding of aggravating or mitigating circumstances:

(a) Practicing radiologic technology without a current Oregon license or permit due to nonpayment of fees:

(A) Date license becomes void to six months, \$100;

(B) Six months to twelve months, \$200;

(C) One year to two years, \$500;

(D) Two years and up, \$1,000.

(b) Practicing radiologic technology without a current Oregon license or permit, not related to nonpayment of fee — \$1,000;

(c) Unprofessional conduct by a licensee or permittee — \$1,000;

(d) Violation of ORS 688.405 to 688.605 or any rule of the Board of Radiologic Technology unless otherwise provided in this schedule, \$1,000;

(e) Gross negligence in the practice of radiologic technology, \$1,000;

(f) Knowingly employing an individual to practice radiologic technology when the individual does not have a current, valid Oregon license or permit, \$1,000;

(g) Knowingly make a false statement to the Board, \$500;

(h) Practicing radiologic technology outside the scope for which the license or permit is issued, \$500;

(i) Obtaining or attempting to obtain a license or permit or a renewal of a license or permit by bribery or fraudulent representation, \$500;

(j) Purporting to be a licensee or permittee when the person does not hold a valid license or permit, \$1,000;

(k) Practice radiologic technology under a false or assumed name, \$500;

(l) Conviction of a crime where such crime bears a demonstrable relationship to the practice of radiologic technology, \$1,000;

(m) Has undertaken to act as a radiologic technologist independently of the supervision of a practitioner licensed by the State of Oregon to practice one of the healing arts, \$1,000.

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(n) Knowingly employing or allowing an individual to practice radiologic technology outside the scope of the license or limited permit, \$1,000;

(4) The Board shall report to the American Registry of Radiologic Technologists of all Board disciplinary actions and all cases where the Board issues a conditional license.

Stat. Auth.: ORS 688.555(1)
Stats. Implemented: ORS 688.605(4)
Hist.: RT 1-1992, f. & cert. ef. 1-15-92; BRT 6-1998, f. & cert. ef. 10-16-98; BRT 2-2002, f. & cert. ef. 11-18-02

337-021-0040

Fee for a Limited Permit — Permanent

Effective April 1, 1998, the fee for a renewed limited permit is \$4 per month.

Stat. Auth.: ORS 688.555(1)
Stats. Implemented: ORS 688.515(6)
Hist.: BRT 5-1998, f. & cert. ef. 7-15-98; BRT 1-2002, f. 1-10-02, cert. ef. 1-14-02; BRT 2-2002, f. & cert. ef. 11-18-02

337-021-0070

Application Fees Non-Refundable

The application fee for an initial license or initial limited permit or Limited Permit Examination application fee is non-refundable.

Stat. Auth.: ORS 688.555(1)
Stats. Implemented: ORS 688.455, ORS 688.515(3),(6),(7),(8)
Hist.: BRT 2-2002, f. & cert. ef. 11-18-02

337-021-0080

Refunds

When the board determines that moneys have been received in excess of the amount legally due in an amount of \$25 or less, the board will refund the amount upon receipt of a written request from the person who paid the money or the legal representative of that person.

Stat. Auth.: ORS 688.555(1)
Stats. Implemented: 293.445(4)
Hist.: BRT 2-2002, f. & cert. ef. 11-18-02

Construction Contractors Board

Chapter 812

Adm. Order No.: CCB 10-2002

Filed with Sec. of State: 11-20-2002

Certified to be Effective: 11-20-02

Notice Publication Date: 11-1-02

Rules Amended: 812-004-0360, 812-004-0540, 812-004-0560, 812-008-0072, 812-009-0020, 812-009-0160, 812-010-0100, 812-010-0110, 812-010-0120, 812-010-0220, 812-010-0420, 812-010-0440

Rules Repealed: 812-004-0560(T), 812-010-0100(T), 812-010-0110(T), 812-010-0120(T), 812-010-0440(T)

Subject: OAR 812-004-0360 is amended to change the reference from “on-site investigation” to “on-site meeting”. OAR 812-004-0540 is amended to correct the reference to on-site meeting and delete a surplus reference to “contested case notice”. OAR 812-004-0560 is amended to make the rule compatible with the arbitration program by referencing arbitrations where appropriate; to revise requirements for affidavit supporting late hearing request after problem arose in hearing; and to correct citations. OAR 812-008-0072 is amended to add one CEU for accompanying a licensed contractor on a ride-along repair or maintenance job lasting a minimum of four hours. OAR 812-009-0020 is amended to clarify procedure for amending declaration of damages and to clarify standard for postponing hearing if declaration of damages is amended. OAR 812-009-0160 is amended to clarify limitation on damages if sum of claim items does not match total shown on declaration of damages or statement of claim. OAR 812-010-0100 is amended to remove authority of arbitrator to order an on-site investigation. OAR 812-010-0110 is amended to make rules regarding declaration of damages parallel to the similar rule for contested case hearings to reduce confusion in application of rules related to arbitration and contested cases; and adds procedure to amend a declaration of damages that is similar to a related rule for contested case hearings. OAR 812-010-0120 is amended to provide that the Hearing Officer Panel will issue the notice of hearing instead of the agency; and deletes sections of the rule limiting an arbitration award. OAR 812-010-0220 is amend-

ed to clarify that the rule is applicable to postponement of arbitration as well as a continuance of arbitration. OAR 812-010-0420 is amended to clarify limitation on damages if sum of claim items does not match total shown on declaration of damages or statement of claim. OAR 812-010-0440 is amended to clarify when an arbitration award becomes effective for purposes of payment from a contractor’s bond; and to clarify the effect of a party filing exceptions with the circuit court on delivery of an unpaid award to a contractor’s surety company.

Rules Coordinator: Cathy Heine—(503) 378-4621, ext. 4077

812-004-0360

Addition of Claim Items at On-Site Investigation

If the agency does an on-site meeting of a claim, the claimant may add new claim items up to and through the initial on-site meeting. New items added to a timely filed claim under this rule shall be considered timely filed.

Stat. Auth.: ORS 670.310, ORS 701.140, ORS 701.145 & ORS 701.235
Stats. Implemented: ORS 701.140 & ORS 701.145
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 10-2002, f. & cert. ef. 11-20-02

812-004-0540

Establishing Monetary Damages and Issuing Proposed Default Order or Referral for Hearing

(1) A claimant may seek monetary damages if the agency has not closed the claim and:

(a) The claimant disagrees with the resolution recommended by the agency;

(b) The respondent cannot or will not comply with the recommended resolution; or

(c) The parties signed the settlement agreement proposed by the agency but, through no fault of the claimant, the terms of the settlement agreement have not been fulfilled by the respondent, and the agency is so advised in writing by the claimant within 30 days of the date the settlement agreement was to have been completed.

(2) If the claimant seeks monetary damages or the agency so requests, the claimant shall file a declaration of damages stating the amount the claimant alleges the respondent owes the claimant, limited to claim items listed in the Statement of Claim and those claim items added up to and through any initial on-site meeting. The agency may require the claimant to submit, in support of the amount alleged, one or more estimates from licensed contractors for the cost of correction of the claim items.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the claim for an arbitration or contested case hearing under section (4) of this rule after each party to the claim has had an opportunity to provide evidence supporting its position with regard to the claim. The agency may require that the claimant file a declaration of damages and supporting evidence described under section (2) of this rule, except that the declaration of damages shall be limited to claim items listed in the Statement of Claim.

(4) After documentation required under sections (2) or (3) is received, the agency may:

(a) Issue a proposed default order proposing dismissal of the claim under OAR 812-004-0550(2) or payment of an amount by the respondent to the claimant; or

(b) Refer the claim to the Hearing Officer Panel for an arbitration or contested case hearing to determine the validity of the claim and whether the amount claimed, or some lesser amount is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to claimant only if the record of the claim contains evidence that persuades the agency that:

(A) Claimant suffered damages;

(B) Those damages were caused by the respondent; and

(C) The monetary value of those damages is substantiated on the record.

(b) The agency may issue a proposed default order that is not described in subsection (a) of this section only if the record of the claim contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Hearing Officer Panel issued under this rule.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235
Stats. Implemented: ORS 183.415, ORS 183.460, ORS 183.470 & ORS 701.145
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02

ADMINISTRATIVE RULES

812-004-0560

General Requirements for Proposed Default Order or Referral to Hearing Officer Panel, Hearing Request

(1) A proposed default order on a claim issued by the agency shall include a contested case notice that complies with OAR 137-003-0505.

(2) A referral to the Hearing Officer Panel for arbitration or a contested case hearing must comply with the following:

(a) OAR 812-004-0590, which regulates whether the claim will be arbitrated or heard as a contested case hearing.

(b) OAR 137-003-0515, which sets out requirements for the referrals including, but not limited to formal requirements.

(c) If the agency did not issue a contested case notice under OAR 137-003-0505 prior to the agency's referral of a claim to the Hearing Officer Panel, the agency shall issue a contested case notice with the referral in all cases, including but not limited to referrals for arbitration.

(3) If the agency refers a claim to the Hearing Officer Panel for arbitration or a contested case hearing on the amount, if any, that the respondent owes the claimant, the following requirements apply:

(a) The referral to the Hearing Officer Panel shall identify by date the declaration of damages or the Statement of Claim that limits the amount that the respondent may be ordered to pay the claimant and state the amount that the order is limited to under OAR 812-009-0160 and 812-010-0420.

(b) The agency shall serve on the parties an explanation of:

(A) The limitation on the amount a respondent may be ordered to pay a claimant under OAR 812-009-0160 and 812-010-0420; and

(B) The procedure to file a new declaration of damages under OAR 812-009-0020 and 812-010-0110.

(4)(a) To be timely, a request for hearing must be in writing and be received by the agency within 21 days from the date a proposed default order is mailed by the agency.

(b) An untimely request for a hearing must comply with the requirements of OAR 137-003-0528. The agency may require that the request be supported by an affidavit setting out facts that affirmatively show that the failure to make a timely request was beyond the reasonable control of the party.

(5) The agency may issue a proposed default order under OAR 137-003-0670(4) that will automatically become a final order 21 days after the date of issue without further notice if no party makes a timely request for a hearing.

(6)(a) Except as provided in subsection (b) of this section, a contested case notice issued under this rule shall include a statement that the agency's file on the claim is designated as the record only for purposes of a default order issued under this rule and not for purposes of an order by default issued after a hearing under OAR 812-009-0140.

(b) If a proposed default order issued under this rule is an order to dismiss a claim, a contested case notice issued under this rule shall include a statement that the agency's file on the claim is designated as the record for purposes of a default order issued under this rule and of an order by default issued after a hearing under OAR 812-009-0140.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 183.460, ORS 183.470 & ORS 701.145

Hist.: 1BB 1-1986, f. & ef. 5-30-86; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-001-0004; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02

812-008-0072

Approved Continuing Education Units

The following continuing education units (CEU's) are approved:

(1) One CEU for each completed clock hour of instruction of approved courses. All required CEU's per renewal may be from this category.

(2) Courses in approved subject areas in OAR 812-008-0074(1) that provide for college credit given by institutions of higher learning (community colleges or state universities) are approved for hours in home inspector continuing education.

(3) Courses in approved subject areas in OAR 812-008-0074(1) given by federal, state or local government agencies.

(4) One CEU for accompanying a plumbing, electrical, or heating and air conditioning contractor who is licensed with the Building Codes Division, on a repair or maintenance job that lasts a minimum of four hours. No more than one CEU shall be granted in each of the three areas per two-year renewal period for a total of three CEUs.

Stat. Auth.: ORS 701.350 & ORS 701.355

Stats. Implemented: ORS 701.350 & ORS 701.355

Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 10-2002, f. & cert. ef. 11-20-02

812-009-0020

Amendment to Declaration of Damages

(1) If the agency refers a claim to the Hearing Officer Panel for a hearing on the amount the respondent owes the claimant, the claimant may amend the amount the claimant alleges the respondent owes the claimant by filing an amended declaration of damages. An amended declaration of damages must be delivered to the hearing officer or Hearing Officer Panel as required by OAR 137-003-0520 and 812-009-0085. An amended declaration of damages filed under this section must be received by the hearing officer or the Hearing Officer Panel no later than 14 days prior to the scheduled date of a hearing on the matter.

(2) An amended declaration of damages filed under section (1) of this rule must be on a form provided by the agency or on a form that substantially duplicates the form provided by the agency. The amended declaration of damages must state the amount alleged to be owed by the respondent, limited to items of complaint in the Statement of Claim and claim items added up to and through the initial on-site meeting. The amended declaration of damages must be signed by the claimant.

(3) An amended declaration of damages making a significant change in the amount the claimant alleges that the respondent owes the claimant may be good cause to postpone the scheduled hearing under OAR 137-003-0525 if the time left before the hearing is insufficient to prepare for a hearing on the amended amount.

Stat. Auth.: ORS 670.310, ORS 701.235 & OL 1999, Ch. 849, Sec. 8

Stats. Implemented: ORS 183.413, ORS 183.415 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 10-2002, f. & cert. ef. 11-20-02

812-009-0160

Order Based on Hearing, Limitation on Order

(1) "Order" as used in sections (2) to (5) of this rule means a proposed and final order a hearing officer is authorized to issue under section (6) of this rule or a final order a hearing officer is authorized to issue under OAR 812-009-0200.

(2) If a claim is referred for a hearing to determine the amount, if any, that a respondent owes a claimant, the hearing officer may not issue an order in an amount greater than the total amount claimant alleges respondent owes claimant in:

(a) The most recent declaration of damages or amended declaration of damages filed under OAR 812-004-0540, 812-004-0550 or 812-009-0020; or

(b) The Statement of Claim filed under OAR 812-004-0340, if no declaration of damages was filed.

(3) If a claim is referred for a hearing to determine whether any portion of a judgment is within the jurisdiction of the agency, the hearing officer may not issue an order requiring payment of an amount greater than the amount of the judgment.

(4) An order issued by a hearing officer may direct specific performance on the part of the respondent, order the respondent to pay monetary damages to the claimant or dismiss the claim.

(5) A hearing officer shall consider any amounts due to the respondent from the claimant under the terms of the contract and reduce the amount of an order by that amount.

(6) Except as provided in OAR 812-009-0200, a hearing officer shall issue a proposed and final order under OAR 137-003-0645(4) that shall automatically become a final order 21 days after the date of issue without further notice unless:

(a) A party files timely exceptions under OAR 812-009-0400;

(b) The agency requests that the hearing officer hold further hearing or revise or amend the proposed order under OAR 137-033-0655(1);

(c) The agency issues an amended proposed order under OAR 137-003-0655(3); or

(d) The agency notifies the parties and the hearing officer that the agency will issue the final order.

(7) If a limitation on damages under section (2) is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

Stat. Auth.: ORS 670.310, ORS 701.145 & ORS 701.235

Stats. Implemented: ORS 183.415, ORS 183.450, ORS 183.460, ORS 183.464, ORS 183.470 & ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-

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2000, f. & cert. ef. 5-2-00; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02

812-010-0100

On-Site Investigation, Mediation

(1) At the discretion of the agency, arbitration may be preceded by an on-site investigation or settlement discussions.

(2) At the discretion of the arbitrator, the arbitration may be preceded by settlement discussions.

(3) The arbitrator may request that the agency conduct an on-site investigation prior to arbitration. The agency may grant or deny the request at its discretion.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02

812-010-0110

Declaration of Damages and Amendment to Declaration of Damages

(1) If the party asserting the claim has not previously filed a Statement of Claim or declaration of damages under OAR 812-004-0340, 812-004-0540 or 812-004-0550, the party shall file with the agency on a form provided by the agency a declaration of damages stating the amount that the party alleges any other party owes the party, together with any supporting documents required by the agency.

(2) If the parties to an arbitration have agreed in writing that the arbitration will bind all of them and if any other party to the proceeding asserts a counterclaim, the counterclaiming party shall file with the agency on a form provided by the agency a declaration of damages stating the amount that the counterclaiming party alleges any other party owes to the counterclaiming party, together with any supporting documents required by the agency.

(3) Notwithstanding section (2) of this rule, a party is not required to file a declaration stating the amount the party alleges any other party owes the party, if the party alleges only an offset.

(4) A party may amend the amount the party alleges another party owes the party by filing an amended declaration of damages. An amended declaration of damages must be delivered to the arbitrator as required by OAR 812-010-0085. An amended declaration of damages filed under this section must be received by the arbitrator no later than 14 days prior to the scheduled date of an arbitration on the matter.

(5) An amended declaration of damages filed under section (4) of this rule must be on a form provided by the agency or on a form that substantially duplicates the form provided by the agency. The amended declaration of damages must state the amount alleged to be owed to the party filing the amended declaration by the other party. If the subject of the arbitration is a claim, the amount alleged to be owed must be limited to items of complaint in the Statement of Claim and claim items added up to and through the initial on-site meeting. The amended declaration of damages must be signed by the party filing the amended declaration.

(6) An amended declaration of damages making a significant change in the amount a party alleges that another party owes the party may be good cause to postpone the scheduled arbitration under OAR 812-010-0220 if the time left before the arbitration is insufficient to prepare for arbitration on the amended amount.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145(9), ORS 701.148

Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02

812-010-0120

Time and Place of Arbitration Hearing; Notice

The Hearing Officer Panel shall fix a time and place for the arbitration hearing. The Hearing Officer Panel will mail notice of the time and place of the arbitration at least 21 days prior to the arbitration, unless otherwise agreed to by the parties.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145(9), ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02

812-010-0220

Postponement, Recess and Continuance

An arbitrator may postpone or recess and later continue an arbitration. A party requesting a postponement or continuance must show good cause. The arbitrator will determine whether to grant a postponement or continuance. That determination shall be final.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 10-2002, f. & cert. ef. 11-20-02

812-010-0420

Time, Form, and Scope of Award; Limitation on Award

(1) An award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The agency may extend the time to issue an award under section (1) of this rule.

(3) The award shall be in writing and shall be signed by the arbitrator. The award shall fully dispose of all issues presented to the arbitrator that are required to resolve the dispute. The arbitrator may summarily dismiss issues that raise no substantive factual or legal questions. The award shall contain sufficient rulings on issues and explanations of the reasoning of the arbitrator that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition for reconsideration would be appropriate.

(4) An arbitrator may not issue an award in an amount greater than the total amount a party alleges another party owes the party in:

(a) The most recent declaration of damages or amended declaration of damages filed by the party under OAR 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The Statement of Claim filed by the party under OAR 812-004-0340, if no declaration of damages was filed.

(5) When a claimant makes a claim against a respondent's surety bond required under ORS 701.085 and the parties to the claim have not agreed that the arbitration will bind claimant, only the claimant may assert damages. The arbitrator may award damages to claimant, but not to respondent. Respondent may assert amounts owed to it as an offset under section (6) of this rule.

(6) An arbitrator shall consider any amounts owed by a party claiming damages to another party under the terms of the contract at issue in the arbitration and reduce the amount of an award of damages to the party claiming the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a declaration of damages as to the offset. If the party asserting the offset did not file a declaration of damages, the amount of the offset may not exceed the amount of the award.

(7) Except as provided in OAR 812-010-0440 and 812-010-0460, an arbitration award is effective as an order to pay under OAR 812-004-0600 or may be delivered to the clerk of a circuit court under ORS 36.350:

(a) Only after the 21st day after service on the parties; and

(b) Only if no party files a timely petition for reconsideration under OAR 812-010-0425.

(8) Except as provided in section (4) of this rule, the arbitrator may dismiss a claim or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(9) If a limitation on damages under section (4) is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 10-2002, f. & cert. ef. 11-20-02

812-010-0440

Payments from Licensee's Bond

(1) As used in this rule, award means an award that becomes effective:

(a) Under OAR 812-010-0420(7);

(b) After a denial of a request for reconsideration is issued under OAR 812-010-0425(6); or

(c) After an award on reconsideration is issued under OAR 812-010-0425(8).

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(2) If an award requires payment by a licensee and the licensee fails to pay the award, the award is payable from the surety bond to the extent payment is authorized under ORS 701.150. Payments from the bond shall be limited to sums for arbitrated claims and shall be subject to the laws in ORS chapter 701 and rules in division 4 of this chapter.

(3) An award may be submitted to a surety company for payment under OAR 812-004-0600 if no party delivers a copy of exceptions to the award filed with the circuit court under ORS 36.350 within 30 days of the date the award becomes effective.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235
Stats. Implemented: ORS 701.145(9) & ORS 701.150
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02

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Department of Agriculture
Chapter 603

Adm. Order No.: DOA 23-2002(Temp)

Filed with Sec. of State: 12-2-2002

Certified to be Effective: 12-4-02 thru 6-1-03

Notice Publication Date:

Rules Amended: 603-057-0410

Subject: This temporary rule is necessary to assure pesticide reporters have adequate electronic web-base system access, resources, and time to submit pesticide use data for calendar year 2002.

Rules Coordinator: Sherry Kudna—(503) 986-4619

603-057-0410

Pesticide Users Required to Report

(1) All pesticide products used by each pesticide user shall be reported at least once yearly to the Department. All pesticide use in a given calendar year shall be reported no later than January 31 of the following calendar year. Pesticide use for the calendar year 2002 shall be reported no later than April 30, 2003. A pesticide user may report the use of pesticide products on a more frequent basis if so selected by the pesticide user. Each report will include the required pesticide use information for the preceding specified period, or since the most recent filing of a pesticide use report, whichever time period is shorter.

(2) Commercial pesticide operators are required to file the pesticide use report when a commercial pesticide operator uses a pesticide product in the course of business.

(3) All agencies, instrumentalities, subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies and utilities are required to file the pesticide use report when a pesticide product is used by their employees.

(4) Employers are required to file the pesticide use report when an employee uses a pesticide product as an employee in the scope of his or her employment.

(5) All other pesticide users, other than as described in subsection (2), (3), or (4) of this section, using a pesticide product, are required to file the pesticide use report.

(6) Reports of pesticide use shall be made to the Department using forms or methods specified by the Department.

Stat. Auth.: ORS 634, ORS 561.190 & Ch. 1059 OL 1999
Stats. Implemented: Ch. 1059 OL 1999
Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 23-2002(Temp), f. 12-2-02., cert. ef. 12-4-02 thru 6-1-03

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Adm. Order No.: DOA 24-2002

Filed with Sec. of State: 12-2-2002

Certified to be Effective: 1-1-03

Notice Publication Date: 8-1-02

Rules Adopted: 603-059-0055, 603-059-0070, 603-059-0080

Subject: 603-059-0055 — Identifies specific product label language to address web site access to product content and metals information. 603-059-0070 — Sets investigational allowances for variations in plant nutrients and specific metals inherent in the sampling process. Sets minimum detection limits for lab analyses. 603-059-0080 — Provides enforcement guidelines for civil penalty implementation consistency. Prohibited acts categorized by magnitude of violation.

Rules Coordinator: Sherry Kudna—(503) 986-4619

603-059-0055

Labeling Requirements

(1) Any fertilizer, agricultural mineral, agricultural amendment or lime product distributed in this state must have the following information included as part of the product label required by ORS 633.321 to 633.341. At a minimum, one of the following labeling statements:

(a) "Information regarding the contents and levels of metals in this product is available on the internet at <http://www.regulatory-info-xx.com>". Each registrant must substitute a unique alpha numeric identifier for "xx". This statement may be used only if the registrant establishes and maintains the internet site and the internet site meets the following criteria:

(A) There is no advertising or company-specific information on the site:

(B) There is a clearly visible, direct hyperlink to the department's internet site specified in (b) of this subsection (1); and

(C) Any other criteria adopted by the director by rule.

(b) "Information regarding the contents and levels of metals in this product is available at the Oregon Dept of Agriculture internet site: <http://oda.state.or.us/fertilizer>"

(c) "Information regarding the contents and levels of metals in this product is available on the internet at..." The Association of American Plant Food Control Officials' hosted website developed to provide a uniform label internet address to access product content information is to be inserted to complete the above sentence. This specific address is the only AAPFCO web address that will be allowed for this product labeling purpose.

(2) At a minimum, the following product information will be maintained by the Department on the internet:

(a) Product name including brand name;

(b) Registrant name;

(c) Guaranteed primary, secondary and micronutrients;

(d) Lime Score for lime products;

(e) Levels of arsenic, cadmium, lead, mercury, and nickel; and

(f) State registration status.

(3) Any fertilizer, agricultural mineral, agricultural amendment, or lime product sold, offered for sale, or distributed in this state must be labeled in accordance to 603-059-0055(1) by January 1, 2004.

(4) Failure to label a fertilizer, agricultural mineral, agricultural amendment, or lime product pursuant to 603-059-0055(1) which is sold, offered for sale, or distributed in this state on or after January 1, 2004 shall be considered mislabeled. Mislabeled of any fertilizer, agricultural mineral, agricultural amendment or lime product in this manner is a violation of ORS 633.366(1)(a) as a Category III violation.

Stat. Auth.: ORS 561.190 & ORS 633 as amended by Ch. 914 OL 2001
Stats. Implemented: ORS 633 as amended by Ch. 914 OL 2001
Hist.: DOA 24-2002, f. 12-2-02, cert. ef. 1-1-03

603-059-0070

Investigational Allowances, Minimum Detection Limits

(1) Investigational allowance means an allowance for variations inherent in the taking, preparation and analysis of an official sample. The following investigational allowances provide enforcement consistency in determining deficiencies in products addressed in the administration of ORS 633.311 to 633.479 and 633.994. Products will be deemed deficient if the analysis of any nutrient, or Lime Score calculation, is below the guarantee by an amount exceeding the following values:

(a) Investigational allowances for primary nutrients are as follows:

% Guarantee — N — P2O5 — K2O

4% or Less — 0.49 — 0.67 — 0.41

5% — 0.51 — 0.67 — 0.43

6% — 0.52 — 0.67 — 0.47

7% — 0.54 — 0.68 — 0.53

8% — 0.55 — 0.68 — 0.60

9% — 0.57 — 0.68 — 0.65

10% — 0.58 — 0.69 — 0.70

12% — 0.61 — 0.69 — 0.79

14% — 0.63 — 0.70 — 0.87

16% — 0.67 — 0.70 — 0.94

18% — 0.70 — 0.71 — 1.01

20% — 0.73 — 0.72 — 1.08

22% — 0.75 — 0.72 — 1.15

24% — 0.78 — 0.73 — 1.21

26% — 0.81 — 0.73 — 1.27

28% — 0.83 — 0.74 — 1.33

30% — 0.86 — 0.75 — 1.39

32% or More — 0.88 — 0.76 — 1.44

For Diamonium Phosphate and Monammonium Phosphate, the investigational allowance for P2O5 shall be 0.70.

For guarantees not listed, calculate the appropriate value by interpolation.

(b) Investigational allowances for secondary nutrients and micronutrients are as follows:

Element — Investigational Allowance

Ca — 0.2 Unit + 5% of Guarantee

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Mg — 0.2 Unit + 5% of Guarantee
S — 0.2 Unit + 5% of Guarantee
B — 0.003 Unit + 15% of Guarantee
Co — 0.0001 Unit + 30% of Guarantee
Cl — 0.005 Unit + 10% of Guarantee
Cu — 0.005 Unit + 10% of Guarantee
Fe — 0.005 Unit + 10% of Guarantee
Mn — 0.005 Unit + 10% of Guarantee
Mo — 0.0001 Unit + 30% of Guarantee
Na — 0.005 Unit + 10% of Guarantee
Zn — 0.005 Unit + 10% of Guarantee

"UNIT" is twenty (20) pounds of plant food or one percent (1%) of a ton

The maximum allowance when calculated in accordance to the above shall be 1 unit (1%).

(c) Investigational allowances for lime products are as follows:

(A) When the Lime Score is found to be more than 5% deficient from the stated Lime Score.

(B) When the amount of calcium carbonate, calcium oxide, magnesium carbonate or magnesium oxide content is found to be more than 10% below the guarantee.

(2) Minimum detection limits for laboratory analysis reports of metal levels required by the department in accordance with ORS 633.362 must be declared at, or below, the following:

Arsenic — 10.0 ppm

Cadmium — 05.0 ppm

Lead — 05.0 ppm

Mercury — 0.20 ppm

Nickel — 05.0 ppm

Stat. Auth: ORS 561.190 & ORS 633 as amended by Ch. 914 OL 2001

Stats. Implemented: ORS 633 as amended by Ch. 914 OL 2001

Hist.: DOA 24-2002, f. 12-2-02, cert. ef. 1-1-03

603-059-0080

Enforcement Guidelines

(1) In addition to any other penalty provided by law, the Director may assess civil penalties for prohibited acts identified in ORS 633.366. Civil penalties will be issued in accordance to the magnitude of the violation. The department is not precluded from utilizing other enforcement alternatives. Enforcement alternatives may include, but are not limited to, letter of advisement, notice of violation, stop sale, use or removal order, and license/registration revocation, suspension or denial. Commission of each prohibited act is a violation of ORS Chapter 633 and subject to a civil penalty. Prohibited acts are categorized as to the magnitude of violation as follows:

(a) **Category I (Major):** The Department will issue a civil penalty for initial Category I violations in addition to any alternative enforcement action deemed necessary to protect the public interests. Category I violations include:

(A) ORS 633.366(1)(b) Register or attempt to register any product using fraudulent or deceptive practices to evade or attempt to evade the requirements of ORS 633.311 to 633.479 and 633.994 or rules adopted thereunder;

(B) ORS 633.366(1)(g) Make false or fraudulent applications, records, invoices or reports;

(C) ORS 633.366(1)(j) Sell, use or remove any product subjected to a stop sale, use or removal order until the product has been released in accordance with ORS 633.445;

(D) ORS 633.366(1)(k) Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department from the performance of department duties under ORS 633.311 to 633.479 and 633.994.

(b) **Category II (Moderate):** The Department will take initial alternative enforcement action and may allow a specified amount of time to take corrective action prior to issuance of a civil penalty for a Category II violation. Failure to complete the required corrective action within the specified time period, or repeat violations, will result in the immediate issuance of a civil penalty. Category II violations include:

(A) Sell, offer for sale, or distribute adulterated products (ORS 633.366(1)(c));

(B) Fail, refuse, or neglect to keep or maintain records as required under ORS 633.461, 633.471 and 633.476 or refuse to make available such records pursuant to ORS 633.385 upon request by the department (ORS 633.366(1)(f));

(C) Knowingly or intentionally make any false or misleading representations in connection with the sale, offer for sale, or distribution of fertilizer, agricultural amendment, agricultural mineral, or lime products (ORS 633.366(1)(L)).

(c) **Category III (Minor):** The Department will take initial alternative enforcement action in writing and will allow a specified amount of time to take corrective action prior to the issuance of a civil penalty for a Category III violation. Failure to complete the corrective action within the

specified time period, or repeat violations, may result in the immediate issuance of a civil penalty. Category III violations include:

(A) Sell, offer for sale, or distribute mislabeled products (ORS 633.366(1)(a)), including, but not limited to, when the product is:

(i) Deemed deficient as defined in 603-059-0070(1)(a)-(c);

(ii) Not labeled pursuant to 603-059-0055(1).

(B) Fail, refuse, or neglect to deliver to a purchaser of a bulk fertilizer, agricultural amendment, agricultural mineral or lime product a printed label that complies with ORS 633.321 to 633.341 (ORS 633.366(1)(d));

(C) Sell, offer for sale, or distribute a fertilizer, agricultural amendment, agricultural mineral or lime product that is not registered with the State Department of Agriculture under ORS 633.362 (ORS 633.366(1)(e));

(D) Fail, refuse, or neglect to provide notification to the department as required by ORS 633.318(5) or 633.362(8) (ORS 633.366(1)(h));

(E) Fail, refuse, or neglect to obtain a manufacturer-bulk distributor license required under ORS 633.318 (ORS 633.366(1)(i));

(F) Fail, refuse, or neglect to file a semiannual statement with the department as required under ORS 633.461 or 633.471 (ORS 633.366(1)(m));

(G) Fail, refuse, or neglect to pay inspection fees required under ORS 633.461 (ORS 633.366(1)(n)).

(d) To "refuse", in the context of these prohibited acts, constitutes a willful misconduct violation and is subject to a civil penalty of not more than \$10,000 for the initial violation or any subsequent violation.

(3) Maximum civil penalties are not to exceed the following:

Category — 1st Violation — 2nd Violation — 3rd+ Violation

Category I (Major) — \$500 — \$1500 — \$10,000

Category II (Moderate) — \$250 — \$750 — \$5000

Category III (Minor) — \$125 — \$375 — \$2500

(4) As authorized by ORS 633.994(5) A civil penalty imposed under ORS 633.311 to 633.479 and 633.994 may be remitted or reduced upon such terms and conditions as the Director of Agriculture considers proper and consistent with the public health and safety.

(5) As authorized by ORS 633.994(3), any violation that arises from gross negligence or willful misconduct and results in substantial harm to human health or the environment may be subject to a civil penalty of not more than \$10,000 for the initial violation or any subsequent violation.

Stat. Auth: ORS 561.190 & ORS 633 as amended by Ch. 914 OL 2001

Stats. Implemented: ORS 633 as amended by Ch. 914 OL 2001

Hist.: DOA 24-2002, f. 12-2-02, cert. ef. 1-1-03

Adm. Order No.: DOA 25-2002

Filed with Sec. of State: 12-2-2002

Certified to be Effective: 1-1-03

Notice Publication Date: 9-1-02

Rules Adopted: 603-059-0100

Subject: 603-059-0100 — Sets specific limits of Arsenic, Cadmium, Lead, Mercury, and Nickel as non-nutritive constituents in fertilizer, ag amendments, ag minerals and lime products sold or distributed in Oregon.

Rules Coordinator: Sherry Kudna—(503) 986-4619

603-059-0100

Limits of Non Nutritive Constituents

(1) Fertilizer, agricultural amendment, agricultural mineral and lime products sold or distributed in the state and required to be registered with the Department shall be limited in the level of the metals arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), and nickel (Ni), contained therein, specifically:

(a) When the product has a guaranteed analysis of available phosphate (P2O5), for each percent of P2O5 guaranteed, the maximum allowed level of a metal, expressed in parts per million (ppm), must not exceed: 9 ppm arsenic, 7.5 ppm cadmium, 43 ppm lead, 0.7 ppm mercury, 175 ppm nickel.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent guaranteed P2O5 for the product by the maximum allowed level of the metal.

(B) For the purpose of calculating the maximum allowed concentration of a metal in a product with a guaranteed analysis of less than six percent P2O5, the minimum percent of P2O5 utilized as a multiplier shall be 6.0.

(b) When the product has no guaranteed analysis of available phosphate (P2O5) but does have a guaranteed analysis of one micronutrient, for each percent of the micronutrient guaranteed, the maximum allowed level of a metal, expressed in parts per million (ppm), must not exceed: 76 ppm

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arsenic, 61 ppm cadmium, 340 ppm lead, 4.5 ppm mercury, 1330 ppm nickel.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent of the micronutrient guaranteed for the product by the maximum allowed level of the metal.

(B) For the purpose of calculating the maximum allowed concentration of a metal in a product with less than one percent micronutrient guaranteed, the minimum percent of micronutrient utilized as a multiplier shall be 1.0.

(c) When the product has no guaranteed analysis of available phosphate (P2O5) but does have a guaranteed analysis of two or more micronutrients, for each percent of the micronutrient in the greatest concentration, the product shall not contain more than 76 parts per million (ppm) arsenic, 61 ppm cadmium, 340 ppm lead, 4.5 ppm mercury, 1330 ppm nickel.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent of the micronutrient guaranteed for the product in the greatest concentration by the maximum allowed level of each metal.

(B) For the purpose of calculating the maximum allowed concentration of a metal in a product with less than one percent micronutrient guaranteed, the minimum percent of micronutrient utilized as a multiplier shall be 1.0.

(d) When the product has a guaranteed analysis of available phosphate (P2O5) and has a guaranteed analysis of one micronutrient, the product shall not contain more of any metal than the higher of the two resulting values as calculated in (a) or (b) above, specifically:

(A) To determine the maximum allowed concentration of a metal in a product, multiply the percent guaranteed P2O5 for the product by the maximum allowed level of the metal as stated in (a) above. Then multiply the percent of the micronutrient guaranteed for the product by the maximum allowed level of the metal as stated in (b) above. Utilize the higher of the two resulting values as the maximum allowable metal concentration.

(e) When the product has a guaranteed analysis of available phosphate (P2O5) and has a guaranteed analysis of two or more micronutrients, the product shall not contain more of any metal than the higher of the resulting values as calculated in (a) or (c) above.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent guaranteed P2O5 for the product by the maximum allowed level of the metal as stated in (a) above. Then multiply the highest percent of a micronutrient guaranteed for the product by the maximum allowed level of the metal as stated in (c) above. Utilize the higher of the resulting values as the maximum allowable metal concentration.

(f) When the product has no guaranteed analysis of available phosphate (P2O5) and no guaranteed analysis of a micronutrient, the product shall not contain more than: 54 parts per million (ppm) arsenic, 45 ppm cadmium, 258 ppm lead, 4.2 ppm mercury, 1050 ppm nickel.

(2) Any fertilizer, agricultural amendment, agricultural mineral or lime product which is made from zinc recycled hazardous wastes as regulated under the Resource Conservation and Recovery Act (RCRA) must comply with the existing, applicable land disposal restriction (LDR) treatment standards for the hazardous wastes the products contain or comply with the conditions for excluding hazardous secondary materials as established in the Federal Register/Vol.67, No. 142/Wednesday, July 24, 2002/Pages 48393-48415.

(3) The department will review the permitted levels of metals or other substances in fertilizer, agricultural amendment, agricultural mineral and lime products every three years as authorized by ORS 633.362(11).

(4) Registration of a fertilizer, agricultural amendment, agricultural mineral or lime product with the department does not entitle the user of such product to violate regulations administered by any other authority with jurisdiction, including Water Quality Standards administered by the Department of Environmental Quality.

Stat. Auth: ORS 633 as amended by Ch. 914 OL 2001
Stats. Implemented: ORS 633 as amended by Ch. 914 OL 2001
Hist.: DOA 25-2002, f. 12-2-02, cert. ef. 1-1-03

Adm. Order No.: DOA 26-2002

Filed with Sec. of State: 12-10-2002

Certified to be Effective: 12-10-02

Notice Publication Date: 11-1-02

Rules Amended: 603-052-1200

Subject: The amendment updates the state's noxious weed quarantine to match changes made by the State Weed Board in the state's noxious weed list. Seven weeds have been removed from the quarantine and five new weeds added. Two weeds have been moved from

the "A" list to the "B" list. Removed: featherheaded knapweed, bulbous goatgrass, Tausch's goatgrass, Lepyroclis, wild safflower, whitestem distaff thistle, big headed knapweed. Added: common bugloss, cutleaf teasel, false brome, old man's beard, and European water chestnut. Moved: small broomrape and short-fringed knapweed from "A" list to "B." Importing, propagating or selling plants listed in the state's noxious weed quarantine is prohibited.

Rules Coordinator: Sherry Kudna—(503) 986-4619

603-052-1200

Quarantine; Noxious Weeds

(1) Establishing Quarantine. A quarantine is established against the noxious weeds listed herein. Noxious weeds have become so thoroughly established and are spreading so rapidly that they have been declared a menace to the public welfare. ORS 570.505.

(2) Areas Under Quarantine. The entire state of Oregon and all other States of the United States and all foreign countries.

(3) Covered Plants. For purposes of this rule the term "plants" applies to whole plants, plant parts, and seeds. This rule applies to all "A" and "B" designated noxious weeds listed herein, except as provided in subsections (c) and (d). Plants on the Federal Noxious Weed List (7 C.F.R. 360.200) are also covered by this rule, with the exception of Japanese blood grass, *Imperata cylindrica*, var. Red Baron.

(a) "A" designated weeds. Weeds of known economic importance which occur in the state in small enough infestations to make eradication/containment possible; or which are not known to occur, but their presence in neighboring states makes future occurrence in Oregon seem imminent.

Common Name — Scientific Name

African rue — *Peganum harmala*
Barbed goatgrass — *Aegilops triuncialis*
Bearded creeper (Common Crupina) — *Crupina vulgaris*
Camelthorn — *Alhagi pseudalhagi*
Coltsfoot — *Tussilago farfara*
European Water Chestnut — *Trapa natans*
Giant hogweed — *Heracleum mantegazzianum*
Hydrilla — *Hydrilla verticillata*
Iberian starthistle — *Centaurea iberica*
King-devil hawkweed — *Hieracium piloselloides*
Kudzu — *Pueraria lobata*
Meadow hawkweed — *Hieracium pratense*
Matgrass — *Nardus stricta*
Mouse-ear hawkweed — *Hieracium pilosella*
Orange hawkweed — *Hieracium aurantiacum*
Ovate goatgrass — *Aegilops ovata*
Plumeless thistle — *Carduus alanthoides*
Purple nutsedge — *Cyperus rotundus*
Purple starthistle — *Centaurea calcitrapa*
Silverleaf nightshade — *Solanum elaeagnifolium*
Skeletonleaf bursage — *Ambrosia tomentosa*
Smooth cordgrass — *Spartina alterniflora*
Smooth distaff thistle — *Carthamus baeticus*
Spartina — *Spartina densiflora*
Spartina — *Spartina anglica*
Squarrose knapweed — *Centaurea virgata*
Syrian bean-caper — *Zygophyllum fabago*
Texas blueweed — *Helianthus ciliaris*
Woolly distaff thistle — *Carthamus lanatus*
Yellow hawkweed — *Hieracium floribundum*

(b) "B" designated weeds. Weeds of economic importance which are regionally abundant, but which may have limited distribution in some counties.

Common Name — Scientific Name

Austrian peaeweed (Swainsonpea) — *Sphaerophysa salsula*
Bearded creeper (Common Crupina) — *Crupina vulgaris*
Biddy-biddy — *Acaena novae-zelandiae*
Buffaloburr — *Solanum rostratum*
Bull thistle — *Cirsium vulgare*
Canada thistle — *Cirsium arvense*
Common Bugloss — *Anchusa officinalis*
Creeping yellow cress — *Rorippa sylvestris*
Cutleaf Teasel — *Dipsacus laciniatus*
Dalmation toadflax — *Linaria dalmatica*
Diffuse knapweed — *Centaurea diffusa*
Dodder — *Cuscuta spp.*
Dyers woad — *Isatis tinctoria*
English Ivy* — *Hedera helix*
(*except named, horticultural varieties)
Eurasian watermilfoil — *Myriophyllum spicatum*
False Brome — *Brachypodium sylvaticum*
Field bindweed — *Convolvulus arvensis*
French broom — *Cytisus monspessulanus*
Giant horsetail — *Equisetum telmateia*
Giant knotweed — *Polygonum sachalinense*
Globe-podded thistle — *Cardaria pubescens*
Gorse — *Ulex europaeus*
Halogeton — *Halogeton glomeratus*

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Himalayan blackberry* — *Rubus armeniacus* (*discolor*, *procerus*)
(*except fruit for consumption)
Himalayan knotweed — *Polygonum polystachyum*
Houndstongue — *Cynoglossum officinale*
Italian thistle — *Carduus pycnocephalus*
Japanese knotweed (Fleece flower) — *Polygonum cuspidatum*
Johnsongrass — *Sorghum halepense*
Jointed goatgrass — *Aegilops cylindrica*
Kochia — *Kochia scoparia*
Leafy spurge — *Euphorbia esula*
Lens-podded thistle — *Cardaria chalapensis*
Meadow knapweed — *Centaurea pratensis*
Mediterranean sage — *Salvia aethiopsis*
Medusahead rye — *Taeniatherum caput-medusae*
Musk thistle — *Carduus nutans*
Old Man's Beard — *Clematis vitalba*
Perennial pepperweed — *Lepidium latifolium*
Poison hemlock — *Conium maculatum*
Portugese broom — *Cytisus striatus*
Puncturevine — *Tribulus terrestris*
Purple loosestrife — *Lythrum salicaria*
Quackgrass — *Agropyron repens*
Ragweed — *Ambrosia artemisiifolia*
Rush skeletonweed — *Chondrilla juncea*
Russian knapweed — *Centaurea repens*
Scotch broom* — *Cytisus scoparius*
(*except sterile, horticultural varieties)
Scotch thistle — *Onopordum acanthium*
Short-fringed knapweed — *Centaurea nigrescens*
Slender-flowered thistle — *Carduus tenuiflorus*
Small broomrape — *Orobancha minor*
South American waterweed (Elodea) — *Elodea (=egeria) densa*
Spartina — *Spartina patens*
Spanish broom — *Spartium junceum*
Spikeweed — *Hemizonia pungens*
Spiny cocklebur — *Xanthium spinosum*
Spotted knapweed — *Centaurea maculosa*
Sulfur cinquefoil — *Potentilla recta*
Tamarix — *Tamarix ramosissima*
Tansy ragwort — *Senecio jacobaea*
Velvetleaf — *Abutilon theophrasti*
White top (Hoary cress) — *Cardaria spp.*
Wild proso millet — *Panicum miliaceum*
Yellow nutsedge — *Cyperus esculentus*
Yellow starthistle — *Centaurea solstitialis*
Yellow toadflax — *Linaria vulgaris*

(c) Agricultural seed as defined in Oregon's Seed Law, ORS 633.511 to 633.750, is exempt from this quarantine but subject to the noxious weed seed tolerances in OAR 603-056-0205.

(d) Other commodities such as but not limited to wheat are exempt from this quarantine to the extent that they are contaminated with noxious weed seed.

(4) Prohibited and Permitted Acts.

(a) All plants covered in section (3) of this rule are prohibited entry into the State of Oregon.

(b) All plants listed in section (3) of this rule are prohibited from transport, purchase, sale or offering for sale in the State of Oregon.

(c) All plants listed in section (3) of this rule are prohibited from being propagated in the State of Oregon.

(d) All plants listed in section (3) may be collected from the wild in areas that are already infested with the specific species that is collected, provided that the plants, plant parts, or seed are not used for propagation or sale within the State of Oregon.

(5) Disposition of Plants in Violation of the Quarantine. All covered plants listed in section (3) of this rule that are found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, if from out of state, or at the owner's option be destroyed under the supervision of the department, without expense to or indemnity paid by the department.

(6) Exceptions. The director may issue a permit allowing entry into this State, propagation, or selling of plants covered by this rule, upon request, and upon investigation and finding that unusual circumstances exist justifying such action, and that the benefits of granting the permit outweigh the potential harm that may result from the requested action. The director may impose specific conditions on any permit issued hereunder, and the permit may be canceled for failure to meet the conditions therein. Any permit issued under this section shall be for a limited duration not to exceed one year.

Stat. Auth.: ORS 561.020, ORS 561.190, ORS 561.510 & ORS 570.305

Stats. Implemented: ORS 561.510

Hist.: DOA 5-1999, f. & cert. ef. 4-5-99; DOA 13-2000, f. & cert. ef. 5-8-00; DOA 7-2002, f. & cert. ef. 2-1-02; DOA 26-2002, f. & cert. ef. 12-10-02

Department of Community Colleges and Workforce Development Chapter 589

Adm. Order No.: DCCWD 6-2002(Temp)

Filed with Sec. of State: 12-4-2002

Certified to be Effective: 12-4-02 thru 6-2-03

Notice Publication Date:

Rules Adopted: 589-020-0270

Subject: The purpose of this rule is to establish the requirements and procedures that take effect if a Local Area fails to meet the local performance measures negotiated with the Department pursuant to the Federal Workforce investment Act (WIA).

Rules Coordinator: Bret West—(503) 378-8648, ext 361

589-020-0270

Performance Measures Improvement

(1) Purpose: The purpose of this rule is to establish the requirements and procedures that take effect if a Local Area fails to meet the local performance measures negotiated with the Department pursuant to the federal Workforce Investment Act (WIA), PL 105-220, its amendments and regulations thereto.

(2) Definitions: As used in OAR 589-020-0270, unless the context requires otherwise:

(a) Failure to Meet: Actual performance for any of the 17 core performance indicators that falls below 80% of the negotiated level of performance. Technical assistance is required to be provided under WIA Section 134(a)(2)(B)(iv) to Local Workforce Investment Areas (LWAs) that fail to meet local performance measures.

(b) Negotiated Levels of Performance: The numeric performance target agreed to by the Department and the LWA for each of the 17 core performance indicators.

(c) Performance Measures: the 17 performance indicators required by the **Workforce Investment Act of 1998, section 136; Final Rules, 20 CFR part 666, published at 65 federal Register 49419** (August 11, 2000).

(d) Program Area: A cluster of measures used in the evaluation of performance for incentive or improvement purposes. There are four program areas: Adults, Dislocated Workers, Youth (both older and younger youth), and customer satisfaction (even though it is not technically a "program").

(e) Unawarded Incentive Grant Funds: Those funds remaining after all incentive awards have been made.

(3) The LWA must achieve at least 80% of the negotiated performance level on each performance measure within a given program area to qualify as having met performance.

(4) Technical assistance shall be provided by the Department or upon request by the Department, the U.S. Department of Labor, Employment and Training Administration, if an LWA fails to meet negotiated levels of performance relating to a program area for any program year.

(a) Technical assistance may include assistance in the development of a performance improvement plan, or the development of a modified local plan.

(b) The following criteria must be considered in providing technical assistance:

(A) The action taken must be remedial in nature rather than punitive; and

(B) The action taken must be appropriate to remedy the problem causing the poor performance.

(5) When the Department determines the local area has failed to meet any negotiated performance, the Department notifies the local area. Upon such notification, the procedures described below shall be followed:

(a) The local area analyzes the problem relative to the failed indicator(s);

(b) The local area develops and submits a program improvement plan to the Department within 30 calendar days of notification from the Department designed to address performance not achieved. The plan shall include proposed actions and costs. The local area may request the assistance of the Department in developing the program improvement plan.

(c) Within 30 calendar days following receipt of the plan, the Department reviews and may approve the program improvement plan based on the following criteria:

(A) The plan adequately addresses the indicator(s) not achieved; and

(B) The costs of the planned action are reasonable.

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(d) If the program improvement plan is not approved, the Department notifies the local area of the decision and provides assistance to address the issues resulting in the plan disapproval.

(6) Upon approval of the program improvement plan by the Department, Unawarded Incentive Grant funds shall be made available in accordance with OAR 589-020-0260 for technical assistance/program improvement to those local areas whose performance for any of the 17 core performance indicators falls below 80% of the negotiated performance level.

(7) If failure to meet performance as defined in (2)(a), (3) and (4) of this OAR continues for a second consecutive year, the Department shall take corrective action which may include development of a reorganization plan through which the Department may:

(a) Require the appointment and certification of a new local board (consistent with the criteria established under WIA Section 117(b);

(b) Prohibit the use of eligible providers and one-stop partners identified as achieving a poor level of performance; or

(c) Take such other actions as the Department determines are appropriate to improve the performance of the local area including those identified in (4) through (6) of this OAR. Other actions may include the selection of an alternative entity to administer the program(s) for the local area. The alternative entity may be a newly formed workforce investment board or any agency jointly selected by the Department and the chief elected official(s) of the LWA.

(8) A local area that is subject to a reorganization plan under (7) of this OAR may, not later than 30 days after receiving notice of the reorganization plan, appeal to the Department to rescind or revise such plan. In such case, the Department shall make a final decision not later than 30 days after the receipt of the appeal.

(a) The decision of the Department shall become effective at the time the Department issues the decision pursuant to (8) of this OAR. Such decision shall remain effective unless the Secretary of the U.S. Department of Labor rescinds or revises such plan pursuant to (8)(b) of this OAR.

(b) The local area may, not later than 30 days after receiving a decision from the Department pursuant to (8) of this OAR, appeal such decision to the Secretary of the U.S. Department of Labor. In such case, the Secretary shall make a final decision not later than 30 days after the receipt of the appeal.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 326.370

Statutes Implemented: ORS 326.370

Hist.: DCCWD 6-2002, f. & cert. ef. 12-4-02 thru 6-2-03

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

Adm. Order No.: BCD 30-2002

Filed with Sec. of State: 12-6-2002

Certified to be Effective: 1-1-03

Notice Publication Date: 11-1-02

Rules Amended: 918-480-0010

Rules Repealed: 918-480-0010(T)

Subject: Implements the installation requirement for arc-fault circuit interrupters in one- and two-family dwellings. Replaces temporary rule that was effective October 1, 2002.

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:

(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

(d) 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 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 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

Department of Consumer and Business Services, Insurance Division Chapter 836

Adm. Order No.: ID 22-2002

Filed with Sec. of State: 11-27-2002

Certified to be Effective: 11-27-02

Notice Publication Date: 8-1-02

Rules Adopted: 836-011-0500, 836-011-0505, 836-011-0510, 836-011-0515, 836-011-0520, 836-011-0525, 836-011-0530, 836-011-0535, 836-011-0540, 836-011-0545, 836-011-0550

Rules Amended: 836-011-0100, 836-011-0110, 836-011-0120, 836-011-0130, 836-011-0140, 836-011-0150, 836-011-0160, 836-011-0170, 836-011-0180, 836-011-0190, 836-011-0200, 836-011-0210, 836-011-0220, 836-011-0230, 836-012-0000, 836-012-0011, 836-012-0021, 836-012-0031, 836-012-0041, 836-012-0051, 836-012-0060, 836-012-0070, 836-012-0080, 836-012-0090, 836-012-0100, 836-054-0300

Rules Ren. & Amended: 836-020-0900 to 836-050-0150

Subject: This rulemaking adopts rules that establish and enforce risk-based capital standards for health care service contractors; amend current rules governing credit for reinsurance; amend current rules governing annual independent audits of insurer financial statements by certified public accountants; amend the current rule relating to mortgage insurance in connection with junior liens; and amend and renumber the current rule governing the notice required to accompany an advance payment of damages so that the period of limitation will not be suspended.

Rules Coordinator: Sue Munson—(503) 947-7272

836-011-0100

Authority; Effective Date

(1) OAR 836-011-0100 to 836-011-0230 are adopted by the Director pursuant to ORS 731.488. The purpose of OAR 836-011-0100 to 836-011-0230 is to improve the Director's surveillance of the financial condition of insurers by requiring an annual examination by independent certified pub-

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lic accountants of the financial statements reporting the financial position and the results of operations of insurers.

(2) OAR 836-011-0100 to 836-011-0230 do not limit the Director's authority to order, conduct or perform examinations of insurers under the Insurance Code.

Stat. Auth.: ORS 731.244 & ORS 731.488
Stats. Implemented: ORS 731.488(2)
Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0110

Definition of Independent Certified Public Accountant

As used in OAR 836-011-0100 to 836-011-0230:

(1) "Accountant" and "independent certified public accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in each state in which the accountant or accounting firm is licensed to practice. For a Canadian or British insurer, the term means a Canadian-chartered or British-chartered accountant.

(2) "Audited financial report" means a report that includes the items specified in OAR 836-011-0140.

Stat. Auth.: ORS 731.244 & ORS 731.488
Stats. Implemented: ORS 731.488(2)(c)
Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0120

Filing and Extensions for Filing of Annual Audited Financial Reports

(1) Each insurer shall have an annual audit performed by an independent certified public accountant and shall file an audited financial report with the Director on or before June 1 for the year ending December 31 immediately preceding. The report must satisfy the requirements of OAR 836-011-0140.

(2) The Director may require an insurer to file an audited financial report on a date earlier than June 1 if the Director gives the insurer not less than 90 days' notice prior to the earlier date.

(3) The Director may grant one or more 30-day extensions of the June 1 filing date upon request of the insurer if the insurer and the independent certified public accountant performing the audit show the reasons for requesting the extension and if the Director determines that good cause exists for the extension. The request for extension must be submitted in writing not less than ten days prior to the filing date and must include sufficient detail to permit the Director to make an informed decision.

(4) The requirements under section (1) of this rule are subject to exemptions under OAR 836-011-0130.

Stat. Auth.: ORS 731.244 & ORS 731.488
Stats. Implemented: ORS 731.488(2)(b)
Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0130

Exemptions

(1) The following insurers are exempt from the requirements of OAR 836-011-0100 to 836-011-0230:

(a) An insurer having direct premiums written in this state of less than \$1,000,000 in any calendar year and having fewer than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of the same calendar year is exempt from OAR 836-011-0100 to 836-011-0230 for such year unless the Director determines with respect to the insurer that compliance is necessary for the Director to carry out statutory responsibilities. The exemption under this subsection does not apply to any insurer that has assumed premiums pursuant to contracts or treaties of reinsurance, or both, of \$1,000,000 or more.

(b) A foreign or alien insurer that has filed an audited financial report in another state pursuant to the other State's requirement of audited financial reports, if the Director determines that the other state's requirements are substantially similar to the requirements of OAR 836-011-0100 to 836-011-0230 and if the foreign or alien insurer does both of the following:

(A) Files with the Director a copy of the Audited Financial Report, the Report on Significant Deficiencies in Internal Controls and the Accountant's Letter of Qualifications that are filed with the other state, in accordance with the filing dates specified in OAR 836-011-0120, 836-011-0200, and 836-011-0210. In lieu of the requirements of this paragraph, a Canadian insurer may file accountants' reports as filed with the Canadian Dominion Department of Insurance.

(B) Files with the Director a copy of any Notification of Adverse Financial Condition Report filed with the other state. The copy must be filed with the Director within the time specified in OAR 836-011-0190.

(c) An insurer to whom the Director has granted an exemption under section (2) of this rule, during the period in which the exemption is effective.

(2) Upon written application of any insurer, the Director may grant an exemption from compliance with OAR 836-011-0100 to 836-011-0230 if the Director finds upon review of the application that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Not later than the 10th day after denial of an insurer's written request for an exemption under this section, the insurer may request in writing a hearing on its application for an exemption.

Stat. Auth.: ORS 731.244 & ORS 731.488
Stats. Implemented: ORS 731.488(2)(h)
Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0140

Contents of Annual Audited Financial Report

(1) An annual audited financial report required under OAR 836-011-0120 must report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed or otherwise permitted by the Department of Insurance of the state of domicile.

(2) The annual audited financial report shall include the following:

(a) A report of an independent certified public accountant;
(b) A balance sheet reporting admitted assets, liabilities and capital and surplus;

(c) A statement of operations;

(d) A statement of cash flows;

(e) A statement of changes in capital and surplus;

(f) Notes to financial statements. The notes shall be those required by the appropriate National Association of Insurance Commissioners (NAIC) Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to ORS 731.574, with a written description of the nature of the differences.

(3) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Director. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

Stat. Auth.: ORS 731.244 & ORS 731.488
Stats. Implemented: ORS 731.488(2)(a)
Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0150

Designation of Independent Certified Public Accountant

(1) Each insurer required by OAR 836-011-0120 to file an annual audited financial report, within 60 days after becoming subject to the requirement, must register with the Director in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in OAR 836-011-0120 and 836-011-0150. This section establishes the initial registration requirement for an insurer when the insurer first becomes subject to the requirement. Except as provided in section (3) of this rule, an insurer that has already registered the name and address of the independent certified public accountant or accounting firm under this section need not register its certified public accountant with the Director.

(2) An insurer shall obtain a letter from the certified public accountant retained by the insurer stating that the accountant is aware of the provisions of the Insurance Code and the rules of the Insurance Department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express the opinion of the accountant on the financial statements in terms of their conformity with the statutory accounting practices prescribed or otherwise permitted by that Department, specifying exceptions that the accountant believes appropriate. The insurer shall file a copy of the letter with the Director.

(3) If the certified public accountant who was the certified public accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall so notify the Director not later than the fifth business day after the dismissal or resignation. The insurer shall also do the following:

(a) Notify the Director in a separate letter, not later than the 10th business day after the date of the notice of dismissal or resignation, whether in the 24 months preceding the engagement there were any disagreements with the former accountant on any matter of accounting principles or prac-

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tices, financial statement disclosure or auditing scope or procedure that, if not resolved to the satisfaction of the former accountant, would have caused the former accountant to make reference to the subject matter of the disagreement in connection with the accountant's opinion. The disagreements required to be reported in response to this subsection include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction, and are those disagreements that occur at the decision making level, between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(b) Request the former accountant, in writing, to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which the accountant does not agree.

(c) Furnish the Director the letter received from the former accountant under subsection (b) of this section together with a response by the insurer to that letter.

Stat. Auth.: ORS 731.244 & ORS 731.488

Stats. Implemented: ORS 731.488(2)(c)

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0160

Qualifications of Independent Certified Public Accountant

(1) The Director shall not recognize any person as a qualified independent certified public accountant for the purposes of OAR 836-011-0100 to 836-011-0230 if the person:

(a) Is not in good standing with the American Institute of Certified Public Accountants and in all states in which the person is licensed to practice as a certified public accountant or, if the insurer is a Canadian or British insurer, the person is not a chartered accountant; or

(b) With respect to the audit of the insurer, has either directly or indirectly entered into an agreement of indemnity or a release from liability, the intent or effect of which is to shift or limit in any manner the potential liability of the person for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

(2) Except as otherwise provided in this rule, the Director shall recognize an independent certified public accountant as qualified as long as the certified public accountant conforms to the standards of the certified public accountant profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and the rules and the Code of Professional Conduct of the Oregon State Board of Accountancy, or a similar code of conduct of the state board regulating the practice of accountancy in the state in which the accountant is licensed to practice.

(3) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. In the event of a delinquency proceeding commenced against the insurer under ORS 734.130, however, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(4) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following a period of service, the partner or other person is disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for a period of two years. An insurer may apply to the Director for relief from the prohibition in this section on the basis of unusual circumstances. The Director may consider the following factors in determining whether the relief should be granted:

(a) The number of partners, the expertise of the partners or the number of insurance clients in the currently registered firm;

(b) The premium volume of the insurer;

(c) The number of jurisdictions in which the insurer transacts insurance.

(5) The Director shall not recognize an individual as an independent certified public accountant, or accept an annual audited financial report required by OAR 836-011-0100 to 836-011-0230 that is prepared in whole or part by an individual, if the individual:

(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under OAR 836-011-0100 to 836-011-0230; or

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in any report filed under OAR 836-011-0100 to 836-011-0230.

(7) The Director may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing the accountant's opinion on the financial statements in the annual audited financial report made pursuant to OAR 836-011-0100 to 836-011-0230 and require the insurer to replace the accountant with another accountant who is qualified with respect to the insurer as provided in OAR 836-011-0100 to 836-011-0230.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 731.244 & ORS 731.488

Stats. Implemented: ORS 731.488

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 2-2002(Temp), f. & cert. ef. 1-15-01 thru 7-5-02;

ID 17-2002, f. & cert. ef. 7-11-02; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0170

Consolidated or Combined Audits

An insurer may apply in writing to the Director for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurers that uses a pooling or one hundred percent reinsurance agreement affecting the solvency and integrity of the insurer's reserves and if the insurer cedes all of its direct and assumed business to the pool. In such a case, a columnar consolidating or combining worksheet shall be filed with the report as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.

(2) Amounts for each insurer subject to this rule shall be stated separately.

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis.

(4) Explanations of consolidating and eliminating entries shall be included.

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

Stat. Auth.: ORS 731.244 & ORS 731.488

Stats. Implemented: ORS 731.488(2)(a)

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0180

Scope of Examination and Report of Independent Certified Public Accountant

Financial statements furnished pursuant to OAR 836-011-0140 shall be examined by an independent certified public accountant. The examination of the insurer's financial statements must be conducted in accordance with generally accepted auditing standards. Consideration shall also be given to other procedures illustrated in the **Financial Condition Examiner's Handbook** promulgated by the National Association of Insurance Commissioners as the certified public accountant determines to be necessary.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 731.244 & ORS 731.488

Stats. Implemented: ORS 731.488(2)(d)-ORS 731.488(2)(e)

Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0190

Notification of Adverse Financial Condition

(1) An insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report in writing to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Director as of the date of the balance sheet currently under examination or that the insurer does not meet the minimum capital and surplus requirement of the Oregon Insurance Code as of that date. The insurer shall require the independent certified public accountant to submit the report not later than the fifth business day after the independent certified public accountant makes such a determination. An insurer that has received a report under this section shall forward a copy of the report to the Director not later than the fifth business day after receiving the report and shall provide the independent certified public accountant with evidence that the report was furnished to the Director. If the independent certified public accountant does not receive the evidence within the required period, the independent certified public accountant shall furnish to the Director a copy of its report not later than the fifth business day after the end of the period within which the insurer was required to submit the report.

(2) An independent certified public accountant shall not be liable to any person for any statement made in connection with the requirements of

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section (1) of this rule if the statement is made in good faith and in compliance with section (1) of this rule.

(3) If the accountant, after the date of the audited financial report filed pursuant to OAR 836-011-0100 to 836-011-0230, becomes aware of facts that might have affected the report, the Director notes the obligation of the accountant to act as prescribed in **Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 731.244 & ORS 731.488
Stats. Implemented: ORS 731.488(2)(f)
Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0200

Report on Significant Deficiencies in Internal Controls

(1) In addition to the annual audited financial statements, each insurer shall furnish the Director with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS No. 60 Communications of Internal Control Structure Matter Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant deficiencies, known as "reportable conditions," noted during a financial statement audit to the appropriate parties within an entity. A report shall not be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the insurer shall file the written report annually with the Director not later than the 60th day after the filing of the annual audited financial statements.

(2) The insurer shall submit with the report required under section (1) of this rule a description of remedial actions taken or proposed to correct significant deficiencies, if the actions are not described in the accountant's report.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 731.244 & ORS 731.488
Stats. Implemented: ORS 731.488(2)(g)
Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0210

Accountant's Letter of Qualifications

(1) An insurer shall include with the filing of each annual audited financial report with the Director a letter meeting the requirements of section (2) of this rule from the independent certified public accountant who prepared the report.

(2) The independent certified public accountant who prepares an annual audited financial report for an insurer shall furnish the insurer, in connection with the report, a letter stating the following:

(a) That the accountant is independent with respect to the insurer and conforms to the standards of the accounting profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Rules of Professional Conduct of the Oregon State Board of Accountancy, or a similar code of conduct of the state board regulating the practice of accountancy in the state in which the accountant is licensed to practice.

(b) The background and experience in general, and the experience in audits of insurers specifically, of the staff assigned to the engagement and whether each is an independent certified public accountant.

(c) That the accountant understands that the annual audited financial report and the opinion of the accountant thereon must be filed in compliance with OAR 836-011-0100 to 836-011-0230 and that the Director will rely on the information contained in the report and opinion in the monitoring and regulation of the financial position of insurers.

(d) That the accountant consents to the requirements of OAR 836-011-220 and that the accountant agrees to make the workpapers described in OAR 836-011-0220 available for review by the Director, or the Director's designee or appointed agent.

(e) A representation that the accountant is currently licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.

(f) A representation that the accountant is in compliance with OAR 836-011-0160.

(3) This rule does not prohibit an independent certified public accountant from using such staff as the accountant determines appropriate when use of the staff is consistent with the standards prescribed by generally accepted auditing standards.

Stat. Auth.: ORS 731.244 & ORS 731.488
Stats. Implemented: ORS 731.488(2)(b)-ORS 731.488(2)(c)
Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0220

Certified Public Accountant Workpapers

(1) Each insurer required to file an audited financial report pursuant to OAR 836-011-0100 to 836-011-0230 shall require the independent certified public accountant performing the audit to make available for review by Department examiners the work papers prepared in the conduct of the accountant's examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Insurance Division of the Department of Consumer and Business Services, or at any other place designated by the Director. The insurer shall require that the accountant retain the audit workpapers and communications until the Director has filed a Report on Examination covering the period of the audit but in any event not longer than seven years from the date of the audit report. For purposes of this rule, workpapers include:

(a) The records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to the examination by the accountant of the financial statements of the insurer; and

(b) Audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of examination of the financial statements of an insurer, supporting the opinion of the accountant.

(2) In the conduct of an examination of an insurer by the Director and examiners, the insurer and independent certified public accountant shall allow the Director and examiners to make and retain copies of pertinent audit workpapers. Such reviews by the Director are investigations and all working papers and communications obtained in the course of such investigations are afforded the same confidentiality as other examination workpapers generated by the Director under the **Insurance Code**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 731.244 & ORS 731.488
Stats. Implemented: ORS 731.488(2)(i)
Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0230

Canadian and British Companies

In the case of Canadian and British insurers, the annual audited financial report is the annual statement of total business on the form filed by such companies with their domiciliary supervision authority and audited by an independent chartered accountant. For such insurers, the letter required under OAR 836-011-0150 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Director under OAR 836-011-0120 and shall affirm that the opinion expressed conforms to those requirements.

Stat. Auth.: ORS 731.244 & ORS 731.488
Stats. Implemented: ORS 731.488(2)(b)-ORS 731.488(2)(c)
Hist.: ID 4-1992, f. & cert. ef. 3-26-92; ID 22-2002, f. & cert. ef. 11-27-02

836-011-0500

Application; Statutory Authority; Statutes Implemented

(1) OAR 836-011-0500 to 836-011-0550 apply to health care service contractors.

(2) OAR 836-011-0500 to 836-011-0550 are adopted pursuant to the authority of ORS 731.244 and 750.045 for the purpose of implementing ORS 731.574, 733.210 and 750.045.

Stat. Auth.: ORS 731.244, ORS 750.045
Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045
Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-011-0505

Definitions

As used in OAR 836-011-0500 to 836-011-05:

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the Director in accordance with OAR 836-011-0510(4).

(2) "Corrective order" means an order issued by the Director specifying corrective actions that the Director has determined are required.

(3) "Domestic health care service contractor" means a health care service contractor domiciled in this state.

(4) "Foreign health care service contractor" means a health care service contractor that is authorized to transact business in this state as a health care service contractor but is not domiciled in this state.

(5) "NAIC" means the National Association of Insurance Commissioners.

(6) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

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(7) "RBC level" means a health care service contractor's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC or Mandatory Control Level RBC, defined as follows:

(a) "Company Action Level RBC" means, with respect to any health care service contractor, the product of 2.0 and its Authorized Control Level RBC;

(b) "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;

(c) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions;

(d) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.

(8) "RBC plan" means a comprehensive financial plan containing the elements specified in OAR 836-011-0515(2). If the Director rejects the RBC plan and it is revised by the health care service contractor with or without the Director's recommendation, the plan shall be called the "revised RBC plan."

(9) "RBC report" means the report required in OAR 836-011-0510.

(10) "Total adjusted capital" means the sum of:

(a) A health care service contractor's statutory capital and surplus (i.e. net worth) as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under ORS 731.574; and

(b) Such other items, if any, as the RBC instructions may provide.

Stat. Auth.: ORS 731.244, ORS 750.045

Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045

Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-011-0510

RBC Reports

(1) A domestic health care service contractor shall, on or prior to each March 1 (the "filing date"), prepare and submit to the Director a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, a domestic health care service contractor shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the health care service contractor is authorized to do business, if the insurance commissioner has notified the health care service contractor of its request in writing, in which case the health care service contractor shall file its RBC report not later than the later of:

(A) 15 days from the receipt of notice to file its RBC report with that state; or

(B) The filing date.

(2) A health care service contractor's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account (and may adjust for the covariance between) determined in each case by applying the factors in the manner set forth in the RBC instructions:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(3) An excess of capital (i.e. net worth) over the amount produced by the risk-based capital requirements contained in OAR 836-011-0500 to 836-011-0550 and the formulas, schedules and instructions referenced in OAR 836-011-0500 to 836-011-0550 is desirable in the business of a health care service contractor. Accordingly, health care service contractors should seek to maintain capital above the RBC levels required by OAR 836-011-0500 to 836-011-0550. Additional capital is used and useful in the insurance business and helps to secure a health care service contractor against various risks inherent in, or affecting, the business of a health care service contractor and not accounted for or only partially measured by the risk-based capital requirements contained in OAR 836-011-0500 to 836-011-0550.

(4) If a domestic health care service contractor files an RBC report that in the judgment of the Director is inaccurate, then the Director shall adjust the RBC report to correct the inaccuracy and shall notify the health care service contractor of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an "adjusted RBC report."

Stat. Auth.: ORS 731.244, ORS 750.045

Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045

Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-011-0515

Company Action Level Event

(1) "Company Action Level Event" means any of the following events:

(a) The filing of an RBC report by a health care service contractor that indicates that the health care service contractor's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC;

(b) Notification by the Director to the health care service contractor of an adjusted RBC report that indicates an event in subsection (a) of this subsection, if the health care service contractor does not challenge the adjusted RBC report under OAR 836-011-0535; or

(c) If, pursuant to OAR 836-011-0535, a health care service contractor challenges an adjusted RBC report that indicates the event in subsection (a) of this section, the notification by the Director to the health care service contractor that the Director has, after a hearing, rejected the health care service contractor's challenge.

(2) In the event of a Company Action Level Event, the health care service contractor shall prepare and submit to the Director an RBC plan that shall:

(a) Identify the conditions that contribute to the Company Action Level Event;

(b) Contain proposals of corrective actions that the health care service contractor intends to take and that would be expected to result in the elimination of the Company Action Level Event;

(c) Provide projections of the health care service contractor's financial results in the current year and at least the two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component;

(d) Identify the key assumptions impacting the health care service contractor's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the health care service contractor's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted

(a) Within 45 days of the Company Action Level Event; or

(b) If the health care service contractor challenges an adjusted RBC report pursuant to OAR 836-011-0535, within 45 days after notification to the health care service contractor that the Director has, after a hearing, rejected the health care service contractor's challenge.

(4) Within 60 days after the submission by a health care service contractor of an RBC plan to the Director, the Director shall notify the health care service contractor whether the RBC plan shall be implemented or is, in the judgment of the Director, unsatisfactory. If the Director determines the RBC plan is unsatisfactory, the notification to the health care service contractor shall set forth the reasons for the determination and may set forth proposed revisions that will render the RBC plan satisfactory, in the judgment of the Director. Upon notification from the Director, the health care service contractor shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the Director, and shall submit the revised RBC plan to the Director:

(a) Within 45 days after the notification from the Director; or

(b) If the health care service contractor challenges the notification from the Director under OAR 836-011-0535, within 45 days after a notification to the health care service contractor that the Director has, after a hearing, rejected the health care service contractor's challenge.

(5) In the event of a notification by the Director to a health care service contractor that the health care service contractor's RBC plan or revised RBC plan is unsatisfactory, the Director may at the Director's discretion, subject to the health care service contractor's right to a hearing under OAR 836-011-0535, specify in the notification that the notification constitutes a Regulatory Action Level Event.

(6) Every domestic health care service contractor that files an RBC plan or revised RBC plan with the Director shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the health care service contractor is authorized to do business if:

(a) The state has an RBC provision substantially similar to ORS 731.752; and

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(b) The insurance commissioner of that state has notified the health care service contractor of its request for the filing in writing, in which case the health care service contractor shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(A) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(B) The date on which the RBC plan or revised RBC plan is filed under sections (3) and (4) of this rule.

Stat. Auth.: ORS 731.244, ORS 750.045
Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045
Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-011-0520

Regulatory Action Level Event

(1) "Regulatory Action Level Event" means, with respect to a health care service contractor, any of the following events:

(a) The filing of an RBC report by the health care service contractor that indicates that the health care service contractor's total adjusted capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(b) Notification by the Director to a health care service contractor of an adjusted RBC report that indicates the event in subsection (a) of this section, if the health care service contractor does not challenge the adjusted RBC report under OAR 836-011-0535;

(c) If, pursuant to OAR 836-011-0535, the health care service contractor challenges an adjusted RBC report that indicates the event in subsection (a) of this section, the notification by the Director to the health care service contractor that the Director has, after a hearing, rejected the health care service contractor's challenge;

(d) The failure of the health care service contractor to file an RBC report by the filing date, unless the health care service contractor has provided an explanation for the failure that is satisfactory to the Director and has cured the failure within ten days after the filing date;

(e) The failure of the health care service contractor to submit an RBC plan to the Director within the time period set forth in OAR 836-011-0515;

(f) Notification by the Director to the health care service contractor that:

(A) The RBC plan or revised RBC plan submitted by the health care service contractor is, in the judgment of the Director, unsatisfactory; and

(B) Notification constitutes a Regulatory Action Level Event with respect to the health care service contractor, if the health care service contractor has not challenged the determination under OAR 836-011-0535;

(g) If, pursuant to OAR 836-011-0535, the health care service contractor challenges a determination by the Director under subsection (f) of this section, the notification by the Director to the health care service contractor that the Director has, after a hearing, rejected the challenge;

(h) Notification by the Director to the health care service contractor that the health care service contractor has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the health care service contractor to eliminate the Company Action Level Event in accordance with its RBC plan or revised RBC plan and the Director has so stated in the notification, if the health care service contractor has not challenged the determination under OAR 836-011-0535; or

(i) If, pursuant to OAR 836-011-0535, the health care service contractor challenges a determination by the Director under subsection (h) of this section, the notification by the Director to the health care service contractor that the Director has, after a hearing, rejected the challenge.

(2) In the event of a Regulatory Action Level Event the Director shall:

(a) Require the health care service contractor to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform such examination or analysis as the Director deems necessary of the assets, liabilities and operations of the health care service contractor including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the Director shall determine are required (a "corrective order").

(3) In determining corrective actions, the Director may take into account factors the Director deems relevant with respect to the health care service contractor based upon the Director's examination or analysis of the assets, liabilities and operations of the health care service contractor, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within 45 days after the occurrence of the Regulatory Action Level Event;

(b) If the health care service contractor challenges an adjusted RBC report pursuant to OAR 836-011-0535 and the challenge is not frivolous in the judgment of the Director within 45 days after the notification to the health care service contractor that the Director has, after a hearing, rejected the health care service contractor's challenge; or

(c) If the health care service contractor challenges a revised RBC plan pursuant to OAR 836-011-0535 and the challenge is not frivolous in the judgment of the Director, within 45 days after the notification to the health care service contractor that the care service contractor has, after a hearing, rejected the health care service contractor's challenge.

(4) The Director may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Director to review the health care service contractor's RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations (including contractual relationships) of the health care service contractor and formulate the corrective order with respect to the health care service contractor. The fees, costs and expenses relating to consultants shall be borne by the affected health care service contractor or such other party as directed by the Director.

Stat. Auth.: ORS 731.244, ORS 750.045
Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045
Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-011-0525

Authorized Control Level Event

(1) "Authorized Control Level Event" means any of the following events:

(a) The filing of an RBC report by the health care service contractor that indicates that the health care service contractor's total adjusted capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;

(b) The notification by the Director to the health care service contractor of an adjusted RBC report that indicates the event in subsection (a) of this section, if the health care service contractor does not challenge the adjusted RBC report under OAR 836-011-0535;

(c) If, pursuant to OAR 836-011-0535, the health care service contractor challenges an adjusted RBC report that indicates the event in subsection (a) of this section, notification by the Director to the health care service contractor that the Director has, after a hearing, rejected the health care service contractor's challenge;

(d) The failure of the health care service contractor to respond, in a manner satisfactory to the Director, to a corrective order (if the health care service contractor has not challenged the corrective order under OAR 836-011-0535); or

(e) If the health care service contractor has challenged a corrective order under OAR 836-011-0535 and the Director has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health care service contractor to respond, in a manner satisfactory to the Director, to the corrective order subsequent to rejection or modification by the Director.

(2) In the event of an Authorized Control Level Event with respect to a health care service contractor, the Director shall:

(a) Take such actions as are required under OAR 836-011-0520 regarding a health care service contractor with respect to which an Regulatory Action Level Event has occurred; or

(b) If the Director deems it to be in the best interests of the policyholders and creditors of the health care service contractor and of the public, take such actions as are necessary to cause the health care service contractor to be placed under regulatory control under ORS 734.059 to 734.440. In the event the Director takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the Director to take action under ORS 734.059 to 734.440, and the Director shall have the rights, powers and duties with respect to the health care service contractor as are set forth in ORS 734.059 to 744.440. In the event the Director takes actions under this subsection pursuant to an adjusted RBC report, the health care service contractor shall be entitled to such protections as are afforded to health care service contractors under the provisions of ORS 734.059 to 734.440.

Stat. Auth.: ORS 731.244, ORS 750.045
Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045
Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-011-0530

Mandatory Control Level Event

(1) "Mandatory Control Level Event" means any of the following events:

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(a) The filing of an RBC report that indicates that the health care service contractor's total adjusted capital is less than its Mandatory Control Level RBC;

(b) Notification by the Director to the health care service contractor of an adjusted RBC report that indicates the event in subsection (a) of this section, if the health care service contractor does not challenge the adjusted RBC report under OAR 836-011-0535; or

(c) If, pursuant to OAR 836-011-0535, the health care service contractor challenges an adjusted RBC report that indicates the event in subsection (a) of this section, notification by the Director to the health care service contractor that the Director has, after a hearing, rejected the health care service contractor's challenge.

(2) In the event of a Mandatory Control Level Event, the Director shall take such actions as are necessary to place the health care service contractor under regulatory control under ORS 734.059 to 734.440. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the Director to take action under ORS 734.059 to 734.440, and the Director shall have the rights, powers and duties with respect to the health care service contractor as are set forth in ORS 734.059 to 734.440. If the Director takes actions pursuant to an adjusted RBC report, the health care service contractor shall be entitled to the protections of ORS 734.059 to 734.440. Notwithstanding the provisions of this rule, the Director may forego action for up to 90 days after the Mandatory Control Level Event if the Director finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90 day period.

Stat. Auth.: ORS 731.244, ORS 750.045
Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045
Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-011-0535

Hearings

Upon the occurrence of any of the following events, a health care service contractor may request a hearing, as provided in ORS 731.240, for the purpose of challenging any determination or action by the Director in connection with any event described in this rule. The health care service contractor shall notify the Director of its request for a hearing not later than the fifth day after notification by the Director under any of the events described in this rule. Upon receipt of the health care service contractor's request for a hearing, the Director shall set a date for the hearing. The date shall be not less than 10 nor more than 30 days after the date of the health care service contractor's request. The events to which the opportunity for a hearing under this rule relates are as follows:

(1) Notification to a health care service contractor by the Director of an adjusted RBC report;

(2) Notification to a health care service contractor by the Director that:

(a) The health care service contractor's RBC plan or revised RBC plan is unsatisfactory; and

(b) Notification constitutes a Regulatory Action Level Event with respect to the health care service contractor;

(3) Notification to a health care service contractor by the Director that the health care service contractor has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the health care service contractor to eliminate the Company Action Level Event with respect to the health care service contractor in accordance with its RBC plan or revised RBC plan; or

(4) Notification to a health care service contractor by the Director of a corrective order with respect to the health care service contractor.

Stat. Auth.: ORS 731.244, ORS 750.045
Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045
Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-011-0540

Supplemental Provisions; Rules; Exemption

(1) OAR 836-011-0500 to 836-011-0550 are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the Director under such laws, including, but not limited to, ORS 734.059 to 734.440 and OAR 836-011-0100 to 836-011-0120.

(2) The Director may exempt from the application of OAR 836-011-0500 to 836-011-0550 a domestic health care service contractor that:

(a) Writes direct business only in this state;

(b) Assumes no reinsurance in excess of five percent of direct premium written; and

(c) Writes direct annual premiums for comprehensive medical business of \$2 million or less; or

(d) Is a limited health care service contractor that covers less than 500 lives.

Stat. Auth.: ORS 731.244, ORS 750.045
Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045
Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-011-0545

Foreign Health Care Service Contractors

(1) A foreign health care service contractor shall, upon the written request of the Director, submit to the Director an RBC report as of the end of the calendar year just ended the later of:

(a) The date an RBC report would be required to be filed by a domestic health care service contractor under OAR 836-011-0500 to 836-011-0550; or

(b) The 15th day after the request is received by the foreign health care service contractor.

(2) A foreign health care service contractor shall, at the written request of the Director, promptly submit to the Director a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(3) In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event with respect to a foreign health care service contractor as determined under the RBC statute or other law applicable in the state of domicile of the health care service contractor (or, if no RBC statute or other law is in force in that state, under the provisions of OAR 836-011-0500 to 836-011-0550), if the insurance commissioner of the state of domicile of the foreign health care service contractor fails to require the foreign health care service contractor to file an RBC plan in the manner specified under that state's RBC statute or other law (or, if no RBC statute or other law is in force in that state, under OAR 836-011-0515), the Director may require the foreign health care service contractor to file an RBC plan with the Director. In such event, the failure of the foreign health care service contractor to file an RBC plan with the Director shall be grounds to order the health care service contractor to cease and desist from writing new insurance business in this state.

(4) In the event of a Mandatory Control Level Event with respect to a foreign health care service contractor, if no domiciliary receiver has been appointed with respect to the foreign health care service contractor under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization, the Director may apply for an order under ORS 734.190 with respect to the liquidation of property of foreign health care service contractors found in this state, and the occurrence of the Mandatory Control Level Event shall be considered adequate grounds for the application under ORS 734.150 (1) or (4).

Stat. Auth.: ORS 731.244, ORS 750.045
Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045
Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-011-0550

Phase-In Provision

For RBC reports required to be filed by health care service contractors with respect to 2002, the following requirements shall apply in lieu of the provisions of OAR 836-011-0515 to 836-011-0530:

(1) In the event of a Company Action Level Event with respect to a health care service contractor, the Director shall take no regulatory action under OAR 836-011-0500 to 836-011-0550.

(2) In the event of an Regulatory Action Level Event under OAR 836-011-0520(1)(a), (b) or (c), the Director shall take the actions required under OAR 836-011-0515.

(3) In the event of an Regulatory Action Level Event under OAR 836-011-0520(1)(d), (e), (f), (g), (h) or (i), or an Authorized Control Level Event, the Director shall take the actions required under OAR 836-011-0520 with respect to the health care service contractor.

(4) In the event of a Mandatory Control Level Event with respect to a health care service contractor, the Director shall take the actions required under OAR 836-011-0525 with respect to the health care service contractor.

Stat. Auth.: ORS 731.244, ORS 750.045
Stats. Implemented: ORS 731.574, ORS 733.210, ORS 750.045
Hist.: ID 22-2002, f. & cert. ef. 11-27-02

836-012-0000

Authority

(1) OAR 836-012-0000 to 836-012-0110 are adopted pursuant to ORS 731.508 to 731.511, and general rulemaking authority under ORS 731.244.

(2) OAR 836-012-0000 to 836-012-0110 are adopted for the purpose of establishing standards and procedural requirements that the Director determines to be necessary and appropriate in the public interest for carry-

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ing out ORS 731.508 to 731.511, relating to credit for reinsurance, for the protection of the insurance-buying public and the ceding insurers in this state.

(3) Form AR-1, Certificate of Assuming Insurer, **Exhibit 1** to this rule, is adopted for purposes of OAR 836-012-0000 to 836-012-0110, when the use of the form is required by such rules.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 731.508 - ORS 731.511 & ORS 731.244

Stats. Implemented: ORS 731.508 - ORS 731.511

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 22-2002, f. & cert. ef. 11-27-02

836-012-0011

Credit for Reinsurance — Reinsurer Authorized in this State

Pursuant to ORS 731.509(3), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was authorized in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

Stat. Auth.: ORS 731.508 - ORS 731.511 & ORS 731.244

Stats. Implemented: ORS 731.508 - ORS 731.511

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 22-2002, f. & cert. ef. 11-27-02

836-012-0021

Credit for Reinsurance — Accredited Reinsurers

(1) Pursuant to ORS 731.509(4) and 731.511, the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of any date on which statutory financial statement credit for reinsurance is claimed. To obtain and maintain its accreditation, an accredited reinsurer must:

(a) File a properly executed Form AR-1 (**Exhibit 1**, OAR 836-012-0000) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

(b) File with the Director a certified copy of a certificate of authority or other acceptable evidence that it is licensed or authorized to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed or authorized to transact insurance or reinsurance in at least one state;

(c) File annually with the Director a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed or authorized to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and:

(A) Maintain capital and surplus in an amount not less than \$20,000,000 and whose accreditation has not been denied by the Director on or before the 90th day after its submission; or

(B) In the case of a reinsurer with capital and surplus of less than \$20,000,000, whose accreditation has been approved by the Director.

(2) If the Director determines that the assuming insurer has failed to meet or maintain any of the qualifications stated in section (1) of this rule, the Director, upon written notice and opportunity for hearing, may revoke the accreditation. Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the Director.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 731.508 - ORS 731.511 & ORS 731.244

Stats. Implemented: ORS 731.508 - ORS 731.511

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 22-2002, f. & cert. ef. 11-27-02

836-012-0031

Credit for Reinsurance — Reinsurer Domiciled and Licensed in Another State

(1) Pursuant to ORS 731.509(5), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

(a) Is domiciled in a state employing standards regarding credit for reinsurance that equal or exceed those applicable under ORS 731.509 to 731.511 and OAR 836-012-0000 to 836-012-0110 or, in the case of a United States branch of an alien assuming insurer, is entered through a state employing such standards;

(b) Maintains capital and surplus in an amount not less than \$20,000,000; and

(c) Files a properly executed Form AR-1 (**Exhibit 1**, OAR 836-012-0000) with the Director as evidence of its submission to this state's authority to examine its books and records.

(2) The provisions of this rule relating to capital and surplus do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 731.508 - ORS 731.511 & ORS 731.244

Stats. Implemented: ORS 731.508 - ORS 731.511

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 22-2002, f. & cert. ef. 11-27-02

836-012-0041

Credit for Reinsurance — Reinsurers Maintaining Trust Funds

(1) Pursuant to ORS 731.509(6), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed in this rule in a qualified United States financial institution as defined in ORS 731.510(1), for the payment of the valid claims of its United States domiciled ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the Director substantially the same information as that required to be reported on the National Association of Insurance Commissioners annual statement form by authorized insurers, to enable the Director to determine the sufficiency of the trust fund.

(2) The following requirements apply to the following categories of assuming insurer:

(a) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000.

(b)(A) The trust fund for a group that includes incorporated and individual unincorporated underwriters shall consist of:

(i) For reinsurance ceded, under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any member of the group;

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of OAR 836-012-0000 to 836-012-0110, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) In addition to the trusts described in subparagraphs (i) and (ii) of this paragraph, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.

(B) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the Director:

(i) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) If a certification is unavailable, a financial statement prepared by independent public accountants, of each underwriter member of the group.

(c)(A) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000, calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:

(i) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

(ii) Maintain a joint trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; and

(iii) File a properly executed Form AR-1 (**Exhibit 1**, OAR 836-012-0000) as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

(B) Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the Director an annual certification of each underwriter member's solvency by the mem-

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ber's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

(3)(a) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(A) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(B) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

(C) The trust shall be subject to examination as determined by the Director;

(D) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, has outstanding obligations under reinsurance agreements subject to the trust; and

(E) Not later than March 1 of each year, the trustees of the trust shall submit to the Director in writing a report setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31

(b)(A) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(B) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(C) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(D) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

(4) For purposes of this rule, the term "liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by U. S. domiciled insurers that are not otherwise secured by acceptable means, and, shall include:

(a) For business ceded by domestic insurers authorized to write accident and health insurance and property and casualty insurance:

(A) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(B) Reserves for losses reported and outstanding;

(C) Reserves for losses incurred but not reported;

(D) Reserves for allocated loss expenses; and

(E) Unearned premiums.

(b) For business ceded by domestic insurers authorized to write life, health and annuity insurance:

(A) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(B) Aggregate reserves for accident and health policies.

(C) Deposit funds and other liabilities without life or disability contingencies; and

(D) Liabilities for policy and contract claims.

(5) Assets deposited in trusts established pursuant to ORS 731.509 and this rule shall be valued according to their fair market value and shall consist only of cash in U. S. dollars, certificates of deposit issued by a U. S. financial institution as defined in ORS 731.510(2)(c), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution as defined in ORS 731.510(2)(c), and investments of the type specified in this section, but investments in or

issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent of total investments. No more than 20 percent of the total of the investments in the trust may be foreign investments authorized under subsections (a)(E), (c), (f)(B) or (g) of this section, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U. S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of ORS 731.509 shall be invested only as follows:

(a) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(A) The United States or by any agency or instrumentality of the United States;

(B) A state of the United States;

(C) A territory, possession or other governmental unit of the United States;

(D) An agency or instrumentality of a governmental unit referred to in paragraphs (B) and (C) of this subsection if the obligations are by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(E) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(b) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U. S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U. S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

(A) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(B) Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(C) Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(c) Obligations issued, assumed or guaranteed by a solvent non-U. S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(d) An investment made pursuant to the provisions of subsections (a), (b) or (c) of this section shall be subject to the following additional limitations:

(A) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent of the assets of the trust;

(B) An investment in any one mortgage-related security shall not exceed five percent of the assets of the trust;

(C) The aggregate total investment in mortgage-related securities shall not exceed 25 percent of the assets of the trust; and

(D) Preferred or guaranteed shares issued or guaranteed by a solvent U. S. institution are permissible investments if all of the institution's obligations are eligible as investments under paragraph (A) or (C) of subsection (b) of this section, but shall not exceed two percent of the assets of the trust.

(e) As used in this rule:

(A) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

(i) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders

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of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(I) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(II) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or

(ii) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of sub-paragraphs (i)(I) and (i)(II) of this paragraph;

(B) "Promissory note," when used in connection with a manufactured home, also includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

(f) Equity interests are subject to the following provisions:

(A) Investments in common shares or partnership interests of a solvent U. S. institution are permissible if:

(i) Its obligations and preferred shares, if any, are eligible as investments under this section; and

(ii) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

(B) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(iii) An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection, when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection, shall not exceed ten percent of the assets in the trust;

(g) Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(h) Investment companies are subject to the following provisions:

(A) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 802, are permissible investments if the investment company:

(i) Invests at least 90 percent of its assets in the types of securities that qualify as an investment under subsection (a), (b) or (c) of this section or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in subsection (a), (b) or (c) of this section; or

(ii) Invests at least 90 percent of its assets in the types of equity interests that qualify as an investment under subsection (f)(A) of this section;

(B) Investments made by a trust in investment companies under this subsection shall not exceed the following limitations:

(i) An investment in an investment company qualifying under paragraph (A)(i) of this subsection shall not exceed ten percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25 percent of the assets in the trust; and

(ii) Investments in an investment company qualifying under paragraph (A)(ii) of this subsection shall not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subsection (f)(A) of this section.

(i) Letters of credit are subject to the following provisions:

(A) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the Director, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(B) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required shall be considered to be negligence or willful misconduct, or both.

(6) A specific security provided to a ceding insurer by an assuming insurer pursuant to OAR 836-012-0060 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 731.508 & ORS 731.509

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 7-1995, f. & cert. ef. 11-15-95; ID 22-2002, f. & cert. ef. 11-27-02

836-012-0051

Credit for Reinsurance Required by Law

Pursuant to ORS 731.509(7), the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of ORS 731.509(3), (4), (5) or (6), but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this rule, "jurisdiction" means any state, district or territory of the United States and any lawful national government.

Stat. Auth.: ORS 731.508 - ORS 731.511 & ORS 731.244

Stats. Implemented: ORS 731.508 - ORS 731.511

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 22-2002, f. & cert. ef. 11-27-02

836-012-0060

Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer Not Meeting the Requirements of OAR 836-012-0011 to 836-012-0051

(1) Pursuant to ORS 731.510, the Director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of ORS 731.509 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security must be held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in ORS 731.510(1). The security may be in the form of any of the following:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as allowed assets;

(c) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in ORS 731.510(2), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the Director.

(2) An allowed asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to section (1) of this rule shall be allowed only when the requirements of OAR 836-012-0100

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and the applicable provisions of OAR 836-012-0070, 836-012-0080 and 836-012-0090 are met.

Stat. Auth.: ORS 731.508 - ORS 731.511 & ORS 731.244

Stats. Implemented: ORS 731.508 - ORS 731.511

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 22-2002, f. & cert. ef. 11-27-02

836-012-0070

Trust Agreements Qualified under OAR 836-012-0060

(1) As used in this rule:

(a) "Beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver or conservator.

(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unauthorized or unlicensed unaccredited assuming insurer.

(c) "Obligations," as used in section (2)(k) of this rule, means:

(A) Reinsured losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer;

(B) Reserves for reinsured losses reported and outstanding;

(C) Reserves for reinsured losses incurred but not reported; and

(D) Reserves for allocated reinsured loss expenses and unearned premiums.

(2) The following are required conditions applicable to the trust agreement:

(a) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee that must be a qualified United States financial institution as defined in ORS 731.510(1).

(b) The trust agreement shall create a trust account into which assets must be deposited.

(c) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(d) The trust agreement shall provide that:

(A) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(B) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(C) It is not subject to any conditions or qualifications outside of the trust agreement; and

(D) It shall not contain references to any other agreements or documents except as provided for under subsection (k) of this section.

(e) The trust agreement shall be established for the sole benefit of the beneficiary.

(f) The trust agreement shall require the trustee to:

(A) Receive assets and hold all assets in a safe place;

(B) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(C) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(D) Notify the grantor and the beneficiary within ten days of any deposits to or withdrawals from the trust account;

(E) Upon written demand of the beneficiary, immediately take all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(F) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(g) The trust agreement shall provide that at least 30 days but not more than 45 days prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(h) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(i) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to or reimbursing the expenses of the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the Director, to

immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(j) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which such a draw would be required shall be deemed to be negligence or willful misconduct, or both.

(k) Notwithstanding other provisions of OAR 836-012-0000 to 836-012-0110, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, when it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(A) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(B) To pay the assuming insurer any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(C) When the ceding insurer has received notification of termination of the trust account and if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in ORS 731.510(1), apart from its general assets, in trust for such uses and purposes specified in paragraphs (A) and (B) of this subsection as may remain executory after such withdrawal and for any period after the termination date.

(L) Notwithstanding other provisions of OAR 836-012-0000 to 836-012-0110, when a trust agreement is established to meet the requirements of OAR 836-012-0060 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, if it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(A) To pay or reimburse the ceding insurer for:

(i) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(ii) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(B) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(C) When the ceding insurer has received notification of termination of the trust and when the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U. S. financial institution apart from its general assets, in trust for the uses and purposes specified in paragraphs (A) and (B) of this subsection as may remain executory after withdrawal and for any period after the termination date.

(m) The reinsurance agreement entered into in conjunction with the trust agreement may but need not contain the provisions required by section (4)(a)(B) of this rule, so long as these required conditions are included in the trust agreement.

(n) Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust

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fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the U. S. beneficiaries of the trust, the assets or any part of them shall be returned to the trustee for distribution in accordance with the trust agreement.

(3) The following are permitted conditions applicable to the trust agreement:

(a) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice, and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, except that such a resignation or removal shall not be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(b) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(c) The trustee may be given authority to invest and accept substitutions of any funds in the account, except that an investment or substitution shall not be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in section (4)(a)(B) of this rule.

(d) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such a transfer may be conditioned upon the trustee receiving other specified assets prior to or simultaneously with the transfer.

(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall be delivered to the grantor with written approval by the beneficiary.

(4) The following are additional conditions applicable to reinsurance agreements:

(a) A reinsurance agreement may contain provisions that:

(A) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;

(B) Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars; certificates of deposit issued by a United States bank and payable in United States dollars; and investments permitted by the Insurance Code or any combination thereof, except that investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments. The reinsurance agreement may further specify the types of investments to be deposited. When a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;

(C) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(D) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(E) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be used and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such insurer, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(II) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(b) The reinsurance agreement may also contain provisions that:

(A) Give the assuming insurer the right to seek the ceding insurer's approval, which the ceding insurer shall not unnecessarily or arbitrarily withhold, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer. The right to seek approval under this paragraph must be subject to one of the following requirements:

(i) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

(B) Provide for:

(i) The return of any amount withdrawn in excess of the actual amounts required for section (4)(a)(E) of this rule; and

(ii) Interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to section (4)(a)(E) of this rule.

(C) Permit the award by any arbitration panel or court of competent jurisdiction of:

(i) Interest at a rate different from that provided in section (4)(b)(B);

(ii) Court or arbitration costs;

(iii) Attorney fees; and

(iv) Any other reasonable expenses.

(c) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of OAR 836-012-0000 to 836-012-0110 when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(d) Existing agreements. Notwithstanding the effective date of OAR 836-012-0000 to 836-012-0110, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 2003, will continue to be acceptable until January 1, 2003, at which time the agreements must be in full compliance with OAR 836-012-0000 to 836-012-0110 for the trust agreement to be acceptable.

(e) The failure of any trust agreement to specifically identify the beneficiary as defined in section (1) of this rule shall not be construed to affect any actions or rights that the Director may take or possess pursuant to the provisions of the laws of this state.

Stat. Auth.: ORS 731.508 - ORS 731.511 & ORS 731.244

Stats. Implemented: ORS 731.508 - ORS 731.511

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 22-2002, f. & cert. ef. 11-27-02

836-012-0080

Letters of Credit Qualified under OAR 836-012-0060

(1) A letter of credit for purposes of OAR 836-012-0060 must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined in ORS 731.510(2). The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in section (9)(a) of this rule. As used in this rule, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by

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operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

(2) The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

(3) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of not less than 30 days' notice prior to expiration date or nonrenewal.

(5) The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(6) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of Publication 500, or any successor publication, occur.

(7) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to ORS 731.510(2).

(8) If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in section (7) of this rule, the following additional requirements must be met:

(a) The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(b) The "evergreen clause" shall provide for 30 days' notice prior to expiration date for nonrenewal.

(9) The following apply to reinsurance agreement provisions:

(a) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions described in this subsection. All of the provisions of this subsection must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer. The provisions are as follows:

(A) A provision requiring the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

(B) A provision stipulating that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and must be used by the ceding insurer or its successors in interest only for one or more of the following reasons:

(i) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(II) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(ii) When the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and when the assuming insurer's entire obligations under the specific reinsurance remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and

deposit those amount in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in subparagraph (i) of this paragraph as may remain after withdrawal and for any period after the termination date.

(b) Nothing contained in subsection (a) of this section shall preclude the ceding insurer and assuming insurer from providing for:

(A) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subsection (a)(B) of this section; or

(B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 731.508 - ORS 731.511 & ORS 731.244

Stats. Implemented: ORS 731.508 - ORS 731.511

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 22-2002, f. & cert. ef. 11-27-02

836-012-0090

Other Security

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Stat. Auth.: ORS 731.244, ORS 731.508 & Sec. 65 - 67, Ch. 447, OL 1993 (Enrolled HB 2119)

Stats. Implemented: ORS 731.508(1), ORS 731.508(3), ORS 731.509 & ORS 731.511

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 22-2002, f. & cert. ef. 11-27-02

836-012-0100

Reinsurance Contract

Credit shall not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of OAR 836-012-0011, 836-012-0021, 836-012-0031, 836-012-0041 or 836-012-0060 or otherwise in compliance with ORS 731.509 after the adoption of OAR 836-012-0000 to 836-012-0110, unless the reinsurance agreement:

(1) Includes a proper insolvency clause pursuant to ORS 731.508; and

(2) Includes a provision pursuant to ORS 731.509(8), whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected and has agreed to abide by the final decision of the court or panel.

Stat. Auth.: ORS 731.508 - ORS 731.511 & ORS 731.244

Stat. Implemented: ORS 731.508

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 15-1996, f. & cert. ef. 11-12-96; ID 22-2002, f. & cert. ef. 11-27-02

836-050-0150

Advance Payments

(1) The notice required by ORS 12.155 shall contain the following:

(a) The time and location of the occurrence in regard to which the advance payment is made.

(b) A statement to the effect that the amount of any advance payment will be credited against any judgment entered in favor of the payee.

(c) The following words: "The period of limitation for commencement of an action for damages as set by Chapter 12 of Oregon Revised Statutes will expire on _____", or such other similar words as the Director of the Department of Consumer and Business Services approves.

(d) The signature of a person authorized to act for the insurer.

(e) The date on which notice is transmitted to the party entitled to the advance payment.

(2) The type size used in the portion of the notice described in section (1)(c) of this rule shall not be smaller than the type used for other typed or printed material required by this rule and shall not be arranged or displayed in such a way as to obscure the content of the notice.

Stat. Auth.: ORS 12.155 & ORS 731.244

Stats. Implemented: ORS 12.155

Hist.: IC 48, f. 8-18-71, ef. 9-1-71; Renumbered from 836-020-0060; ID 15-1996, f. & cert. ef. 11-12-96; ID 22-2002, f. & cert. ef. 11-27-02, Renumbered from 836-020-0900

836-054-0300

Loan to Value

(1) A mortgage insurer may provide insurance with respect to an obligation that does not exceed, solely or in combination with liens existing at the time the insured loan is made, 105 percent of the fair market value of the securing real property at the time the loan is made if permitted by the

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insurer's domicile and if the obligation insured is secured by a mortgage, deed of trust or other instrument constituting a first lien or charge.

(2) A mortgage insurer may provide insurance with respect to an obligation that does not exceed, solely or in combination with liens existing at the time the insured loan is made, 110 percent of the fair market value of the securing real property at the time the loan is made if permitted by the insurer's domicile and if the insured obligation is secured by a mortgage, deed of trust or other instrument constituting a junior lien or junior charge. In determining the 110 percent limitation, the full amount of a line of credit to be secured by a junior lien shall be considered the amount of the loan.

(3) This rule is adopted under the authority of ORS 731.244 for the purpose of implementing ORS 742.282(1)(a).

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 742.282

Hist.: ID 4-2001, f. & cert. ef. 4-3-01; ID 22-2002, f. & cert. ef. 11-27-02

Adm. Order No.: ID 23-2002

Filed with Sec. of State: 11-27-2002

Certified to be Effective: 11-27-02

Notice Publication Date: 10-1-02

Rules Amended: 836-053-0021, 836-053-0430, 836-053-0440

Subject: This rulemaking prohibits list billing, in which an insurer provides to a small employer a billing that lists premium due for employees' individual health plans, and to eliminate wording that appears to allow list billing. A prohibition against closed blocks of individual policies is also deleted because the prohibition is now contrary to statute.

Rules Coordinator: Sue Munson—(503) 947-7272

836-053-0021

Plans Offered to Oregon Small Employers

The following provisions apply to health benefit plans offered to Oregon small employers:

(1) A small employer carrier shall issue a plan to a small employer if the employee eligibility criteria established by the small employer meet the requirements of this section. The eligibility criteria must be based solely on weekly work hours and completion of a group eligibility waiting period, if applicable, and those criteria must meet the following standards:

(a) The work hours requirement may range from 17.5 to 40 hours per week, but a single, uniform requirement must apply to all employees of the employer; and

(b) A waiting period requirement may not exceed 90 days and a single, uniform requirement must apply to all employees of the employer.

(2) Employee eligibility criteria must be limited to those described in section (1) of this rule. Impermissible criteria include:

(a) Employee classifications or categories, such as salaried, hourly, management, and non-management;

(b) Health status;

(c) Disability; and

(d) A requirement that an employee be actively at work when coverage would otherwise begin.

(3) A small employer carrier may provide different health benefit plans to different categories of employees of an employer, as determined by the employer, if the categories do not relate to the actual or expected health status of the employees or their dependents. All eligible employees, in accordance with the criteria established by the employer under section (1) of this rule, however, must be offered coverage.

(4) A small employer carrier may enforce reasonable employer participation and contribution requirements, as specified in OAR 836-053-0040. Such requirements, however, shall be applied uniformly to all Oregon small employers with the same number of eligible employees. In determining minimum participation requirements, a carrier shall count only those employees who are not covered by an existing group health benefit plan.

(5) Premium rates for plans issued to Oregon small employers are subject to the rating and filing requirements of ORS 743.737 and OAR 836-053-0065 and 836-053-0910.

Stat. Auth.: ORS 731.244, ORS 743.731(4) & ORS 746.240

Stats. Implemented: ORS 743.730 et seq.

Hist.: ID 5-1998, f. & cert. ef. 3-9-98; ID 23-2002, f. & cert. ef. 11-27-02

836-053-0430

Marketing

The application forms used by a carrier in marketing individual health benefit plans may require applicants to make a preliminary election of a specific plan, but all application forms must:

(1) Briefly describe the variety of individual health benefit plans and optional benefit riders offered by the carrier and inform the applicant that additional information is available;

(2) State that an applicant who is accepted for coverage may elect to enroll at the time of acceptance in any of the individual health benefit plans and optional benefit riders offered by the carrier; and

(3) State that an accepted applicant may revoke a coverage election and make a replacement election with ten days of original acceptance.

Stat. Auth.: ORS 743.769

Stats. Implemented: ORS 743.766 - ORS 743.769

Hist.: ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 23-2002, f. & cert. ef. 11-27-02

836-053-0440

Underwriting

(1) Except as permitted under a preexisting conditions provision, a carrier shall not modify the benefit provisions of an individual health benefit plan for any enrollee by means of a rider, endorsement or otherwise, for the purpose of restricting or excluding coverage for medical services or conditions that are otherwise covered by the plan.

(2) If an applicant has been accepted for coverage, a carrier may offer a rider for wrap-around occupational coverage to the applicant. The carrier may refuse to issue such a rider to accepted applicants who work in certain occupations that have been designated by the carrier.

(3) The crediting of prior coverage, as specified in ORS 743.766, shall be applied in either of the following cases:

(a) If creditable coverage remains in effect on the effective date of coverage; or

(b) If creditable coverage terminated no more than 63 days prior to the effective date of coverage.

(4) In determining an enrollee's eligibility for prior coverage credit in accordance with ORS 743.766, a carrier shall consider the effective date of the new individual health benefit plan coverage to be the date the carrier received the enrollee's application for coverage.

(5) All policy forms and enrollee summaries for individual health benefit plans that contain a preexisting conditions provision must clearly disclose how prior creditable coverage will be applied. A carrier may use the following statement, or other similar disclosure, for this purpose:

The duration of the preexisting conditions provision in this policy will be reduced by the amount of your prior "creditable coverage" if:

(a) Your creditable coverage is still in effect on your date of enrollment in this policy; or

(b) Your creditable coverage ended no more than 63 days before your date of enrollment in this policy. "Creditable coverage" means any of the following coverages: Group coverage (including FEHBP and Peace Corps); Individual coverage (including student health plans); Medicaid; Medicare; CHAMPUS; Indian Health Service or tribal organization coverage; state high risk pool coverage; and public health plans. Creditable coverage does not include coverage only for a specified disease or illness or hospital indemnity (income) insurance.

(6) To expedite the accurate crediting of prior coverage, in accordance with section (3) of this rule, a carrier offering individual health benefit plans shall:

(a) Include a question about potential creditable coverage in all application forms that are used in conjunction with any individual health benefit plan containing a preexisting conditions provision; and

(b) Include a notice about potential creditable coverage whenever the carrier notifies an enrollee that a claim has been denied because of a preexisting conditions provision. The notice of claim denial shall also include a telephone number at the carrier that the enrollee may use for additional information regarding the denied claim.

(7) A carrier may impose an individual coverage waiting period on the coverage of certain new enrollees in an individual health benefit plan, in accordance with ORS 743.766 and 743.767. The terms of such a waiting period must be specified in the policy form and enrollee summary. Such a waiting period may apply only when the carrier has determined, by evaluation of the Oregon Individual Standard Health Statement, that the enrollee has a preexisting health condition warranting the application of a waiting period.

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(8) If a carrier imposes an individual coverage waiting period on the coverage of a new enrollee, the carrier shall apply prior coverage credit to the waiting period. The credit must be applied in the following manner:

(a) Credit must be given for the individual's prior creditable coverage, including any individual coverage waiting period connected with the prior coverage;

(b) The credit must apply equally to the waiting period and the related surcharge, if any, that applies in accordance with ORS 743.767(4); and

(c) The credit must be applied on a prorated basis. For example, if the enrollee qualifies for a 50 percent reduction in the waiting period because of prior creditable coverage, then the surcharge must also be reduced by 50 percent.

(9) An enrollee in an individual health benefit plan may request enrollment in another individual plan or optional benefit rider offered by the enrollee's carrier, but such a request may be handled by the carrier as a new application for coverage.

(10) A modification to an existing individual health benefit plan must be implemented on the next anniversary or fixed renewal date of the plan that occurs on or after the operative date of the governing statutory provision (i.e., October 1, 1996, for SB 152 (1995); August 1, 1997, for SB 98 (1997)). In addition:

(a) Any existing riders or endorsements in effect for an enrollee that were based on the actual or expected health status of the enrollee and that exclude coverage for diseases or medical conditions that are otherwise covered by the enrollee's plan must be eliminated and deemed ineffective as of the next renewal date; and

(b) If a recent enrollee who is still subject to the preexisting conditions provision of a plan has a rider or endorsement eliminated in accordance with this rule, the enrollee's medical condition that was subject to the rider or endorsement may be subject to the preexisting conditions provision of the plan, including the prior coverage credit provisions.

(11) An individual health benefit plan shall be renewable at the option of the policyholder and shall not be discontinued by the carrier except in the circumstances specified in ORS 743.766 and consistent with the requirements of HIPAA (42 U.S.C. 300gg-42). In accordance with applicable federal law, renewal or continuation of an individual plan shall not be denied on the basis of Medicare eligibility. An individual plan, however, may contain a Medicare non-duplication provision.

(12) A small employer carrier that issues individual health benefit plans to employees of a small employer may not provide a billing to an employer that lists premium due for the employer's individual employees.

Stat. Auth.: ORS 743.769

Stats. Implemented: ORS 743.766 - ORS 743.769

Hist.: ID 12-1996, f. & cert. ef. 9-23-96; ID 5-1998, f. & cert. ef. 3-9-98; ID 5-2000, f. & cert. ef. 5-11-00; ID 23-2002, f. & cert. ef. 11-27-02

Adm. Order No.: ID 24-2002

Filed with Sec. of State: 12-13-2002

Certified to be Effective: 12-13-02

Notice Publication Date: 11-1-02

Rules Amended: 836-052-0142

Subject: The rule governing the guaranteed issuance of Medicare supplement insurance is amended to incorporate the most recent changes in federal law governing Medicare.

Rules Coordinator: Sue Munson—(503) 947-7272

836-052-0142

Guaranteed Issue for Eligible Persons

(1) Guaranteed issue:

(a) Eligible persons are those individuals described in section (2) of this rule who seek to enroll under the policy during the period specified in section (3) of this rule and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in section (5) of this rule that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(2) Eligible persons. An eligible person is an individual described in any of the following paragraphs:

(a) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare,

and the plan terminates or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual.

(b) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All Inclusive Care for the Elderly (PACE) provider under section 1894 of the Social Security Act, and there are circumstances similar to those described in this subsection that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare+Choice plan:

(A) The certification of the organization or plan under this part has been terminated;

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets such other exceptional conditions as the Secretary may provide.

(c)(A) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare [risk or] cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under section (2)(b) of this rule.

(d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A)(i) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy.

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(e)(A) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select policy; and

(B) The subsequent enrollment under paragraph (A) of this subsection is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851 (e) of the federal Social Security Act); or

(f) The individual, upon first becoming enrolled for benefits under Medicare part A, enrolls in a Medicare+Choice plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social

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Security Act, and disenrolls from the plan or program by not later than 12 months after the effective date of enrollment.

(3) Guaranteed Issue Time Periods.

(a) In the case of an individual described in section (2)(a) of this rule, the guaranteed issue period begins on the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation) and ends 63 days after the date of the applicable notice;

(b) In the case of an individual described in section (2)(b), (c), (e) or (f) of this rule whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated;

(c) In the case of an individual described in section (2)(d)(A), the guaranteed issue period begins on the earlier of:

(i) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and (ii) the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated;

(d) In the case of an individual described in section (2)(b), (d)(B), (d)(C), (e) or (f) of this rule, who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date; and

(e) In the case of an individual described in section (2) of this rule but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

(4) Extended Medigap access for interrupted trial periods.

(a) In the case of an individual described in section (2)(e) of this rule (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in section (2)(e)(A) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in section (2)(e) of this rule.

(b) In the case of an individual described in section (2)(f) of this section (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in section (2)(f) of this rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in section (2)(f) of this rule; and

(c) For purposes of sections (2)(e) and (f) of this rule, no enrollment of an individual with an organization or provider described in section (2)(e)(A) of this rule, or with a plan or in a program described in section (2)(f) of this rule, may be deemed to be an initial enrollment under this paragraph after the two year period beginning on the date on which the individual first enrolled with such an organization provider, plan or program.

(5) Products to which eligible persons are entitled. The Medicare supplement policy to which eligible persons are entitled under:

(a) Section (2)(a), (b), (c) (except for coverage described in (c)(iv)) and (d) of this rule is a Medicare supplement policy that has a benefit package classified as Plan A, B, C or F offered by any issuer;

(b) Section (2)(c)(iv) and (f) of this rule is any Medicare supplement policy described in OAR 836-052-0136 offered by any issuer;

(c) Section (2)(e) of this rule is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in subsection (a) of this section.

(6) Notification provisions:

(a) At the time of an event described in section (2) of this rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this rule, and of the obligations of issuers of Medicare supplement policies under section (1) of this rule. Such notice shall be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in section (2) of this rule because of which an individual ceases enrollment under a contract or agreement, policy or plan, the organization that offers the contract or agreement,

regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this rule, and of the obligations of issuers of Medicare supplement policies under section (1) of this rule. Such notice shall be communicated within ten working days of the issuer's receiving notification of disenrollment.

Stat. Auth.: ORS 743.684

Stats. Implemented: ORS 743.010 & ORS 743.684

Hist.: ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 24-2002, f. & cert. ef. 12-13-02

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

Adm. Order No.: WCD 12-2002(Temp)

Filed with Sec. of State: 12-11-2002

Certified to be Effective: 12-11-02 thru 6-8-03

Notice Publication Date:

Rules Amended: 436-105-0003, 436-105-0500, 436-105-0510

Subject: The Workers' Compensation Division is temporarily amending OAR 436-105, and these amendments will be applied to all individual Employer-at-Injury Programs begun on or after October 1, 2001. These amendments are needed in order to:

- Require documentation of transitional work, to include start date, wages and hours, and a description of the job duties. This requirement was inadvertently omitted from OAR 436-105-0500(6) when this rule was moved to its own rule division (formerly in division 110) effective 10/1/01. The insurer must be able to establish that transitional work was within the worker's physical restrictions prior to requesting reimbursement of Employer-at-Injury Program costs from the Workers' Benefit Fund.

- Allow Employer-at-Injury Programs to continue even if the worker is temporarily removed from work by his or her medical provider. The rule/section adopted effective 10/1/01, OAR 436-105-0510(2), states that the worker must be released to work to be eligible for an Employer-at-Injury Program. Employer-at-Injury Programs should continue despite such temporary gaps. This temporary rule will allow the following: When a worker is temporarily restricted from any transitional work by the medical provider during the wage subsidy period, and is subsequently released for transitional work under the same claim opening, the wage subsidy may continue until the end of the three consecutive month period.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-105-0003

Applicability of Rules

(1) These rules apply to all individual Employer-at-Injury Programs which began on or after October 1, 2001.

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

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

Stats. Implemented: ORS 656.622

Hist.: WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03

436-105-0500

Insurer Participation in the Employer-At-Injury Program

(1) When the employer-at-injury requests assistance, the insurer shall be an active participant in providing reemployment assistance. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

(2) The insurer shall notify the worker and employer-at-injury in writing of the assistance available from the Employer-at-Injury Program. A notice shall be issued:

- (a) Upon acceptance or reopening of a non-disabling or disabling claim; and

- (b) Within five days of a worker's first release for work after claim opening unless the release is for regular work.

(3) The notices of Employer-at-Injury Program assistance shall contain the following language:

- (a) The notice to the worker shall appear in bold type as follows:

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The Reemployment Assistance Program provides Oregon's qualified injured workers help with staying on the job or getting back to work. Because of your injury, your employer may be eligible for assistance to return you to transitional work through the Employer-at-Injury Program while your claim is open. Your employer may contact (insurer name and phone number).

(b) The notice to the employer-at-injury shall appear in bold type as follows: Because of your worker's injury, you may be eligible for assistance through the Employer-at-Injury Program to return the worker to transitional work while the worker's claim is open. To learn more about the assistance available from the program, please call [insurer name and phone number].

(4) The insurer shall respond to the employer's request for assistance and administer the Employer-at-Injury Program according to these rules. The insurer shall assist the employer to:

(a) Obtain a medical release citing the injury-caused restrictions which prevent the worker from performing regular employment from the medical service provider;

(b) Identify a transitional work position;

(c) Process employer Wage Subsidy requests specified in OAR 436-105-0520(1);

(d) Make Worksite Modification purchases as specified in OAR 436-105-0520(2);

(e) Make Employer-at-Injury Program purchases as specified in OAR 436-105-0520(3); and

(f) Request Employer-at-Injury Program reimbursement from the division as specified in OAR 436-105-0540.

(5) The insurer may use the Employer-at-Injury Program upon establishing the worker and employer meet the eligibility criteria stated in OAR 436-105-0510(1) and (2). The insurer must possess all medical releases citing restrictions from the medical service provider. For purposes of the Employer-at-Injury Program, medical releases must meet the following criteria:

(a) All medical releases must state the worker's specific injury-caused restrictions, and must be dated. The date the medical release is issued by the medical provider is considered the effective date if an effective date is not otherwise specified;

(b) For Employer-at-Injury Program purposes, a medical release for "light work," "light duty," or "modified work," without other specific restrictions, are not considered restrictions unless the medical service provider references the Dictionary of Occupational Titles standards;

(c) A medical release must cover any period of time for which benefits are requested, except as provided in subsection (f) of this rule;

(d) A medical release with no specific end date expires in 30 days;

(e) A medical release with a specific end date or follow-up medical appointment date expires on the end date, or the follow-up appointment date, if the worker does not return to the medical service provider for a follow-up appointment; and

(f) Once restrictions have been in place, if a follow-up medical appointment is missed by the worker, the restrictions previously issued by the medical service provider will be allowed to remain in effect for up to 14 days from the date of the missed appointment if the worker subsequently attends a medical appointment.

(6) The insurer shall maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last Employer-at-Injury Program Reimbursement Request. The division may request additional information from the insurer in order to perform and complete an audit. The insurer shall maintain the following information at the authorized claim processing location(s) for future audit by the division:

(a) The worker's claim file;

(b) Documentation from the worker's medical service provider that the worker is unable to perform regular employment due to the injury and dated copies of the work release from the worker's medical service provider;

(c) A legible copy of the worker's payroll records for the wage subsidy period as follows:

(A) Payroll records shall state the dates (daily), hours worked, wage rate(s), and the worker's gross wages for the wage subsidy period;

(B) Payroll records shall state the wage rate or rates if the worker is paid by any method other than hourly wage. If only part of the period covered by the payroll record is for transitional work, the payroll record must be supplemented with documentation of how the worker's earnings were prorated for the Wage Subsidy; and

(C) If a partial day's reimbursement is requested after a worker is released for transitional work, or prior to returning from a medical appoint-

ment with a regular work release, documentation of the time of the medical appointment and hours and wages of transitional work shall be provided for those days.

(d) A legible copy of invoices, proof of payment, and proof of the delivery date of the item(s) for Worksite Modification purchases and Employer-at-Injury Program purchases; [and]

(e) Written justification for Worksite Modification as specified in OAR 436-105-0520(2)(f); and

(f) Documentation of the transitional work. Documentation must include the start date, wage and hours, and a description of the job duties.

(7) The insurer may end the Employer-At-Injury Program at any time while the worker's claim is open. The insurer shall end the Employer-At-Injury Program when the worker or employer meet any of the end of eligibility criteria listed in OAR 436-105-0510(3).

Stat. Auth.: ORS 656.340, 656.622, 656.726(4)

Stats. Implemented: ORS 656.340, 656.622

Hist.: WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0090; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; Renumbered from 436-110-0360; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0540; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03

436-105-0510

Eligibility and End of Eligibility for the Employer-at-Injury Program

(1) The eligibility criteria for an employer are:

(a) The employer has and maintains Oregon workers' compensation insurance coverage during and through the Employer-at-Injury Program period;

(b) The employer is the employer at injury as defined in OAR 436-105-0005;

(c) The employer is re-employing an eligible worker while the worker's claim is open; and

(d) The employer is not currently ineligible for Employer-at-Injury Program benefits under OAR 436-105-0560.

(2) The eligibility criteria for a worker are:

(a) The worker has an accepted Oregon compensable injury or occupational disease. Injuries covered by the Injured Inmate Law do not qualify;

(b) The worker has not returned to regular work under the most recent claim opening except when there is a release for regular work and the worker is subsequently released for work with restrictions under the same claim opening; and

(c) The worker has cited restrictions from the medical service provider which prevent the worker from performing regular work.

(3) Reasons for ending Employer-at-Injury Program eligibility include the following, whichever occurs first:

(a) The worker or employer no longer meet the eligibility provisions stated in sections (1) and (2) of this rule;

(b) The worker exceeds the hourly or physical restrictions cited by the medical service provider;

(c) The worker's claim is closed;

(d) The worker's transitional work ends;

(e) The medical release lapses per OAR 436-105-0500(5);

(f) The worker's need for transitional work is no longer due to the compensable injury which gave cause for use of the Employer-at-Injury Program;

(g) The Employer-at-Injury Program reimbursement is requested; or

(h) Sanctions under OAR 436-105-0560 preclude eligibility.

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

Stats. Implemented: ORS 656.622

Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78, WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0020, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0020; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0280; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0520; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03

Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 129-2002(Temp)

Filed with Sec. of State: 11-20-2002

Certified to be Effective: 11-20-02 thru 1-31-03

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Amended: 635-005-0045

Subject: Amend rule to delay the season opening date of the Oregon 2002-2003 crab season until December 10, 2002 for that portion of the Oregon ocean commercial Dungeness crab fishery north of 42 degrees 57' (just north of Cape Blanco) to the OR/WA border. This filing reflects technical changes to the temporary rule filed November 15, 2002, to clarify intent.

Rules Coordinator: Mike Lueck—(503) 872-5272, ext 5447

635-005-0045

Closed Season in Pacific Ocean and Columbia River

(1) In addition to any closures described in Section 3, it is *unlawful* to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through November 30.

(2) It is *unlawful* prior to January 1, pursuant to a fishery described in (3)(a), or January 10, pursuant to a fishery described in (3)(b), to land or to receive, or to buy, Dungeness crab from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab on November 30, as specified in section (3)(a), or December 9, as specified in section (3)(b) of this rule.

(3) Delay of Season Openings:

(a) From 42 degrees 57' N. Lat. (just north of Cape Blanco near the mouth of Floras Creek) south to the Oregon/California border is open at 12:01 a.m. December 1, 2002.

(b) From 42 degrees 57' N. Lat. (just north of Cape Blanco near the mouth of Floras Creek) to the Oregon/Washington border is closed December 1, 2002 through December 9, 2002. The closed area will open at 12:01 a.m. on December 10, 2002.

(4)(a) The Director shall adopt rules identifying the boundary. The boundary shall take into account the existence of traditional fishing patterns;

(b) Vessels electing to fish south of 42 degrees 57' N. Lat., but north of Sonoma County, California, with a December 1, 2002 opening date, as noted in (3)(a), may not fish in an area with the delayed opening date north of 42 degrees 57' N. Lat. within the first 30 days of the delayed opening date;

(c) For the first 30 days of a fishing zone season, vessels electing to fish an area shall be certified by officials of the State of Oregon, Washington or California to have been free of Dungeness crab on the day immediately prior to the opening day of the selected fishing area. At the time of vessel inspection, the vessel operator shall certify the vessel has not been used to take crab in the selected fishing area.

(5) Upon a determination by the Department that catch in Oregon's Pacific Ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Fish and Wildlife Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03

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Adm. Order No.: DFW 130-2002

Filed with Sec. of State: 11-21-2002

Certified to be Effective: 1-1-03

Notice Publication Date: 7-1-02

Rules Amended: 635-011-0101, 635-013-0003, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-039-0080, 635-039-0090

Rules Repealed: 635-021-0100

Subject: Adopted sport fishing regulations for finfish, shellfish, and marine invertebrates for 2003.

Rules Coordinator: Mike Lueck—(503) 872-5272, ext 5447

635-011-0101

2002 Sport Fishing Regulations Pamphlet Amendment

Notwithstanding OAR 635-011-0100, 016-0080 the 2003 Sport Fishing Regulations pamphlet posted on the Oregon Department of Fish and Wildlife web page shall be the officially incorporated version referenced in the rules.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-013-0003

Purpose and Scope

(1) The purpose of Division 013 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures for 2002, included in the **Pacific Fishery Management Council — Adopted 2002 Ocean Salmon Management Measures and Impacts, dated April 2002**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**.

(3) This rule also incorporates by reference the 2003 Oregon Sport Fishing Regulations, including any changes to those rules, as posted on the Department's web page, www.dfw.state.or.us.

(4) A copy of the **Pacific Fishery Management Council referenced document** and the **Federal Regulations** may be obtained by contacting Steve King or Sharon Bird at 503-872-5252.

(5) 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.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-013-0004

Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2003 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supercede the published federal regulations and the 2003 Oregon Sport Fishing Regulations. This means that persons must consult not only the Department's web page and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subparts A and H)**.

(4) General Requirements, Definitions, Restrictions or Exceptions: No modifications to this category of regulations in the **Code of Federal Regulations, Title 50, Part 660, Subparts A and H, and the 2003 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119

Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert.

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ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp) f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-014-0080

Purpose and Scope

(1) The purpose of Division 014 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 014 incorporates, by reference, the **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page, www.dfw.state.or.us, and any changes to those regulations as posted on the same web page. Therefore, persons must consult the **2003 Oregon Sport Fishing Regulations** in addition to Divisions 011 and 014 to determine all applicable sport fishing requirements for the Northwest Zone.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-014-0090

Inclusions and Modifications

The **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page www.dfw.state.or.us provide requirements for the Northwest Zone. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the **2003 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119
Stats. Implemented: ORS 496.162 & ORS 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-016-0080

Purpose and Scope

(1) The purpose of Division 016 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 016 incorporates, by reference, the **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page www.dfw.state.or.us, and any changes to those regulations as posted on the same web page. Therefore, persons must consult the **2003 Oregon Sport Fishing Regulations** in addition to Divisions 011 and 016 to determine all applicable sport fishing requirements for the Southwest Zone.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-016-0105 - 635-016-0325; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-

2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-016-0090

Inclusions and Modifications

The **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page www.dfw.state.or.us provide requirements for the Southwest Zone. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the **2003 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138 & ORS 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-017-0080

Purpose and Scope

(1) The purpose of Division 017 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 017 incorporates, by reference, the **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page www.dfw.state.or.us, and any changes to those regulations as posted on the same web page. Therefore, persons must consult the **2003 Oregon Sport Fishing Regulations** in addition to divisions 011 and 017 to determine all applicable sport fishing requirements for the Willamette Zone.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-017-0090

Inclusions and Modifications

The **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page www.dfw.state.or.us provide requirements for the Willamette Zone. The Willamette Zone is described in OAR 635-017-0100. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the **2003 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146 & ORS 497.121
Stats. Implemented: ORS 496.004 & ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-

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5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-018-0080

Purpose and Scope

(1) The purpose of Division 018 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 018 incorporates, by reference, the 2003 Oregon Sport Fishing Regulations as posted on the Department's web page www.dfw.state.or.us, and any changes to those regulations as posted on the same web page. Therefore, persons must consult the 2003 Oregon Sport Fishing Regulations in addition to divisions 011 and 018 to determine all applicable sport fishing requirements for the Central Zone.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-019-0080

Purpose and Scope

(1) The purpose of Division 019 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 019 incorporates, by reference, the 2003 Sport Fishing Regulations as posted on the Department's web page www.dfw.state.or.us, and any changes to those regulations as posted on the same web page. Therefore, persons must consult the 2003 Oregon Sport Fishing Regulations in addition to divisions 011 and 019 to determine all applicable sport fishing requirements for the Northeast Zone.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-019-0090

Inclusions and Modifications

The 2003 Oregon Sport Fishing Regulations as posted on the Department's web page www.dfw.state.or.us provide requirements for the Northeast Zone. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the 2003 Oregon Sport Fishing Regulations.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146, & ORS 497.121
Stats. Implemented: ORS 496.004 & ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-

20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-021-0080

Purpose and Scope

(1) The purpose of Division 021 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 021 incorporates, by reference, the 2003 Oregon Sport Fishing Regulations as posted on the Department's web page www.dfw.state.or.us, and any changes to those regulations as posted on the same web page. Therefore, persons must consult the 2003 Oregon Sport Fishing Regulations in addition to divisions 011 and 021 to determine all applicable sport fishing requirements for the Southeast Zone.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-021-0090

Inclusions and Modifications

The 2003 Oregon Sport Fishing Regulations as posted on the Department's web page www.dfw.state.or.us provide requirements for the Southeast Zone. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the 2003 Oregon Sport Fishing Regulations.

Stat. Auth.: ORS 496.138 & ORS 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-023-0080

Purpose and Scope

(1) The purpose of Division 023 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 023 incorporates, by reference, the 2003 Oregon Sport Fishing Regulations as posted on the Department's web page www.dfw.state.or.us, and any changes to those regulations as posted on the same web page. Therefore, persons must consult the 2003 Oregon Sport Fishing Regulations in addition to divisions 011 and 023 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-023-0090

Inclusions and Modifications

The 2003 Oregon Sport Fishing Regulations as posted on the Department's web page www.dfw.state.or.us provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the 2003 Oregon Sport Fishing Regulations.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 497.123
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC

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12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-039-0080

Purpose and Scope

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) Sport fishing regulations of the State, included in the document entitled **2003 Oregon Sport Fishing Regulations** as posted on the Department's web page www.dfw.state.or.us, and any changes to those regulations as posted on the same web page. Therefore, persons must consult the **2003 Oregon Sport Fishing Regulations** in addition to divisions 011 and 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates; and

(b) Pacific Halibut Fishery Regulations of the International Pacific Halibut Commission (IPHC), included in the **Pacific Council News**, and 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 also consult the **Pacific Council News** and **Federal Regulations**, or the **Pacific Halibut Fishery Regulations 2003** as published by IPHC to determine all rules applicable to the taking of halibut.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

635-039-0090

Inclusions and Modifications

The **2003 Oregon Sport Fishing Regulations** as posted on www.dfw.state.or.us provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, addi-

tional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the **2003 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119

Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03

Adm. Order No.: DFW 131-2002

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Rules Adopted: 635-007-0502, 635-007-0503, 635-007-0504, 635-007-0505, 635-007-0506

Rules Amended: 635-007-0501

Subject: Adopted a Native Fish Conservation Policy.

Rules Coordinator: Mike Lueck—(503) 872-5272, ext 5447

635-007-0501

Definitions

As used in this division and division 40:

(1) "Anadromous" means fish which migrate from saltwater to freshwater for spawning.

(2) "Aquaria species" means those fish commonly sold in the pet store trade for use in home aquaria. "Aquaria" are any tanks, pools, ponds, bowls or other containers intended for and capable of holding or maintaining live fish and from which there is no outfall to any waters of this state.

(3) "Aquatic habitat" means the waters which support fish or other organisms which live in water and which includes the adjacent land area and vegetation (riparian habitat) that provides shade, food, and/or protection for those organisms.

(4) "Area" means a stream, a lake, a group of streams or lakes, or a portion of the ocean managed for or with a common stock of fish, or for protection of a stock or stocks of fish.

(5) "Biological requirements" refers to those environmental conditions such as water quality, water quantity, and available food that are necessary for fish to grow and/or reproduce.

(6) "Brood stock" means a group of fish, generally from the same population, that are held and eventually artificially spawned to provide a source of fertilized eggs for hatchery programs.

(7) "Brood year" means the year in which more than fifty percent of the adults in a population of fish spawn.

(8) "Commission" means the Oregon Fish and Wildlife Commission.

(9) "Compensation" means activities that replace fish, or their habitat lost through development or other activities.

(10) "Conservation" means managing for sustainability of native fish so that present and future generations may enjoy their ecological, economic, recreational, and aesthetic benefits.

(11) "Cooperative Salmon Hatchery Project" means a fish propagation enhancement project authorized under OAR 635-009-0400 through 635-009-0455.

(12) "Department" means the Oregon Department of Fish and Wildlife.

(13) "Depressed" means below established goal such as a fish production or escapement goal shown in a management plan or below the level of production or escapement that the Commission determines to be an optimal level.

(14) "Disease" means problems caused by infectious agents, such as parasites or pests, and by other conditions that impair the performance of the body or one of its parts.

(15) "Enhancement" means management activities including rehabilitation and supplementation that increase fish production beyond the existing levels.

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(16) "Fish" means all game fish as defined by ORS 496.009 and food fish as defined by ORS 506.036, which live or could live in the waters of this state.

(17) "Fish Hatchery" means a facility at which adult broodstock are held, or where eggs are collected and incubated, or where eggs are hatched, or where fish are reared.

(18) "Fry" means fish which have recently hatched and have not fed.

(19) "Foreign" means fish which originate through human intervention from a different population.

(20) "Gene conservation group" means a genetically distinct cluster of one or more populations within a taxonomic species that resulted because gene flow between the cluster and other populations of the same species has been zero or very low over sufficient geological time.

(21) "Genetic engineering" means the introduction of genetic material into an organism's genotype through molecular genetics techniques.

(22) "Genetic Resources" means the kind and frequency of genes found within a population or collection of populations.

(23) "Genotype" means the kinds of and the combination of genes possessed by an individual.

(24) "Goal" means a statement of intent which leads to policy, rules, and operation plans for implementation of a Department Program.

(25) "Hatchery produced fish" means a fish incubated or reared under artificial conditions for at least a portion of its life.

(26) "Hatchery Program" means a program in which a specified hatchery population is planted in a specified geographical location.

(27) "Hold fish" means to capture and/or remove live fish in or from the waters of this state and/or maintain live fish in captivity but does not include fish held live for less than one day for examination and release without transfer from the waters where caught or collected.

(28) "Indigenous" means descended from a population that is believed to have been present in the same geographical area prior to the year 1800 or that resulted from a natural colonization from another indigenous population.

(29) "Management Plan" means:

(a) A plan adopted by the Fish and Wildlife Commission which provides the basic framework (goals, policies and objectives) for managing a resource, geographic area, watershed (waterbody) or species; and

(b) Which may include specific information or alternatives relative to how the goals and policies may be achieved.

(30) "Marine species" means those fish found in the ocean or the saline or brackish water of estuaries or bays along the coast, but not generally found in freshwater streams.

(31) "Mitigation" means to lessen the impact of activities or events that cause fish or habitat loss.

(32) "Native fish" means indigenous to Oregon, not introduced. This includes both naturally produced and hatchery produced fish.

(33) "Naturally produced" means fish that reproduce and complete their full life cycle in natural habitats.

(34) "Naturally Spawned" means fish produced in the natural environment as the result of natural reproduction.

(35) "Nongame Fish" means any fish other than those specifically defined as game fish in ORS 496.009.

(36) "Objective" means a specific statement of planned results to be achieved by a predetermined date. Attainment of objectives represents measurable progress toward attainment of the broader goal.

(37) "Operating Principle" means a mandatory direction or approach to carrying out a Department program.

(38) "Operation plan" means an action plan developed by the Department that generally addresses how the objectives in a management plan for harvest or production of a species shall be attained.

(39) "Optimum" means the desired fish production level as stated in management plans or set by specific Commission action.

(40) "Phenotype" means any characteristic of an organism that is determined by the organism's genes, genotype and the environment.

(41) "Policy" means mandatory direction or constraints that provide the framework for Department programs.

(42) "Population" means a group of fish originating and reproducing in a particular area at a particular time which do not interbreed to any substantial degree with any other group reproducing in a different area or in the same area at a different time.

(43) "Population fragmentation" means the process by which natural or human-caused events cause a single, large breeding population to be broken up into two or more smaller new breeding populations.

(44) "Presmolt" means a juvenile anadromous fish which has fed and reared but is not yet a smolt.

(45) "Production" means the number or pounds of fish raised in a hatchery or resulting from natural spawning and rearing in freshwater, estuarine, or ocean habitats; also used in reference to harvest.

(46) "Propagation of fish" means the spawning, incubating, and/or rearing of fish by a human for sale, release or other uses.

(47) "Rehabilitation" means short-term management actions which may include fish stocking, habitat improvement, harvest management, or other work, that restore fish populations depressed by natural or man-made events.

(48) "Rehabilitation fish" means a fish from a hatchery program that has wild-type phenotypes and is used for one life cycle in a program to rebuild a depressed population of wild fish.

(49) "Risk" means the extent to which, a management practice may reduce population productivity or cause an undesirable change in genetic characteristics of a population.

(50) "Sensitive" means those fishes that have been designated for special consideration pursuant to OAR 635-100-0040.

(51) "Serious depletion" means a significant likelihood that the species management unit will become threatened or endangered under either the state or federal Endangered Species Act.

(52) "Significant or substantial" means a condition of sufficient magnitude such that it is likely to influence continued natural production at optimum levels.

(53) "Smolt" means a juvenile salmon or trout that is capable of initiating a seaward migration and is capable of living in the sea.

(54) "Species" means any group or population that interbreeds and is substantially reproductively isolated.

(55) "Species hybridization" means the crossing of two different taxonomic species.

(56) "Species management unit" means a collection of populations from a common geographic region that share similar genetic and ecological characteristics.

(57) "STEP" means Salmon Trout Enhancement Program.

(58) "Stock" means an aggregation for management purposes of fish populations which typically share common characteristics such as life histories, migration patterns, or habitats.

(59) "Stray" means a hatchery fish that spawns naturally in a location different from the location intended when the fish was stocked.

(60) "Supplementation" means continued planting of fish to maintain or increase fish abundance in areas where natural production is insufficient to meet management objectives.

(61) "Sustainable" means persistence over time, that is to say the ability of a population or a species management unit to maintain temporal, spatial, genetic, and ecological coherence while withstanding demographic, environmental, and genetic variation and catastrophic events from natural and human induced causes.

(62) "Taxonomic species" means a group of fish that have been assigned a scientific name in the form of genus and species by the American Fisheries Society Committee on Common and Scientific Names of Fishes.

(63) "Transgenic fish" means fish that have genes or groups of genes that have been transferred from another organism through the process of genetic engineering.

(64) "Wild fish" means any naturally spawned fish in the taxonomic classes, Agnatha, Chondrichthyes, and Osteichthyes, belonging to an indigenous population.

(65) "Wild Fish Management" means all of the constraints, operating principles, and direction embodied in both the Natural Production Rules and the Wild Fish Management Rules.

(66) "Wild-type phenotype" means the kind of phenotype possessed by individuals in a wild population.

Stat. Auth.: ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 496.146 & ORS 506.124

Hist.: FWC 25-1984, f. 6-21-84, ef. 7-1-84; FWC 6-1990, f. & cert. ef. 1-29-90; FWC 2-1992, f. 1-28-92, cert. ef. 2-1-92; FWC 37-1992, f. 5-29-92, cert. ef. 6-1-92; FWC 15-1997, f. & cert. ef. 3-10-97; DFW 131-2002, f. & cert. ef. 11-22-02

635-007-0502

Purpose of the Native Fish Conservation Policy

(1) The purpose of this policy is to ensure the conservation and recovery of native fish in Oregon. The policy focuses on naturally produced native fish. This focus is because naturally produced native fish are the primary basis for Endangered Species Act (ESA) delisting decisions and the foundation for long-term sustainability of native species and hatchery programs. Conservation of hatchery produced native fish is also important to maintain opportunities for fisheries and aid conservation of naturally pro-

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duced fish. The Hatchery Management Policy describes conservation of hatchery produced native fish.

(2) The intent of the Native Fish Conservation Policy is to provide a basis for managing hatcheries, fisheries, habitat, predators, competitors, and pathogens in balance with sustainable production of naturally produced native fish. The policy has three areas of emphasis. The first is defensive to ensure the avoidance of serious depletion of native fish. The second is more proactive to restore and maintain native fish at levels providing ecological and societal benefits. The third ensures that, consistent with native fish conservation, opportunities for fisheries and other societal resource uses are not unnecessarily constrained. This approach will allow Oregon to play a vital role in the recovery of ESA listed species and the prevention of future listings.

(3) The policy embraces the case-by-case application of a wide range of conservation and utilization strategies tailored to individual watersheds and situations. Policy implementation will likely illustrate a variety of management approaches across the landscape, such as areas focused on hatchery programs complemented with areas where hatchery influences are avoided.

(4) The policy shall be implemented through conservation plans. Plans shall be developed in collaboration with management partners and the public, and will identify the desired and existing status of native fish, key limiting factors, management options to address these factors, and monitoring required to evaluate success. The Oregon Plan for Salmon and Watersheds, as well as other local and regional forums, shall provide the context for development, implementation and coordination of these plans. Existing rules shall guide management until conservation plans are completed.

Stat. Auth.: ORS 496.012 & ORS 496.138

Stats. Implemented: ORS 496.171, ORS 496.172, ORS 496.176, ORS 496.182, ORS 496.430, ORS 496.435, ORS 496.445, ORS 496.450, ORS 496.455

Hist.: DFW 131-2002, f. & cert. ef. 11-22-02

635-007-0503

Native Fish Conservation Policy Goals

(1) Prevent the serious depletion of any native fish species by protecting natural ecological communities, conserving genetic resources, managing consumptive and nonconsumptive fisheries, and using hatcheries responsibly so that naturally produced native fish are sustainable.

(2) Maintain and restore naturally produced native fish species, taking full advantage of the productive capacity of natural habitats, in order to provide substantial ecological, economic, and cultural benefits to the citizens of Oregon.

(3) Foster and sustain opportunities for sport, commercial, and tribal fishers consistent with the conservation of naturally produced native fish and responsible use of hatcheries.

Stat. Auth.: ORS 496.012 & ORS 496.138

Stats. Implemented: ORS 496.171, ORS 496.172, ORS 496.176, ORS 496.182, ORS 496.430, ORS 496.435, ORS 496.445, ORS 496.450, ORS 496.455

Hist.: DFW 131-2002, f. & cert. ef. 11-22-02

635-007-0504

Key Elements of Native Fish Conservation Policy

(1) Naturally produced fish are foundational to the long-term sustainability of native fish species, hatchery programs, and fisheries in Oregon. Therefore, conservation of naturally produced native fish species in the geographic areas to which they are indigenous is the Department's principal obligation for fish management.

(2) The Native Fish Conservation Policy applies to all geographic areas within the State's jurisdiction.

(3) The Department shall manage native fish to meet the following objectives:

(a) To maintain and restore sustainable naturally produced native fish species living and reproducing successfully in their natural environments;

(b) To provide recreational, commercial, cultural, and aesthetic benefits of optimum native fish populations to present and future citizens; and

(c) To contribute benefits to their ecosystem such as carcass nutrients and food for other species.

(4) Hatcheries shall be used responsibly to help achieve the goals of this policy. The Hatchery Management Policy describes the hatchery tool and its range of applications, as well as additional guidance concerning the conservation and management of native hatchery produced fish. Other tools include but are not limited to the management of habitat, harvest, competitors, predators, and fish health.

(5) In restoring naturally produced native fish, and when weighing options for conservation action, the Department shall generally:

(a) Give priority to management actions that address and help remedy the primary factors of decline (i.e. limiting factors);

(b) Consider economic effects required by ORS 183.335(2)(b)(E); and

(c) Consider the potential for success.

(6) The Department shall manage for sustainability of naturally produced native fish at the level of the species management unit. In developing sustainability standards, the Department shall:

(a) Incorporate the importance of population structure within each species management unit, and

(b) Base the sustainability standards on biological attributes directly related to species performance, as described in OAR 635-007-0505(6).

(7) When faced with scientific uncertainty concerning fish management, including status assessments and the effectiveness of recovery strategies, the Department shall proceed with precautionary strategies scaled to the conservation risk. Less precautionary strategies may be allowed if:

(a) The Department determines that monitoring, evaluation and responsive management will keep biological risks within acceptable limits, or

(b) The Department implements specific research to address management uncertainties.

(8) The Department shall manage nonnative fish and hatchery based fisheries to optimize user benefits consistent with conservation of naturally produced native fish species.

Stat. Auth.: ORS 496.012 & ORS 496.138

Stats. Implemented: ORS 496.171, ORS 496.172, ORS 496.176, ORS 496.182, ORS 496.430, ORS 496.435, ORS 496.445, ORS 496.450, ORS 496.455

Hist.: DFW 131-2002, f. & cert. ef. 11-22-02

635-007-0505

Implementing the Native Fish Conservation Policy

(1) Conservation Plans: The Native Fish Conservation Policy shall be implemented primarily through conservation plans developed for individual species management units and adopted by the Commission. Conservation plans shall illustrate a range of options for recovery strategies, fisheries and the responsible use of hatchery produced fish and may include subbasin plans, NOAA Fisheries recovery plans, and other plans that address the elements contained in subsections (5), (6), (7), and (8) of this rule.

(2) Conservation plans shall be based on the concept that locally adapted populations provide the best foundation for maintaining and restoring sustainable naturally produced native fish.

(3) Planning and implementation shall proceed incrementally, consistent with available funding, according to priorities established by the Department with collaboration and input from affected tribal governments, management partners, and the public. The Department shall place highest priority on developing conservation plans for species management units having one or more of the following characteristics:

(a) Contain fish that are listed under the federal or state Endangered Species Act or as a state sensitive species or contain naturally produced native fish populations that demonstrate continued decline or extirpation from a significant portion of their range;

(b) Contain new hatchery programs or existing hatchery programs that need substantial change;

(c) Have high public interest or economic or other impact on the local community; or

(d) Where the Departmental resources available for the planning and implementation efforts will likely lead to a significant increase in naturally produced native fish.

(4) The Department shall develop and maintain a statewide list of species management units and their constituent populations, including appropriate hatchery produced fish, for native fish belonging to the genus *Oncorhynchus*. Lists for other taxonomic groups will be developed as prioritized pursuant to subsection (3) of this rule.

(5) Plan Contents: Native fish conservation plans will address the following elements:

(a) Identification of the species management unit and constituent populations pursuant to subsection (4) of this rule;

(b) Description of the desired biological status relative to biological attributes contained in subsection (6) of this rule;

(c) Description of current status relative to biological attributes contained in subsection (6) of this rule;

(d) An assessment of the primary factors causing the gap between current and desired status, if there is a gap, and identify factors that can be managed;

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(e) A description of the short- and long-term management strategies most likely to address the primary limiting factors;

(f) A description of monitoring, evaluation, and research necessary to gauge the success of corrective strategies and resolve uncertainties;

(g) A process for modifying corrective strategies based upon the monitoring, evaluation and research results;

(h) Measurable criteria indicating significant deterioration in status, triggering plan modification to begin or expand recovery actions;

(i) Annual and long-term reporting requirements necessary to document data, departures from the plan, and evaluations necessary for adaptive management, in a format available to the public;

(j) A description of potential impacts to other native fish species.

(6) Measurable Criteria: Each native fish conservation plan shall include specific, measurable criteria of species performance. Depending upon available information, criteria will be developed for the following primary biological attributes:

(a) Distribution of populations within unit;

(b) Adult fish abundance for constituent populations;

(c) Within and among population diversity;

(d) Population connectivity;

(e) Survival rate to each critical life history stage;

(f) Standardized rate of population growth for constituent natural populations;

(g) Forecast likelihood of species management unit persistence in the near and long terms.

(7) Conservation plans shall also contain secondary criteria such as migration timing, spawn timing, age structure, sex ratios, stray rates, habitat complexity, artificial barriers, and harvest rates. These secondary criteria shall be used to help assess and link the effectiveness of management actions to address limiting factors as they affect the primary biological attributes described in subsection (6).

(8) Process for Developing Plans: When developing fish conservation plans, delineating naturally reproducing populations, and defining species management unit borders, the Department shall:

(a) Use the most up-to-date and reliable scientific information and, as appropriate, convene an ad hoc team of scientists for collaboration and assistance;

(b) Solicit the assistance and independent peer review by scientists including but not limited to the Independent Multidisciplinary Science Team and university fishery management programs; and

(c) Seek input and involvement from appropriate tribal, state, local, and federal management partners, university programs, and the public. Affected tribal governments shall be consulted in the development and implementation of conservation plans.

(9) Interim Measures: Until an individual conservation plan is completed for a species management unit, the Department shall continue to manage native fish in that unit according to existing statutes, administrative rules, Commission directives and binding agreements. In addition, the Department shall manage such populations in a manner that will avoid addition of new species to the State "Sensitive Species" list. Development of conservation plans shall be governed by this Native Fish Conservation Policy. Implementation of those plans shall be as specified in the plan.

(10) The Department shall review existing administrative rules relating to fish conservation and management to determine their consistency with the Native Fish Conservation Policy. Based on this review, staff shall recommend areas for consolidation, change or removal to the Commission. Recommendations shall also include interim criteria for native fish without conservation plans. These interim criteria will be used to help gauge the status and conservation risks for native fish and trigger appropriate management actions. Interested management partners and the public shall be consulted in this process.

(11) Status Reports: The Department shall prepare and present to the Commission an Oregon native fish species status report at timely intervals adequate to track progress, or at the request of the Commission or Director. This report shall include:

(a) Identification of all existing native fish conservation plans;

(b) Status assessments addressing biological attributes related to species performance as described in subsection (6) of this rule and the methods and assumptions used to make these assessments, including those used because of missing or insufficient data; and

(c) Appropriate modifications to the list of populations and species management units, and additional research needs.

(12) Cooperative Recovery Planning: In implementing the Native Fish Conservation Policy and consistent with the Oregon Plan, the Department will encourage the development of complementary policies

and plans by other state and federal regulatory agencies and tribes that supports a unified conservation effort.

Stat. Auth.: ORS 496.012 & ORS 496.138

Stats. Implemented: ORS 496.171, ORS 496.172, ORS 496.176, ORS 496.182, ORS 496.430, ORS 496.435, ORS 496.445, ORS 496.450, ORS 496.455

Hist.: DFW 131-2002, f. & cert. ef. 11-22-02

635-007-0506

Education and Training

(1) The Department shall develop a training curriculum for staff, Commissioners, management partners, and the public that focuses on the Native Fish Conservation Policy and its implementation.

(2) Training shall be provided as deemed appropriate by the Director.

Stat. Auth.: ORS 496.012 & ORS 496.138

Stats. Implemented: ORS 496.171, ORS 496.172, ORS 496.176, ORS 496.182, ORS 496.430, ORS 496.435, ORS 496.445, ORS 496.450, ORS 496.455

Hist.: DFW 131-2002, f. & cert. ef. 11-22-02

Adm. Order No.: DFW 132-2002(Temp)

Filed with Sec. of State: 11-25-2002

Certified to be Effective: 11-25-02 thru 1-31-03

Notice Publication Date:

Rules Amended: 635-005-0045

Subject: Amend rule to delay the season opening date of the Oregon 2002-2003 crab season until December 10, 2002 for that portion of the Oregon ocean commercial Dungeness crab fishery north of 42 degrees 57' (just north of Cape Blanco) to the OR/WA border. This filing reflects technical changes to the temporary rule filed November 15, 2002, to further clarify intent.

Rules Coordinator: Mike Lueck—(503) 872-5272, ext 5447

635-005-0045

Closed Season in Pacific Ocean and Columbia River

(1) In addition to any closures described in Section 3, it is unlawful to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through November 30.

(2) It is unlawful prior to January 1, pursuant to a fishery described in (3)(a), or January 10, pursuant to a fishery described in (3)(b), to land or to receive, or to buy, Dungeness crab from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab on November 30, as specified in section (3)(a), or December 9, as specified in section (3)(b) of this rule.

(3) Delay of Season Openings:

(a) From 42 degrees 57' N. Lat. (just north of Cape Blanco near the mouth of Floras Creek) south to the Oregon/California border is open at 12:01 a.m. December 1, 2002.

(b) From 42 degrees 57' N. Lat. (just north of Cape Blanco near the mouth of Floras Creek) to the Oregon/Washington border is closed December 1, 2002 through December 9, 2002. The closed area will open at 12:01 a.m. on December 10, 2002.

(4)(a) The Director shall adopt rules identifying the boundary. The boundary shall take into account the existence of traditional fishing patterns;

(b) Vessels electing to fish south of 42 degrees 57' N. Lat., but north of Sonoma County, California, with a December 1, 2002 opening date, as noted in (3)(a), may not fish in an area with the delayed opening date north of 42 degrees 57' N. Lat. within the first 30 days of the delayed opening date;

(c) For the first 30 days of a fishing zone season, vessels electing to fish an area shall be certified by officials of the State of Oregon, Washington or California to have been free of Dungeness crab on the day immediately prior to the opening day of the selected fishing area. At the time of vessel inspection, the vessel operator shall certify the vessel has not been used to take crab in the selected fishing area.

(5) Upon a determination by the Department that catch in Oregon's Pacific Ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Fish and Wildlife Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87;

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Department of Forestry Chapter 629

FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03

Adm. Order No.: DFW 133-2002(Temp)
Filed with Sec. of State: 12-6-2002
Certified to be Effective: 12-6-02 thru 1-31-03
Notice Publication Date:
Rules Amended: 635-005-0045
Rules Suspended: 635-005-0045(T)

Subject: Amends the temporary rule effective November 25, 2002, to delete the "30 day delay" provision (former subsection (4)(b)) that, for 30 days, prevented commercial crab fishing vessels subject to a December 1 commercial harvest opening date south of Floras Cr. (42 57' N. Lat.), from moving north of Floras Cr. when the northern area opens to commercial harvest on December 10.

Rules Coordinator: Mike Lueck—(503) 872-5272, ext. 5447

635-005-0045

Closed Season in Pacific Ocean and Columbia River

(1) In addition to any closures described in Section 3, it is *unlawful* to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through November 30.

(2) It is *unlawful* prior to January 1, pursuant to a fishery described in (3)(a), or January 10, pursuant to a fishery described in (3)(b), to land or to receive, or to buy, Dungeness crab from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab on November 30, as specified in section (3)(a), or December 9, as specified in section (3)(b) of this rule.

(3) Delay of Season Openings:

(a) From 42 degrees 57' N. Lat. (just north of Cape Blanco near the mouth of Floras Creek) south to the Oregon/California border is open at 12:01 a.m. December 1, 2002.

(b) From 42 degrees 57' N. Lat. (just north of Cape Blanco near the mouth of Floras Creek) to the Oregon/Washington border is closed December 1, 2002 through December 9, 2002. The closed area will open at 12:01 a.m. on December 10, 2002.

(4)(a) The Director shall adopt rules identifying the boundary. The boundary shall take into account the existence of traditional fishing patterns;

(b) For the first 30 days of a fishing zone season, vessels electing to fish an area shall be certified by officials of the State of Oregon, Washington or California to have been free of Dungeness crab on the day immediately prior to the opening day of the selected fishing area. At the time of vessel inspection, the vessel operator shall certify the vessel has not been used to take crab in the selected fishing area.

(5) Upon a determination by the Department that catch in Oregon's Pacific Ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Fish and Wildlife Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03

Adm. Order No.: DOF 12-2002
Filed with Sec. of State: 12-9-2002
Certified to be Effective: 1-1-03
Notice Publication Date: 12-1-02
Rules Adopted: 629-625-0700, 629-630-0150
Rules Amended: 629-606-0200, 629-606-0600, 629-625-0100, 629-625-0200, 629-625-0310, 629-625-0330, 629-625-0600, 629-630-0100, 629-630-0500

Subject: Adopt: OAR 629-625-0700: Requires operators to use durable surfacing around streams on wet season used roads and to cease active road use if hauling results in high turbidity in Type F or Type D streams; OAR 630-0150 Describes practices for ground-based yarding on steep slopes.

Amend: OAR 629-606-0200 Clarifies terminology consistent with landslide and public safety rules; OAR 629-606-0600 Clarifies terminology consistent with landslide and public safety rules; OAR 625-625-0100 Clarifies terminology consistent with landslide and public safety rules; OAR 629-625-0200 Clarifies terminology consistent with landslide and public safety rules; OAR 629-625-0310 Clarifies terminology consistent with landslide and public safety rules; OAR 629-625-0330 Clarifies terminology consistent with landslide and public safety rules; OAR 629-625-0600 Requires operators to upgrade drainage on active roads in operations areas if needed to protect water quality; OAR 629-630-0100 Removes 35 percent as steep slope threshold; OAR 629-630-0500 Adds purpose statement, clarifies identification of high landslide hazard locations, and places current practices into one rule.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-606-0200

Developing a Stewardship Plan

(1) A landowner may develop a stewardship plan in cooperation with the State Forester. The plan shall include maps, aerial photographs, or other visual aids as requested by the State Forester.

(2) The stewardship plan should generally describe:

(a) The landowner's management objectives relevant to the purposes of the Forest Practices Act;

(b) The legal descriptions for the ownership covered by the plan;

(c) The topography and unique soil characteristics or other geological features that should be considered when planning road construction or timber harvest;

(d) Road systems;

(e) Forest vegetation types; and

(f) Scenic highways, as listed in ORS 527.755(1)(a) and (b), that cross or abut the property.

(3) The stewardship plan shall include known inventories of:

(a) Streams, lakes and other waters of the state;

(b) High landslide hazard locations;

(c) Road-related problems that could adversely affect water quality or soil productivity; and

(d) Specific sites or resource sites that are inventoried and protected under ORS 527.710(3)(a) and OAR 629-665-0000 to 0300, or that are listed under OAR 629-605-0170(1). Examples of these sites include sensitive bird nesting, roosting and watering sites, resource sites used by threatened and endangered fish and wildlife species, or significant wetlands. The specific locations of resource sites used by threatened or endangered species do not need to be disclosed in the stewardship plan, but may instead be referenced in confidential documents held by the State Forester.

(4) The stewardship plan shall describe the prescriptions or alternate practices needed to protect the resources inventoried in section (3) of this rule for operating practices not explicitly described in existing statute and rules, including appropriate site-specific consultation with the State Forester.

(5) When inventories of the resources listed in section (3) of this rule are incomplete, the plan shall describe how those sites will be identified and protected prior to conduct of operations affecting the sites.

(6) The stewardship plan shall describe the administrative and technical resources available to the landowner.

(7) If high landslide hazard locations are present in the area covered by the stewardship plan, the landowner shall include a summary of the

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engineering and geotechnical expertise that will be applied to making decisions regarding harvesting, road design, construction, and maintenance on or near those sites.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), ORS 527.765 & ORS 527.714

Hist.: DOF 3-1999, f. & cert. ef. 7-13-99; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

629-606-0600

Stewardship Agreement

(1) When the State Forester approves a stewardship plan, the State Forester and the landowner shall jointly draft a proposed stewardship agreement.

(2) The proposed stewardship agreement shall include the name of the landowner, the person primarily responsible for administering the stewardship plan, the planned frequency of audits, and the duration of the agreement.

(3) The stewardship agreement shall include the landowner's commitment to:

(a) Follow the stewardship plan and comply with forest practice rules and statutes in effect during the life of the plan;

(b) Stay current with changes to forest practice rules and statutes;

(c) Maintain adequate staffing to oversee operations and ensure compliance with the stewardship plan;

(d) Seek appropriate technical assistance from internal or external sources when dealing with special resource protection issues;

(e) Update the resource inventories described in OAR 629-606-0200(3) as new information becomes known;

(f) Report to the State Forester any activity that results in resource damage, along with a written description of the time of discovery, the cause of the damage, and the repairs made or in progress;

(g) Allow audits and assist with the process, as appropriate; and

(h) Allow the State Forester to inspect any active or inactive operation.

(4) The stewardship agreement shall include the State Forester's commitment to:

(a) Notify the landowner of changed forest practice rules and statutes;

(b) Train the landowner in forest practice rules, statutes and technical guidance;

(c) Provide updated information on the resource inventories in OAR 629-606-0200(3);

(d) Provide consultation related to alternate practices, high landslide hazard locations and complex operations, as available; and

(e) Seek appropriate technical assistance from other agencies when dealing with special resource protection issues.

(5) The stewardship agreement shall address the modification, application, or waiver of:

(a) Written plans under ORS 527.670(3) and OAR 629-605-0170;

(b) Fifteen-day waiting periods under OAR 629-605-0150(1) following notification, except as provided by ORS 527.670(9) for aerial chemical applications;

(c) Prior approval for individual practices;

(d) Pre-operation, operation or post-operation inspections normally performed by the State Forester;

(e) Notification consistent with OAR 629-605-0140 and 629-605-0150; and

(f) Other administrative rules and statutes related to notification, such as for fire protection, taxation, safety, water withdrawals, or public subscriptions.

(6) Landowners may have active operations on lands that are part of a proposed stewardship agreement. If so, the stewardship agreement shall address forest practice rule and statute administration on those operations when the stewardship agreement is finalized.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), ORS 527.765 and ORS 527.714

Hist.: DOF 3-1999, f. & cert. ef. 7-13-99; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

629-625-0100

Prior Approval

(1) A properly located, designed, and constructed road greatly reduces potential impacts to water quality, forest productivity, fish, and wildlife habitat. To prevent improperly located, designed, or constructed roads, prior approval of the State Forester is required in the sections listed below.

(2) In addition to the requirements of the water protection rules, operators shall obtain prior approval from the State Forester before:

(a) Constructing a road where there is an apparent risk of road-generated materials entering waters of the state from direct placement, rolling, falling, blasting, landslide or debris flow;

(b) Conducting machine activity in Type F or Type D streams, lakes or significant wetlands; or

(c) Constructing roads in riparian management areas.

(3) Operators shall obtain prior approval from the State Forester before constructing roads on high landslide hazard locations. Operators and the State Forester shall share responsibility to identify high landslide hazard locations and to determine if there is public safety exposure from shallow, rapidly moving landslides using methods described in OAR 629-623-0000 through 0300. If there is public safety exposure, then the practices described in OAR 629-623-0400 through 0800 shall also apply.

(4) Operators shall obtain written prior approval from the State Forester of a written plan, as described in OAR 629-625-0320(1)(b)(B), before constructing any stream crossing fill over 15 feet deep.

(5) In addition to the requirements of the water protection rules, operators shall obtain prior approval from the State Forester before placing woody debris or boulders in stream channels for stream enhancement.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), ORS 527.765 and ORS 527.714

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

629-625-0200

Road Location

(1) The purpose of this rule is to ensure roads are located where potential impacts to waters of the state are minimized.

(2) When locating roads, operators shall designate road locations which minimize the risk of materials entering waters of the state and minimize disturbance to channels, lakes, wetlands and floodplains.

(3) Operators shall avoid locating roads on steep slopes, slide areas, high landslide hazard locations, and in wetlands, riparian management areas, channels or floodplains where viable alternatives exist.

(4) Operators shall minimize the number of stream crossings.

(5) To reduce the duplication of road systems and associated ground disturbance, operators shall make use of existing roads where practical. Where roads traverse land in another ownership and will adequately serve the operation, investigate options for using those roads before constructing new roads.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), ORS 527.765 & ORS 527.714

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

629-625-0310

Road Prism

(1) Operators shall use variable grades and alignments to avoid less suitable terrain so that the road prism is the least disturbing to protected resources, avoids steep sidehill areas, wet areas and potentially unstable areas as safe, effective vehicle use requirements allow.

(2) Operators shall end-haul excess material from steep slopes or high landslide hazard locations where needed to prevent landslides.

(3) Operators shall design roads no wider than necessary to accommodate the anticipated use.

(4) Operators shall design cut and fill slopes to minimize the risk of landslides.

(5) Operators shall stabilize road fills as needed to prevent fill failure and subsequent damage to waters of the state using compaction, buttressing, subsurface drainage, rock facing or other effective means.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), ORS 527.765 & ORS 527.714

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

629-625-0330

Drainage

(1) The purpose of this rule is to provide a drainage system on new and reconstructed roads that minimizes alteration of stream channels and the risk of sediment delivery to waters of the state. Drainage structures should be located based on the priority listed below. When there is a conflict between the requirements of sections (2) through (6) of this rule, the lowest numbered section takes precedence, and the later-numbered and conflicting section shall not be implemented.

(2) Operators shall not concentrate road drainage water into headwalls, slide areas, high landslide hazard locations, or steep erodible fill-slopes.

(3) Operators shall not divert water from stream channels into roadside ditches.

(4) Operators shall install dips, water bars, or cross drainage culverts above and away from stream crossings so that road drainage water may be filtered before entering waters of the state.

(5) Operators shall provide drainage when roads cross or expose springs, seeps, or wet areas.

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(6) Operators shall provide a drainage system using grade reversals, surface sloping, ditches, culverts and/or waterbars as necessary to minimize development of gully erosion of the road prism or slopes below the road.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), ORS 527.765 & ORS 527.714

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

629-625-0600

Road Maintenance

(1) The purpose of this rule is to protect water quality by timely maintenance of all active and inactive roads.

(2) Operators shall maintain active and inactive roads in a manner sufficient both to provide a stable surface and to keep the drainage system operating as necessary to protect water quality.

(3) Operators shall inspect and maintain culvert inlets and outlets, drainage structures and ditches before and during the rainy season as necessary to diminish the likelihood of clogging and the possibility of washouts.

(4) Operators shall provide effective road surface drainage, such as water barring, surface crowning, constructing sediment barriers, or out-sloping prior to the rainy and runoff seasons.

(5) When applying road oil or other surface stabilizing materials, operators shall plan and conduct the operation in a manner as to prevent entry of these materials into waters of the state.

(6) In the Northwest and Southwest Oregon Regions, operators shall maintain and repair active and inactive roads as needed to minimize damage to waters of the state. This may include maintenance and repair of all portions of the road prism during and after intense winter storms, as safety, weather, soil moisture and other considerations permit.

(7) Operators shall place material removed from ditches in a stable location.

(8) In order to maintain fish passage through water crossing structures, operators shall:

(a) Maintain conditions at the structures so that passage of adult and juvenile fish is not impaired during periods when fish movement normally occurs. This standard is required only for roads constructed or reconstructed after September 1994, but is encouraged for all other roads; and

(b) As reasonably practicable, keep structures cleared of woody debris and deposits of sediment that would impair fish passage.

(c) Other fish passage requirements under the authority of ORS 498.268 and 509.605 that are administered by other state agencies may be applicable to water crossing structures, including those constructed before September 1, 1994.

(9) Where needed to protect water quality, as directed by the State Forester, operators shall place additional cross drainage structures on existing active roads within their ownership prior to hauling to meet the requirements of OAR 629-625-0330.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), ORS 527.765 & ORS 527.714

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

629-625-0700

Wet Weather Road Use

(1) The purpose of this rule is to reduce delivery of fine sediment to streams caused by the use of forest roads during wet periods that may adversely affect downstream water quality in Type F or Type D streams.

(2) Operators shall use durable surfacing or other effective measures that resist deep rutting or development of a layer of mud on top of the road surface on road segments that drain directly to streams on active roads that will be used for log hauling during wet periods.

(3) Operators shall cease active road use where the surface is deeply rutted or covered by a layer of mud and where runoff from that road segment is causing a visible increase in the turbidity of Type F or Type D streams as measured above and below the effects of the road.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), ORS 527.765 & ORS 527.714

Hist.: DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

629-630-0100

Skidding and Yarding Practices

(1) For each harvesting operation, operators shall select a logging method and type of equipment appropriate to the given slope, landscape, and soil properties in order to minimize soil deterioration and to protect water quality.

(2) Operators shall avoid ground-based yarding on unstable, wet, or easily compacted soils unless operations can be conducted without damaging soil productivity through soil disturbance, compaction or erosion.

(3) Operators shall locate skid trails where sidecasting is kept to a minimum.

(4) Operators shall locate skid trails on stable areas so as to minimize the risk of material entering waters of the state.

(5) Operators shall avoid excavating skid trails on slumps or slides.

(6) Operators shall limit cable logging to uphill yarding whenever practical. When downhill cable yarding is necessary, operators shall use a layout and system which minimizes soil displacement.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), ORS 527.765 & ORS 527.714

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

629-630-0150

Ground-Based Harvesting On Steep Or Erosion-Prone Slopes

(1) The purpose of this rule is to reduce the potential for erosion from steep or erosion-prone slopes to enter waters of the state.

(2) Slopes over 60 percent are subject to the requirements of Sections (4) through (9) of this rule.

(3) Slopes over 40 percent where soils consist of decomposed granite-type materials, or other highly erodible materials as determined by the State Forester, are considered erosion-prone and subject to the requirements of Sections (4) through (9) of this rule.

(4) Methods that avoid development of compacted or excavated trails are the preferred alternative for operating on steep or erosion-prone slopes. If the operation will result in excavated or compacted skid trails, operators shall apply sections (5) through (9) of this rule.

(5) If skid trails are located on steep or erosion-prone slopes, operators shall locate them at least 100 feet from any stream channels.

(6) Operators shall locate skid trails where water can drain off the skid trail and onto undisturbed soils.

(7) Skid trails shall not be located straight up and down steep or erosion prone slopes for a distance exceeding 100 feet unless effective drainage and sediment filtration can be achieved.

(8) Operators shall install effective cross ditches on all skid roads located on steep or erosion-prone slopes.

(9) Operators shall limit the amount of ground with disturbed soils on steep or erosion-prone slopes as described in Sections (2) and (3) of this rule to no more than ten percent of the steep or erosion-prone slopes within the operation area.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710(2) & 527.630(3)

Hist.: DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

629-630-0500

Harvesting On High Landslide Hazard Locations

(1) The purpose of this rule is to prevent timber harvesting-related serious ground disturbance and drainage alterations on all high landslide hazard locations, and to reference additional requirements when there is public safety exposure below the high landslide hazard location.

(2) Operators shall obtain prior approval from the State Forester before conducting harvesting operations on high landslide hazard locations.

(3) Operators and the State Forester shall share responsibility to identify high landslide hazard locations and to determine if there is public safety exposure from shallow, rapidly moving landslides using methods described in OAR 629-623-0100 through 0300. If there is public safety exposure, then the practices described in OAR 629-623-0400 through 0800 shall also apply.

(4) Operators shall not construct skid roads on high landslide hazard locations.

(5) Operators shall not operate ground-based equipment on high landslide hazard locations.

(6) Operators shall prevent deep or extensive ground disturbance on high landslide hazard locations during log felling and yarding operations.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), ORS 527.765 & ORS 527.714

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03

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Rules Adopted: 629-623-0000, 629-623-0100, 629-623-0200, 629-623-0250, 629-623-0300, 629-623-0400, 629-623-0450, 629-623-0500, 629-623-0550, 629-623-0600, 629-623-0700, 629-623-0800

Rules Amended: 629-600-0100

Subject: Adopt: OAR 629-623-0000 Gives rules a title and establishes the purpose of the landslide and public safety rules to reduce

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the risk of serious bodily injury or death caused by shallow, rapidly moving landslides that are directly related to forest practices; OAR 629-623-0100 Describes how operators and the department will screen operations where there may be a significant landslides and public safety risk; OAR 629-623-0200 Exposure categories are established by this rule in order to evaluate risk to persons from rapidly moving landslides; OAR 629-623-0250 Describes evaluation of rapidly moving landslide transport potential (how far dangerous landslides will travel); OAR 629-623-0300 Establishes general forest practices restriction levels for locations prone to shallow, rapidly moving landslides; OAR 629-623-0400 Restricts timber harvesting if there is a high down slope public safety risk; OAR 629-623-0450 Restricts road construction if there is a high down slope public safety risk; OAR 629-623-0500 Describes timber harvesting practices for locations with intermediate down slope public safety risk; OAR 629-623-0550 Describes road construction practices for locations with intermediate down slope public safety risk; OAR 629-623-0600 Describes protection measures for debris torrent-prone stream channels; 629-623-0700 Requires operators to submit a written plan for all operations with intermediate or high public safety risk; OAR 629-623-0800 Allows hazard mitigation and risk reduction projects to reduce exposure category.

Amend: OAR 629-600-0100 Removes definitions of high risk site and high risk area; adds definitions of debris torrent-prone stream channels; exposure categories; further review area; high landslide hazard location; landslide mitigation; shallow, rapidly moving landslide; and Tyee Core Area.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-600-0100

Definitions

As used in OAR chapter 629, divisions 605 through 669 and divisions 680 through 699, unless otherwise required by context:

(1) "Abandoned resource site" means a resource site that the State Forester determines is not active.

(2) "Active resource site" means a resource site that the State Forester determines has been used in the recent past by a listed species. "Recent past" shall be identified for each species in administrative rule. Resource sites that are lost or rendered not viable by natural causes are not considered active.

(3) "Active roads" are roads currently being used or maintained for the purpose of removing commercial forest products.

(4) "Alternate plan" means a written plan proposing practices or protection standards different than those specified in rule.

(5) "Aquatic area" means the wetted area of streams, lakes and wetlands up to the high water level. Oxbows and side channels are included if they are part of the flow channel or contain fresh water ponds.

(6) "Artificial reforestation" means restocking a site by planting trees or through the manual or mechanical distribution of seeds.

(7) "Basal area" means the area of the cross-section of a tree stem derived from DBH.

(8) "Basal area credit" means the credit given towards meeting the live tree requirements within riparian management areas for placing material such as logs, rocks or rootwads in a stream, or conducting other enhancement activities such as side channel creation or grazing exclosures.

(9) "Bog" means a wetland that is characterized by the formation of peat soils and that supports specialized plant communities. A bog is a hydrologically closed system without flowing water. It is usually saturated, relatively acidic, and dominated by ground mosses, especially sphagnum. A bog may be forested or non-forested and is distinguished from a swamp and a marsh by the dominance of mosses and the presence of extensive peat deposits.

(10) "Channel" is a distinct bed or banks scoured by water which serves to confine water and that periodically or continually contains flowing water.

(11) "Chemicals" means and includes all classes of pesticides, such as herbicides, insecticides, rodenticides, fungicides, plant defoliants, plant desiccants, and plant regulators, as defined in ORS 634.006(8); fertilizers, as defined in ORS 633.310; petroleum products used as carriers; and chemical application adjuvants, such as surfactants, drift control additives, anti-foam agents, wetting agents, and spreading agents.

(12) "Commercial" means of or pertaining to the exchange or buying and selling of commodities or services. This includes any activity under-

taken with the intent of generating income or profit; any activity in which a landowner, operator or timber owner receives payment from a purchaser of forest products; any activity in which an operator or timber owner receives payment or barter from a landowner for services that require notification under OAR 629-605-0140; or any activity in which the landowner, operator, or timber owner barter or exchanges forest products for goods or services. This does not include firewood cutting or timber milling for personal use.

(13) "Completion of the operation" means harvest activities have been completed to the extent that the operation area will not be further disturbed by those activities.

(14) "Conflict" means resource site abandonment or reduced resource site productivity that the State Forester determines is a result of forest practices.

(15) "Debris torrent-prone streams" are designated by the State Forester to include channels and confining slopes that drain watersheds containing high landslide hazard locations that are of sufficient confinement and channel gradient to allow shallow, rapid landslide movement.

(16) "Department" means the Oregon Department of Forestry.

(17) "Diameter breast height" (DBH) means the diameter of a tree inclusive of the bark measured four and one-half feet above the ground on the uphill side of the tree.

(18) "Domestic water use" means the use of water for human consumption and other household human use.

(19) "Dying or recently dead tree" means a tree with less than ten percent live crown or a standing tree which is dead, but has a sound root system and has not lost its small limbs. Needles or leaves may still be attached to the tree.

(20) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which saltwater is usually diluted by freshwater derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes, and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

(21) "Exposure categories" are used to designate the likelihood of persons being present in structures or on public roads during periods when shallow, rapidly moving landslides may occur.

(22) "Filling" means the deposit by artificial means of any materials, organic or inorganic.

(23) "Fish use" means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(24) "Fledging tree" means a tree or trees close to the nest which the State Forester determines are regularly used by young birds to develop flying skills.

(25) "Foraging area" means an area (usually a body of water) where bald eagles concentrate their hunting activities.

(26) "Foraging perch" means a tree or other structure that overlooks a portion of a foraging area and is habitually used by bald eagles as a vantage point while hunting.

(27) "Forestland" means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(28) "Free to grow" means the State Forester's determination that a tree or a stand of well distributed trees, of acceptable species and good form, has a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation. For the purpose of this definition, trees are considered well distributed if 80 percent or more of the portion of the operation area subject to the reforestation requirements of the rules contains at least the minimum per acre tree stocking required by the rules for the site and not more than ten percent contains less than one-half of the minimum per acre tree stocking required by the rules for the site.

(29) "Further review area" means an area of land that may be subject to rapidly moving landslides as mapped by the State Department of Geology and Mineral Industries or as otherwise determined by the State Forester.

(30) "Geographic region" means large areas where similar combinations of climate, geomorphology, and potential natural vegetation occur, established for the purposes of implementing the water protection rules.

(31) "High landslide hazard location" means a specific site that is subject to initiation of a shallow, rapidly moving landslide.

(32) "High water level" means the stage reached during the average annual high flow. The "high water level" often corresponds with the edge

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of streamside terraces, a change in vegetation, or a change in soil or litter characteristics.

(33) "Hydrologic function" means soil, stream, wetland and riparian area properties related to the storage, timing, distribution, and circulation of water.

(34) "Important springs" are springs in arid parts of eastern Oregon that have established wetland vegetation, flow year round in most years, are used by a concentration of diverse animal species, and by reason of sparse occurrence have a major influence on the distribution and abundance of upland species.

(35) "Inactive roads" are roads used for forest management purposes exclusive of removing commercial forest products.

(36) "Key components" means the attributes which are essential to maintain the use and productivity of a resource site over time. The key components vary by species and resource site. Examples include fledgling trees or perching trees.

(37) "Lake" means a body of year-round standing open water.

(a) For the purposes of the forest practice rules, lakes include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein; and

(B) Beds, banks or wetlands below the high water level which may contain water, whether or not water is actually present.

(b) "Lakes" do not include water developments as defined in section (81) of this rule.

(38) "Landslide mitigation" means actions taken to reduce potential landslide velocity or re-direct shallow, rapidly moving landslides near structures and roads so risk to persons is reduced.

(39) "Large lake" means a lake greater than eight acres in size.

(40) "Live tree" means a tree that has 10 percent or greater live crown.

(41) "Local population" means the number of birds that live within a geographical area that is identified by the State Forester. For example: the area may be defined by physical boundaries, such as a drainage or subbasin.

(42) "Main channel" means a channel that has flowing water when average flows occur.

(43) "Natural barrier to fish use" is a natural feature such as a waterfall, increase in stream gradient, channel constriction, or other natural channel blockage that prevents upstream fish passage.

(44) "Natural reforestation" means restocking a site with self-grown trees resulting from self-seeding or vegetative means.

(45) "Nest tree" means the tree, snag, or other structure that contains a bird nest.

(46) "Nesting territory" means an area identified by the State Forester that contains, or historically contained, one or more nests of a mated pair of birds.

(47) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

(48) "Other wetland" means a wetland that is not a significant wetland or stream-associated wetland.

(49) "Perch tree" means a tree identified by the State Forester which is used by a bird for resting, marking its territory, or as an approach to its nest.

(50) "Prior approval" means written approval of the State Forester given for specific forest practices before the operation begins, with the exception that verbal permission may be granted followed by immediate written confirmation where timing is critical.

(51) "Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity.

(52) "Removal" means the taking or movement of any amount of rock, gravel, sand, silt, or other inorganic substances.

(53) "Replacement tree" means a tree or snag within the nesting territory of a bird that is identified by the State Forester as being suitable to replace the nest tree or perch tree when these trees become unusable.

(54) "Resource site" is defined for the purposes of protection and for the purposes of requesting a hearing.

(a) For the purposes of protection:

(A) For threatened and endangered bird species, "resource site" is the nest tree, roost trees, or foraging perch and all identified key components.

(B) For sensitive bird nesting, roosting and watering sites, "resource site" is the nest tree, roost tree or mineral watering place, and all identified key components.

(C) For significant wetlands "resource site" is the wetland and the riparian management area as identified by the State Forester.

(b) For the purposes of requesting a hearing under ORS 527.670(4) and 527.700(3), "resource site" is defined in OAR 629-680-0020.

(55) "Riparian area" means the ground along a water of the state where the vegetation and microclimate are influenced by year-round or seasonal water, associated high water tables, and soils which exhibit some wetness characteristics.

(56) "Riparian management area" means an area along each side of specified waters of the state within which vegetation retention and special management practices are required for the protection of water quality, hydrologic functions, and fish and wildlife habitat.

(57) "Roosting site" means a site where birds communally rest at night and which is unique for that purpose.

(58) "Roost tree" is a tree within a roosting site that is used for night time roosting.

(59) "Saplings and poles" means live trees of acceptable species, of good form and vigor, with a DBH of one to 10 inches.

(60) "Seedlings" means live trees of acceptable species of good form and vigor less than one inch in DBH.

(61) "Shallow, rapidly moving landslide" 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 at a velocity difficult for people to outrun or escape.

(62) "Side channel" means a channel other than a main channel of a stream that only has flowing water when high water level occurs.

(63) "Significant wetlands" means those wetland types listed in OAR 629-680-0310, that require site specific protection.

(64) "Snag" means a tree which is dead but still standing, and that has lost its leaves or needles and its small limbs.

(65) "Sound snag" means a snag that retains some intact bark or limb stubs.

(66) "Staging tree" is a tree within the vicinity of a roosting site that is used for perching by bald eagles before entering the roost.

(67) "Stream" means a channel, such as a river or creek, that carries flowing surface water during some portion of the year.

(a) For the purposes of the forest practice rules, streams include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein;

(B) Beds and banks below the high water level which may contain water, whether or not water is actually present;

(C) The area between the high water level of connected side channels;

(D) Beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year; and

(E) Stream-associated wetlands.

(b) "Streams" do not include:

(A) Ephemeral overland flow (such flow does not have a channel); or

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(B) Road drainage systems or water developments as defined in section (81) of this rule.

(68) "Stream-associated wetland" means a wetland that is not classified as significant and that is next to a stream.

(69) "Structural exception" means the State Forester determines that no actions are required to protect the resource site. The entire resource site may be eliminated.

(70) "Structural protection" means the State Forester determines that actions are required to protect the resource site. Examples include retaining the nest tree or perch tree.

(71) "Temporal exception" means the State Forester determines that no actions are required to prevent disturbance to birds during the critical period of use.

(72) "Temporal protection" means the State Forester determines that actions are required to prevent disturbance to birds during the critical period of use.

(73) "Tree leaning over the channel" means a tree within a riparian management area if a portion of its bole crosses the vertical projection of the high water level of a stream.

(74) "Tye Core Area" means a location with geologic conditions including thick sandstone beds with few fractures. These sandstones weather rapidly and concentrate water in shallow soils creating a higher shallow, rapidly moving landslide hazard. The Tye Core area is located within coastal watersheds from the Siuslaw watershed south to and including the Coquille watershed, and that portion of the Umpqua watershed north of Highway 42 and west of Interstate 5. Within these boundaries, locations where bedrock is highly fractured or not of sedimentary origin as determined in the field by a geotechnical specialist are not subject to the Tye Core area slope steepness thresholds.

(75) "Type D stream" means a stream that has domestic water use, but no fish use.

(76) "Type F stream" means a stream with fish use, or both fish use and domestic water use.

(77) "Type N stream" means a stream with neither fish use nor domestic water use.

(78) "Unit" means an operation area submitted on a notification of operation that is identified on a map and that has a single continuous boundary. Unit is used to determine compliance with ORS 527.676 (down log, snag and green live tree retention), ORS 527.740 and 527.550 (harvest type 3 size limitation), and other forest practice rules.

(79) "Vacated roads" are roads that have been made impassable and are no longer to be used for forest management purposes or commercial forest harvesting activities.

(80) "Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation and duff so that it does not gain the volume and velocity which causes soil movement or erosion.

(81) "Water development" means water bodies developed for human purposes that are not part of a stream such as waste treatment lagoons, reservoirs for industrial use, drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds, pump chances, or heli-ponds that are maintained for the intended use by human activity.

(82) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(83) "Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas. Wetlands do not include water developments as defined in section (81) of this rule.

(84) "Written plan" means a plan submitted by an operator, for written approval by the State Forester, which describes how the operation will be conducted, including the means to protect resource sites described in ORS 527.710(3)(a) (relating to the collection and analysis of resource site inventories), if applicable.

Stat. Auth.: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & ORS 527.714

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 39, f. 7-3-74, ef. 7-25-74; FB 1-1978, f. & ef. 1-6-78; FB 5-1978, f. & ef. 6-7-78; FB 3-1983, f. & ef. 9-13-83; FB 1-1985, f. & ef. 3-12-85; FB 2-1985(Temp), f. & ef. 4-24-85; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 4-1988, f. 7-27-88, cert.

ef. 9-1-88; FB 4-1990, f. & cert. ef. 7-25-90; FB 1-1991, f. & cert. ef. 5-23-91; FB 7-1991, f. & cert. ef. 10-30-91; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; Renumbered from 629-024-0101; DOF 6-2002, f. & cert. ef. 7-1-02; DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0000

Purpose

(1) Shallow, rapidly moving landslides may be a public safety risk affected by forest operations. There is a high natural landslide hazard in certain locations. In the short term, forest practices regulations can reduce the risk to people who are present in locations prone to shallow, rapidly moving landslides. In the long term, effective protection of the public can only be achieved through the shared responsibilities of homeowners, road users, forestland owners, and state and local governments to reduce the number of persons living in or driving through locations prone to shallow, rapidly moving landslides during heavy rainfall periods.

(2) OAR 629-623-0000 through 629-623-0800 shall be known as the shallow, rapidly moving landslide and public safety rules.

(3) The purpose of the shallow, rapidly moving landslides and public safety rules is to reduce the risk of serious bodily injury or death caused by shallow, rapidly moving landslides directly related to forest practices. These rules consider the exposure of the public to these safety risks and include appropriate practices designed to reduce the occurrence, timing, or effects of shallow, rapidly moving landslides.

(4) These rules are based on the best scientific and monitoring information currently available. The department will continue to monitor factors associated with shallow, rapidly moving landslides and also review new research on this issue. The department will recommend rule changes if this new information suggests different forest practices may be appropriate.

Stat. Auth: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & ORS 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0100

Screening for High Landslide Hazard Locations and Exposed Population

(1) The State Forester will use further review area maps and/or other information to screen proposed operations for high landslide hazard locations that may affect exposed populations. Operators are encouraged to acquire available maps and other information and to conduct their own public safety screening.

(2) Upon notification by the State Forester, operators shall identify portions of the operation that contain high landslide hazard locations and shall also identify structures and paved public roads within further review areas below the operation area.

(3) The following criteria shall be used to identify high landslide hazard locations:

(a) The presence, as measured on site, of any slope in western Oregon (excluding competent rock outcrops) steeper than 80 percent, except in the Tye Core Area, where it is any slope steeper than 75 percent; or

(b) The presence, as measured on site, of any headwall or draw in western Oregon steeper than 70 percent, except in the Tye Core Area, where it is any headwall or draw steeper than 65 percent.

(c) Notwithstanding the slopes specified in (a) or (b) above, field identification of atypical conditions by a geotechnical specialist may be used to develop site specific slope steepness thresholds for any part of the state where the hazard is equivalent to (a) or (b) above. The final determination of equivalent hazard shall be made by the State Forester.

Stat. Auth: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & ORS 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0200

Exposure Categories

(1) The State Forester will verify the information provided by operators in OAR 629-623-0100 and use this information to determine the exposure category for the operation.

(2) Exposure Category A includes habitable residences, schools, and other buildings where people are normally present during periods when wet season rain storms are common.

(3) Exposure Category B includes paved public roads averaging over 500 vehicles per day, as determined, if possible during periods when wet season rain storms are common.

(4) Exposure Category C includes barns, outbuildings, recreational dwellings not included in Exposure Category A, low-use public roads, and other constructed facilities where people are not usually present when wet season rain storms are common.

Stat. Auth: ORS 527.710(11)

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Stats. Implemented: ORS 527.630(5) & ORS 527.714
Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0250

Shallow, Rapidly Moving Landslide Impact Rating

(1) The State Forester will publish technical guidance for evaluating and rating shallow, rapidly moving landslide impact potential for any exposed population. Impact rating factors may include, but are not limited to: the location of the structure or road in relationship to the debris torrent-prone stream or steep slope; channel confinement; channel gradient; channel junction angles; and debris in the channel.

(2) Shallow, rapidly moving landslide impact potential is rated as unlikely, moderate, serious and in limited cases, extreme.

(3) The State Forester may require the landowner to submit a geotechnical determination of shallow, rapidly moving landslide impact rating for the proposed operation.

(4) The impact rating may include the potential for the failure of a structure in the direct path of a rapidly moving landslide resulting in a substantial risk of serious bodily injury or death to the exposed population below that structure.

(5) The State Forester will make the final impact rating.

Stat. Auth: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & ORS 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0300

Public Safety Risk Levels

(1) The exposure categories described in OAR 629-623-0200 and the impact rating described in OAR 629-623-0250 are used to determine the downslope public safety risk level and the applicable forest practice rules that apply to the operation, as described in Sections (2) through (10) of this rule.

Substantial downslope public safety risk:

(2) For Exposure Category A, substantial downslope public safety risk exists if the impact rating is extreme or serious.

(3) For Exposure Category B, substantial downslope public safety risk exists if the impact rating is extreme and the State Forester informs the operator that these site specific conditions warrant substantial public safety risk practices.

(4) Substantial Downslope Public Safety Risk operations are regulated by OARs 629-623-0400, 629-623-0450, 629-623-0600, and 629-623-0700.

Intermediate downslope public safety risk:

(5) For Exposure Category A, intermediate downslope public safety risk exists if the impact rating is moderate.

(6) For Exposure Category B, intermediate downslope public safety risk exists if the impact rating is serious.

(7) For Exposure Category C, intermediate downslope public safety risk exists if the impact rating is extreme and the State Forester informs the operator that these site specific conditions warrant intermediate public safety risk practices.

(8) Intermediate Downslope Public Safety Risk operations are regulated by OARs 629-623-0500, 629-623-0550, 629-623-0600, 629-623-0700, and 629-630-0500.

Low downslope public safety risk:

(9) All other operations not described in section (2), (3), (5), (6) and (7) of the rule are determined to have low downslope public safety risk.

(10) Low Downslope Public Safety Risk operations are regulated by OAR 629-630-0500 and by OAR 629-625-0000 through 0700 and all other applicable rules.

Applicability of regulations and use of leave trees:

(11) As required by subsection 4 (3) of chapter 1103, Oregon Laws 1999, forest practice rules shall not apply to risk situations arising solely from the construction of a building permitted under subsection (1)(c) of chapter 1103, Oregon Laws 1999.

(12) Leave trees required to comply with timber harvesting rules for shallow, rapidly moving landslides and public safety may also be used to comply with ORS 527.676 except those required to be retained in riparian management areas by OAR 629-640-0000 through 629-640-0500.

Stat. Auth: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & ORS 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0400

Restriction of Timber Harvesting — Substantial Down Slope Public Safety Risk

(1) Operators shall not remove trees from high landslide hazard locations with substantial downslope public safety risk unless a geotechnical

report demonstrates to the State Forester that any landslides that might occur will not be directly related to forest practices because of very deep soil or other site-specific conditions. Removal of dead or diseased trees or trees from sites that have already failed is allowed if the operator demonstrates to the State Forester that the operation results in no increased overall downslope public safety risk.

(2) Operators shall leave a sufficient number and arrangement of trees adjacent to high landslide hazard locations to reduce the likelihood of trees retained in these locations blowing down.

Stat. Auth: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & ORS 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0450

Restriction of Road Construction — Substantial Down Slope Public Safety Risk

(1) Operators shall not construct new roads on high landslide hazard locations or other very steep slopes with substantial downslope public safety risk.

(2) Operators may reconstruct existing roads in high landslide hazard locations if the operator can demonstrate in the written plan required by OAR 629-623-0700 that road reconstruction will reduce landslide hazard.

Stat. Auth: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & ORS 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0500

Timber Harvesting — Intermediate Down Slope Public Safety Risk

(1) The purpose of this rule is to manage canopy closure on high landslide hazard locations with intermediate downslope public safety risk.

(2) For harvesting operations that remove all or most of the largest trees, operators shall ensure that no more than half the area of high landslide hazard locations on a single ownership within the drainage or hillslope directly above the affected structure or road are in a 0 to 9 year-old age class or with reduced canopy closure in other age classes;

(3) For thinning or partial cutting operations, operators shall retain a vigorous stand that allows rapid canopy closure.

(4) Landowners shall use reforestation and stand management practices that result in rapid canopy closure.

(5) For timber harvesting operations, landowners shall describe in the written plan required by OAR 629-623-0700 how they will manage the high landslide hazard locations on their ownership within the affected drainage or hillslope with intermediate downslope public safety risk.

Stat. Auth: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & ORS 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0550

Road Construction — Intermediate Down Slope Public Safety Risk

(1) When constructing roads on high landslide hazard locations or other very steep slopes with intermediate downslope public safety risk, operators shall follow site-specific practices as directed by a geotechnical specialist.

(2) In addition to the road construction and maintenance rules in OAR 629-625-0100 through 629-625-0440, written plans shall include an evaluation of cutslope stability. Only written plans that demonstrate that major cutslope failure is very unlikely and that include additional measures to be taken to prevent water from draining onto high landslide hazard locations shall be approved.

Stat. Auth: ORS 527.710(11)

Stats. Implemented: ORS 527.630(5) & ORS 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0600

Protection Along Debris Torrent-Prone Streams

(1) The purpose of this rule is to reduce or eliminate woody debris loading, and to retain large standing trees in locations where they might slow debris torrent movement along debris torrent-prone streams with substantial or intermediate downslope public safety risk.

(2) During timber harvesting operations, operators shall fell and yard trees in a manner to minimize slash and other debris accumulations in debris torrent-prone stream channels where there is substantial or intermediate downslope public safety risk.

(3) Operators shall remove logging slash piles and continuous logging slash deposits from debris torrent-prone stream channels where there is substantial or intermediate downslope public safety risk.

(4) Operators shall leave, and during felling and yarding activity, protect large standing trees along the likely depositional reaches of debris torrent-prone streams, as determined by the State Forester, in locations where

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there is substantial or intermediate downslope public safety risk. Leave trees shall:

- (a) be larger than 20 inches in diameter breast height;
- (b) be within 50 feet of the edge of the active channel along both sides of the stream;
- (c) be left for a distance of 300 feet or the depositional length of the channel, whichever is less, as measured from the beginning of the forested portion of the stream reach above the road or structure;
- (d) not include trees that pose a greater public safety risk because of windthrow or other risks as determined by the State Forester.

Stat. Auth.: ORS 527.710(11)
Stats. Implemented: ORS 527.630(5) & ORS 527.714
Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0700

Written Plans

(1) To allow evaluation of public safety risk and the appropriate methods for reducing this risk, operators shall submit a written plan for approval (OAR 629-605-0170 and 629-625-0100) for all timber harvesting or road construction operations with intermediate or substantial downslope public safety risk as described in OAR 629-623-0300. Written plans shall include:

- (a) A determination of public safety risk (OAR 629-623-0300);
- (b) A map showing those portion(s) of the operation containing high landslide hazard locations;
- (c) The location of all existing and proposed new roads crossing high landslide hazard locations;
- (d) A detailed road design for all new or reconstructed roads crossing high landslide hazard locations;
- (e) The location of habitable structures (Exposure Category A) and paved public roads (Exposure Category B) below the operation and within further review areas;
- (f) Locations where timber harvesting will not occur;
- (g) Locations where partial cutting will occur and the specific silvicultural prescription; and
- (h) Additional information related to the operation as requested by the State Forester.

(2) Operators shall submit a written plan for proposed stream crossing fills constructed across debris torrent-prone streams with substantial or intermediate downslope public safety risk.

(3) Operators shall submit a written plan for proposed waste fill areas within a drainage containing debris torrent-prone streams where there is substantial or intermediate downslope public safety risk.

Stat. Auth.: ORS 527.710(11)
Stats. Implemented: ORS 527.630(5) & ORS 527.714
Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

629-623-0800

Hazard Mitigation and Risk Reduction Projects

(1) Completed landslide mitigation projects can be used to lower the shallow, rapidly moving landslide impact rating as described in OAR 629-623-0250.

(a) The landowners who own structures and are directly affected by the impact rating must agree to landslide mitigation.

(b) Structural measures designed and inspected by a geotechnical specialist are the preferred mitigation strategy.

(2) Landowners may remove trees on high landslide hazard locations above habitable structures or paved public roads where the public safety risk from trees blowing over is equal to or higher than the public safety risk from landslides. Supporting evidence for removing these trees must be included in the written plan required by OAR 629-623-0700.

(3) A homeowner may submit evidence in the form of a risk management plan to the State Forester to lower the exposure category (OAR 629-623-0200) from Exposure Category A to Exposure Category B. Risk management plans shall include:

(a) An evacuation plan that substantially reduces the risk to residents and visitors during periods when shallow, rapidly moving landslides may occur;

(b) A copy of the property title showing full disclosure of the elevated landslide hazard on that property, including a statement that it is the homeowner's responsibility to inform residents and visitors of the elevated landslide hazard and of the necessity to comply with the evacuation plan;

(c) Assumption by the homeowner of all liability for injury and property damage associated with shallow, rapidly moving landslides initiating within the operation; and

(d) The signatures of the homeowner and of a notary public.

Stat. Auth.: ORS 527.710(11)
Stats. Implemented: ORS 527.630(5) & ORS 527.714
Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03

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

Adm. Order No.: OMAP 70-2002

Filed with Sec. of State: 11-22-2002

Certified to be Effective: 11-22-02

Notice Publication Date: 7-1-02

Rules Adopted: 410-001-0030

Subject: The Department will provide written communications in an alternate format, as required by law, to clients with disabilities who need alternate formats in order to access the Department's programs and services.

Rules Coordinator: Patricia F. Bougher—(503) 945-6482

410-001-0030

Documents in Alternate Format

The Department will provide written communications in an alternate format, as required by law, to clients with disabilities who need alternate formats in order to access the Department's programs and services.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010
Hist.: OMAP 21-2002(Temp), f. & cert. ef. 6-4-02 thru 11-28-02; OMAP 70-2002, f. & cert. ef. 11-22-02

Adm. Order No.: OMAP 71-2002(Temp)

Filed with Sec. of State: 11-27-2002

Certified to be Effective: 12-1-02 thru 5-15-03

Notice Publication Date:

Rules Amended: 410-121-0300

Rules Suspended: 410-121-0300(T)

Subject: The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. Rule 410-121-0300 is being amended to reference the CMS Federal Upper Limits for Drug Payments listing. This listing is being updated, with Transmittal #37, effective December 1, 2002, to revise drug products information for the listing in compliance with a directive from the Centers for Medicare and Medicaid Services (CMS).

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0300

CMS Federal Upper Limits for Drug Payments

(1) The CMS Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993. The development of the current Federal Upper Limit (FUL) listing has been accomplished by computer. Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit which CMS has determined to be equal to a 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs. The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website at http://www.cms.hhs.gov/medicaid/drugs/drug_10.asp. The FUL price listing will be updated approximately every six months.

(2) The most current CMS Federal Upper Limits for Drug Payments Listing, includes changes to Transmittal #37, dated November 4, 2002, effective December 1, 2002 and is available for downloading on OMAP's Website, (<http://www.omap.hr.state.or.us/providerinfo/provguides/pharmacy/>) To request a hard copy, call OMAP.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90; Renumbered from 461-16-330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR

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22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp) f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002, f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03

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**Department of Human Services,
Public Health
Chapter 333**

Adm. Order No.: OHD 18-2002
Filed with Sec. of State: 12-4-2002
Certified to be Effective: 1-1-03
Notice Publication Date: 10-1-02
Rules Adopted: 333-162-1005
Rules Amended: 333-157-0045

Subject: These rules allow civil penalties to be assessed for operating a food service establishment or mobile food unit without a license or for continuing to operate after a closure order has been issued due to uncorrected imminent critical violations.

Rules Coordinator: Jana Fussell—(503) 731-4012

**333-157-0045
Civil Penalties**

(1) The Department or a delegate county may impose civil penalties on any person for the following willful violations:

(a) Operation of a restaurant, bed and breakfast facility or vending machine without a current license to do so from the Department or delegate county;

(b) Failure to cease operation of a restaurant, bed and breakfast facility or vending machine that has been closed due to uncorrected critical violations. This authority shall be limited to those critical violations identified as creating an imminent or present danger to public health and defined in OAR 333-150-0000 Section 1-201.10(18.2).

(2) For the purposes of section (1) of this rule, the term ‘willful’ means intentional or deliberate.

(3) The maximum civil penalty for each of the violations listed in section (1) of this rule is \$500 per day of violation.

(4) Civil penalties shall be imposed in the manner provided by ORS 183.090 or the equivalent.

Stat. Auth.: ORS 624.992
Stats. Implemented: ORS 624.992

Hist.: HD 15-1995, f. 12-28-95, cert. ef. 1-1-96; OHD 18-2002, f. 12-4-02, cert. ef. 1-1-03

**333-162-1005
Civil Penalties**

(1) The Department or a delegate county may impose civil penalties on any person for the following willful violations:

(a) Operation of a mobile food unit, commissary, or warehouse without a current license to do so from the Department or delegate county;

(b) Failure to cease operation of a mobile food unit, commissary, or warehouse that has been closed due to uncorrected critical violations. This authority shall be limited to those critical violations identified as creating an imminent or present danger to public health and defined in OAR 333-162-0000(12).

(2) For the purposes of section (1) of this rule, the term ‘willful’ means intentional or deliberate.

(3) The maximum civil penalty for each of the violations listed in section (1) of this rule is \$500 per day of violation.

(4) Civil penalties shall be imposed in the manner provided by ORS 183.090 or the equivalent.

Stat. Auth.: ORS 624.992
Stats. Implemented: ORS 624.992

Hist.: OHD 18-2002, f. 12-4-02, cert. ef. 1-1-03

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Adm. Order No.: OHD 19-2002
Filed with Sec. of State: 12-4-2002
Certified to be Effective: 2-1-03
Notice Publication Date: 3-1-02

Rules Adopted: 333-536-0000, 333-536-0005, 333-536-0010, 333-536-0015, 333-536-0020, 333-536-0025, 333-536-0030, 333-536-0035, 333-536-0040, 333-536-0045, 333-536-0050, 333-536-0055, 333-536-0060, 333-536-0065, 333-536-0070, 333-536-0075, 333-536-0080, 333-536-0085, 333-536-0090, 333-536-0095

Subject: As required by statute, these rules establish standards for licensure of In-Home Care Agencies. These rules include definitions; provisions for obtaining licensure; expiration, renewal, denial and revocation of a license; fees; agency organization and personnel (including criminal background checks); clients’ rights; personal care, nursing and medication services provided; client records; and quality improvement.

Rules Coordinator: Jana Fussell—(503) 731-4320

333-536-0000

Purpose

The purpose of these rules is to establish standards for licensure of In-Home Care Agencies.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - ORS 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0005

Definitions

As used in 333-536-0000 through 333-536-0095, the following definitions apply:

(1) Abuse.

(a) “Abuse” of persons defined as disabled and elderly by Oregon Revised Statute (ORS) 124.005(2) and 124.005(3) means actions defined as abuse in ORS 124.005(1).

(b) “Abuse” of persons who are 18 years of age or older, mentally ill or developmentally disabled, and receive services from a community program or facility means actions defined as abuse in ORS 430.735(1).

(c) “Abuse” of a child as defined by ORS 419B.005(2) means actions defined as abuse in ORS 419B.005(1).

(2) “Activities of Daily Living” means those self-care activities which must be accomplished by an individual to meet his or her daily needs.

(3) “Agency” means In-Home Care Agency.

(4) “Authentication” means verification by the author that an entry in the client record is genuine.

(5) “Branch office” means a location or site from which an in-home care agency provides services within a portion of the total geographic area served by the parent agency. The site of the branch office generally does not exceed one hour of travel time from the parent agency. The branch office is part of the in-home care agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch to independently meet the requirements of an in-home care agency.

(6) A “Caregiver” means a person providing assistance with activities of daily living or assistance with personal care tasks, household and supportive services, or medication services as authorized by these rules.

(7) “Client Representative” means:

(a) Parent, stepparent, foster parent, or other adult with primary caregiving responsibility for the client when the client is a child; or

(b) An individual, paid or unpaid, related or unrelated, who acts on behalf of, or cares for the client when the client is an adult.

(8) Department means the Department of Human Services.

(9) “Governing Body” means the owner or designee legally responsible for the direction and control of the operation of the in-home care agency.

(10) “Home health agency” means a public or private agency which provides coordinated home health services on a home visiting basis. Home health agencies provide skilled nursing services and at least one of the following therapeutic services:

(a) Physical therapy;

(b) Occupational therapy;

(c) Speech therapy;

(d) Home health aide services.

(11) “In-home care agency” means an agency primarily engaged in providing in-home care services for compensation to an individual in that individual’s place of residence. A In-home care agency does not include a home health agency or portion of an agency providing home health services as defined in ORS 443.005.

(12) “In-home care services” means personal care services furnished by an in-home care agency, or an individual under an arrangement or con-

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tract with an in-home care agency, that are necessary to assist an individual in meeting the individual's daily needs, but do not include curative or rehabilitative services.

(13) "Licensed" means that the person or agency to whom the term applies is currently licensed, certified, or registered by the proper authority within the State of Oregon.

(14) "Parent agency" means the in-home care agency that develops and maintains administrative controls of subunits or branch offices.

(15) "Personal care services" means the provision of or assistance with tasks intended to supplement a client's own personal abilities which are necessary to accomplish the client's activities of daily living and other activities as described in Oregon Administrative Rule (OAR) 333-536-0045(1), and are preventive and maintaining in nature.

(16) "Registered Nurse"(RN) means a person licensed under ORS Chapter 678.

(17) "Schedule caregivers" means to plan appointments for caregivers to deliver specific in-home care services to clients; the times and dates of these appointments are set by the in-home care agency.

(18) "Skilled nursing services" means the patient care services pertaining to the curative, rehabilitative, and/or preventive aspects of nursing performed by, or under the supervision of, a registered nurse pursuant to the plan of treatment established by a physician or nurse practitioner.

(19) "Stable and predictable condition" means a situation where the client's clinical and behavioral state is known, not characterized by rapid changes, and does not require continuous reassessment and evaluation.

(20) "Subunit" means an in-home care agency that provides for a parent agency in a geographic area different from that of the parent agency and generally exceeding one hour of travel time from the location of the parent agency.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0010 Licensure

(1) An agency that establishes, conducts, or represents itself to the public as providing in-home care services must be licensed by the Department and must comply with ORS 443.305 through 443.350 and these rules. The provisions of ORS 443.305 through ORS 443.350 do not apply to organizations licensed, registered or certified under ORS 101.030, 410.495, 443.410, 443.485, 443.725, 443.860, or 443.886. The provisions of ORS 443.305 through 443.350 do not apply to independent individuals, volunteers, family, neighbors, or to agencies offering only housekeeping or on-call staffing for facilities, or to support services provided and funded by the Department of Human Services. Entities that provide referral or matching services that link In-Home Care services with clients are not required to be licensed under these rules, unless they do one or more of the following:

- (a) Schedule caregivers (as defined in OAR 333-536-0005(17);
- (b) Assign work;
- (c) Assign compensation rates;
- (d) Define working conditions.

(2) Application for a license to operate an in-home care agency shall be in writing on a form provided by the Department including demographic, ownership, and administrative information. The form shall specify such information required by the Department.

(3) If any of the information delineated in the agency's most recent application changes at a time other than the annual renewal date, the agency shall notify the Department in writing within 30 days of the change.

(4) No entity shall provide in-home care services, or use the term "in-home care agency" in its advertising, publicity, or any other form of communication unless licensed as an in-home care agency in accordance with the provisions herein.

(5) An agency that submits a completed application for licensure must demonstrate to the Department substantial compliance with these administrative rules through the survey process.

(6) The Department may reissue an agency license that has been suspended or revoked after the Department determines that compliance with these rules has been achieved.

(7) A licensed Home Health Agency which also operates as an In-Home Care Agency must obtain a license for both functions.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0015

Initial Licensure

(1) Upon receipt of a completed initial application and the required fee, the Department may conduct a survey of the agency or any subunit(s) to determine if the agency or subunit is in compliance with these rules, and has the intent to provide in-home care services. If an agency or subunit is in compliance and intends to provide in-home care services to individuals, a license may be issued for the operation of the agency or subunit.

(2) During the first year of the Department's operation of the licensure program:

(a) An established in-home care agency requesting initial licensure shall submit:

- (A) An initial license application;
- (B) A completed self-assessment form;
- (C) The required fee; and
- (D) Any other information required by the Department.

(b) Upon satisfactory review of the above, the Department may waive the initial onsite survey and, if so, shall issue a one-time provisional license for a maximum of one year.

(3) Each license shall be issued only for the agency or subunit named in the application and shall not be transferable or assignable. If the ownership of the agency or subunit changes, the new owner shall apply for a license.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0020

Licensure Fees

(1) The fee for an initial in-home care agency license shall be \$500. If the agency has subunits, the fee for an initial license shall be \$500 for the parent agency, plus an additional \$500 for each subunit of the parent agency.

(2) The fee for a renewed in-home care agency license shall be \$350. If the agency has subunits, the fee for a renewed license shall be \$350 for the parent agency, plus an additional \$350 for each subunit of the parent agency.

(3) If the ownership of an agency changes other than at the time of the annual renewal, the new owner's agency licensure fee shall be \$350. If the new owner's agency has one or more subunits, this fee shall be \$350 for the parent agency, plus an additional \$350 for each subunit. Licenses are not transferable.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0025

Expiration and Renewal of License

Each license to operate an in-home care agency shall expire twelve months from the date of issue. If renewal is desired, the licensee shall make application at least 30 days prior to the expiration date upon a form prescribed by the Department.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0030

Denial, Suspension, or Revocation of License

(1) A license for an in-home care agency may be denied, suspended or revoked by the Department when the Department finds that there has been a failure to comply with ORS 443.305 through 443.350 or with OAR 333-536-0000 through 333-536-0095.

(2) A license for an in-home care agency may be denied, suspended, or revoked by the Department if a person or persons who own or manage the in-home care agency permit(s), aid(s), or abet(s) any illegal act affecting the welfare of the client.

(3) Action under this section, including hearing rights, shall be taken in accordance with ORS 183.310 through ORS 183.550.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0035

Return of Agency License

Each license certificate in the licensee's possession shall be returned to the Department immediately upon the suspension or revocation of the license, failure to renew the license by the date of expiration, or if operation is discontinued by the voluntary action of the licensee.

Stat. Auth.: ORS 443.340

ADMINISTRATIVE RULES

Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHF 19-2002, f. 12-4-02, cert. ef. 2-1-03

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHF 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0040

Department Procedures

Complaint Investigations and Inspections:

(1) Complaint Investigations:

(a) Any person may make a complaint to the Department regarding violations of in-home care agency laws or regulations. An unannounced complaint investigation will be carried out as soon as practicable and may include, but not be limited to: Interview of the complainant, client(s), witnesses, and agency management and staff; observations of the client(s), staff performance, client environment; and review of documents and records.

(b) Copies of all complaint investigation reports and statements of deficiencies, which are not exempt from disclosure, will be available from the Department provided that the identity of any complainant or client referred to in an investigation will not be disclosed without legal authorization.

(2) Abuse and Protective Services Investigations:

(a) The in-home care agency shall cooperate with investigations of allegations of client abuse and protective service activities conducted by, or according to procedures established by, the Department.

(3) Inspections:

(a) The Department may, in addition to any inspections conducted pursuant to complaint investigations, conduct at least one unannounced general inspection of each in-home care agency during each calendar year and at such other times as the Department deems necessary to determine compliance with these rules.

(b) Inspections may include but not be limited to those procedures stated in subsection (1)(a) of this rule.

(c) When documents and records are requested under section (1) or (2) of this rule, the agency shall make the requested materials available to the investigator for review and copying.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - ORS 443.350

Hist.: OHF 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0045

Services Provided

(1) The services provided by the agency must include the safe provision of, or assistance with, personal care tasks related to one or more of the following:

- (a) Bathing;
- (b) Personal grooming and hygiene;
- (c) Dressing;
- (d) Toileting and elimination;
- (e) Mobility and movement; and
- (f) Nutrition/hydration and feeding.

(2) The agency may also provide one or more of the following services at the request of the client or the client's representative:

(a) Medication services, in accordance with OAR 333-536-0075, which includes:

(A) Assistance with self-administration of non-injectable medication;

or

- (B) Medication administration; or
- (C) Medication management.

(b) Nursing services. For clients whose conditions are stable and predictable, the agency may provide nursing assessment, monitoring, and nursing care including assignment and delegation in accordance with Oregon State Board of Nursing administrative rules. These services are not rehabilitative and curative, but are maintenance services.

(3) In-home care agencies may also provide housekeeping and other supportive services. Such tasks include, but are not limited to:

- (a) Housekeeping tasks;
- (b) Laundry tasks;
- (c) Shopping and errands;
- (d) Transportation; and
- (e) Arranging for medical appointments.

(f) In-home care agencies with clients receiving only housekeeping and supportive services are not subject to the requirements for the provision of personal care services. If the agency has clients who receive only housekeeping and support services, the agency is not required to comply with any of the requirements of these OARs for those specific/particular clients.

(4) Services described in this section shall be primarily provided at the client's residence. In addition, the services may be rendered at nonresidence locations as specified in the client's service plan.

333-536-0050

Organization, Administration, and Personnel

(1) An agency shall clearly set forth in writing the organization, services provided, administrative control, and lines of authority and responsibility from the owner to the client-care level:

(a) An agency shall not assign administrative and supervisory functions to another agency or organization.

(b) The agency shall control and be responsible for all services provided, including those provided through contractual agreements between the agency and caregivers or licensed nurses.

(2) Geographic service area:

(a) The agency shall identify in writing the geographic area in which it generally intends to provide services.

(b) The geographic service area shall be within a distance from the parent agency which ensures appropriate and timely delivery and supervision of services.

(3) If the agency operates a branch office:

(a) The branch office shall be located within the parent agency's geographic service area at a distance from the parent agency which generally does not exceed one hour's travel time.

(b) The branch office shall be operated under the management and supervision of the parent agency. Administrative and personnel functions must be retained at the parent agency. The branch office must not function as an independent agency.

(c) Services must not be provided from the branch office until the branch office has been added to the license of the parent agency in accordance with Department procedures.

(4) If the agency provides services from an office located outside of the parent agency's geographic service area, that office will constitute a subunit of the agency. If the agency has subunits:

(a) The subunit shall have its own staff, separate from parent agency staff, and shall operate independently of the parent agency.

(b) The subunit shall independently meet all licensing requirements, be separately licensed from the parent agency, and pay a separate licensure fee.

(5) An agency's owner or designee shall:

(a) Assume full legal, financial, and overall responsibility for the agency's operation; and

(b) Serve as, or employ, a qualified manager.

(6) The manager hired on or after the effective date of these rules shall meet the following qualifications:

(a) Possess a high school diploma or equivalent; and

(b) Have at least two years of professional or management experience in a health-related field or program.

(7) The manager or designee shall be accessible and available during all hours in which services are being provided to clients. The manager shall designate, in writing, a qualified individual to act as manager in his or her absence.

(8) The manager or designee shall be responsible for:

(a) Organizing and directing the agency's ongoing functions;

(b) Developing and implementing written and current policies and procedures necessary to direct the administrative, personnel, and client care operations of the agency, including but not limited to the requirements in these rules;

(c) Ensuring the completeness and accuracy of all information provided to the public regarding the agency and its services;

(d) Ensuring the provision of safe and appropriate services in accordance with written service plans;

(e) Ensuring that all individuals providing services for the agency meet the qualification, orientation, competency, training, and education requirements in the rules;

(f) Ensuring that personnel and client care practices are consistent with the agency's written policies and procedures.

(g) Ensuring that client care assignments are based on the caregiver's abilities, skills, and competence;

(h) Ensuring that agency does not accept or retain clients for whom it does not have the capabilities or resources to provide services;

(i) Ensuring the timely internal investigation of complaints, grievances, accidents, incidents, medication or treatment errors, and allegations of abuse or neglect involving individuals providing services for the agency. The agency shall maintain in its records documentation of the complaint or event, the investigation, the results, and actions taken;

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(j) Ensuring the timely reporting of allegations of abuse or neglect to the appropriate authority which includes but is not limited to Department or local law enforcement agency.

(9) Personnel records for all caregiver and nursing staff, both employees and contracted staff, shall include at a minimum the following:

(a) Evidence of pre-employment screening;

(b) Evidence that the in-home care agency ensures that a criminal background check has been conducted on all individuals employed by or contracting with the agency as in-home caregivers;

(A) The in-home care agency must insure that a criminal background check has been conducted on all new employees hired after the effective date of these rules.

(B) The in-home care agency must insure that a criminal background check has been conducted on all current employees within six months of the effective date of these rules. If the screening indicates that the employee has been convicted for crimes against an individual or property, the agency shall make a determination of the employee's fitness to provide care to clients.

(C) Once adopted, Department administrative rules governing criminal background checks and fitness determinations will apply.

(c) Evidence that all position qualifications have been met, including required licensure;

(d) Current position job description(s) signed by the individual(s);

(e) Evidence of orientation, training, competency, and ongoing education;

(f) Evidence of annual performance evaluations;

(g) Evidence of compliance with agency employee health policies, including at a minimum tuberculosis screening in accordance with OAR 333-019-0405(4).

(h) Evidence of a current Driver's License with current auto insurance for each individual whose duties include transporting clients in motor vehicles; and

(i) Current signed contract(s), if applicable, as specified in paragraph (10) of these rules.

(10) An agency contracting with individuals, or with another agency or organization, to provide personal care services to its clients shall enter into a written contract with each party under which services to the agency clients are provided. The written contract shall clearly stipulate:

(a) The services to be provided by the contractor;

(b) That the clients are the clients of the agency and not the contractor;

(c) The requirement that the contractor conform to all of the agency's client care and personnel policies; and

(d) The terms of the agreement and basis for renewal or termination.

(11) The agency shall comply with all applicable state and local laws, statutes, rules, and ordinances.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - ORS 443.350

Hist.: OHF 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0055

Disclosure, Screening, and Acceptance of Clients

(1) When an individual is accepted for agency service, a written disclosure statement shall be signed by the potential client or the client's representative and a copy shall be incorporated into the client record.

(2) All existing clients of the agency at the time of initial licensure must receive the disclosure statement within thirty (30) days of initial licensure of the agency.

(3) The disclosure statement must include the following:

(a) A description of the services offered by the agency according to OAR 333-536-0045, including the extent of registered nurse involvement in the agency's operations and whether nursing services as described in OAR 333-536-0080 are provided.

(b) If the agency provides medication services as described in OAR 333-536-0075, the qualifications of the individual(s) providing oversight of the agency's medication administration systems and the medication training and demonstration.

(c) A clear statement indicating that it is not within the scope of the agency's license to manage the medical and health conditions of clients should they become unstable or unpredictable.

(d) The qualifications and training requirements determined by the agency for individuals providing direct client care.

(e) The charges for the services provided by the agency.

(f) A description of how the service plans are developed and reviewed and the relationship between the service plans and the cost of services.

(g) A description of billing methods, payment systems, and due dates.

(h) The policy for client notification of increases in the costs of services.

(i) The agency's refund policy.

(j) Criteria, circumstances, or conditions which may result in termination of services by the agency and client notification of such.

(k) Procedures for contacting the agency manager or designee during all of the hours during which services are provided.

(l) Clients' Bill of Rights including:

(a) Procedures for filing a grievance or complaint with the agency; and

(b) Procedures for filing a grievance or complaint with the Department, along with the telephone number and business hours of the Department.

(m) Notice that the Department has the authority to examine clients' records as part of the Department's regulation and evaluation of the agency.

(4) The agency manager or designee shall conduct an initial screening to evaluate a prospective client's service requests and needs prior to accepting the individual for service. The extent of the screening shall be sufficient to determine the ability of the agency to meet those requests and needs based on the agency's overall service capability. The screening shall be documented, and dated and signed by the individual who conducted it.

(5) The agency shall only accept or retain individuals for services for whom it can ensure the following:

(a) The agency has the capability to meet the in-home care needs of the individual;

(b) The agency employs or contracts with a sufficient number of trained and competent staff and has adequate resources to provide the requested or needed services; and

(c) The agency is able to coordinate its services with the care and services provided by other organizations and individuals.

(6) The agency shall notify the client, or the client's representative, of the need for a referral for medical or health services if the client's medical or health condition becomes unstable or unpredictable. The agency may continue to provide in-home care services in the client's residence, but must not manage, or represent itself as able to manage, the client's unstable or unpredictable medical or health condition.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - ORS 443.350

Hist.: OHF 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0060

Clients' Rights

(1) The manager shall ensure that the agency recognizes and protects the following rights of each client:

(a) The right to be treated with dignity and respect;

(b) The right to be free from theft, damage, or misuse of one's personal property;

(c) The right to be given the informed choice and opportunity to select or refuse service and to accept responsibility for the consequences;

(d) The right to be free from neglect of care, verbal, mental, emotional, physical, and sexual abuse;

(e) The right to be free from financial exploitation;

(f) The right to be free from physical and chemical restraints;

(g) The right to voice grievances or complaints regarding services or any other issue without discrimination or reprisal for exercising such rights;

(h) The right to be free from discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.

(i) The right to participate in planning of the services and care to be furnished, any changes in the services and care, the frequency of visits, and cessation of services;

(j) The right to have access to his or her client record;

(k) The right to have client information and records confidentially maintained by the agency;

(l) The right to be advised in writing, before care is initiated, of the charges for the services to be furnished, and the amount of payment that will be required from the client;

(m) The right to a written 30-day notice of termination of services by the agency that specifies the reason(s) for the termination with the following exceptions:

(A) The right to immediate oral or written notice of termination of services by the agency at the time the agency determines that the safety of its staff or the client cannot be ensured. If oral notice is given, the agency must also subsequently provide the client a written confirmation of the oral notice of termination of services.

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(B) The right to a written 48-hour notice of termination of services by the agency in the event of non-payment in accordance with the agency's disclosed payment requirements.

(2) The agency shall provide each client with a written notice of the client's rights, as specified in paragraph (1) of this section, prior to furnishing care to the client. Evidence that each client has received this notice shall be maintained in the client's agency record.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0065

Service Plan

For clients receiving services described in 333-536-0045(1) and (2), the services provided shall be in accordance with a written service plan developed in conjunction with client or the client's representative based on the client's or the client's representative's request and an evaluation of the client's physical, mental, and emotional needs. The service plan must be consistent with the agency's capabilities.

(1) The agency manager or designee shall conduct an initial evaluation of the client. The evaluation must be documented, dated, and signed by the individual who conducted the evaluation, and maintained in the client's agency record.

(2) The agency manager or designee, in conjunction with the client or the client's representative, shall complete a written service plan within seven (7) days after the initiation of services. The agency representative shall ensure that the service plan includes a list of individuals participating in development of the plan. The agency representative shall also sign and date the service plan when it is complete and acceptable to all individuals participating in development of the plan.

(3) The completed service plan shall include at least the following:

(a) The schedule for the provision of services, specifying days and times;

(b) The services to be provided, specifying the tasks to be conducted;

(c) Identification of the professional discipline of individuals who will provide the services;

(d) Pertinent information about the client's needs in relation to the services to be provided to ensure the provision of safe and appropriate care; and

(e) When medication services or nursing services are provided as allowed under these rules, information set forth in OAR 333-536-0075 and 333-536-0080.

(4) The client or the client's representative may request changes in the service plan as the client's needs change. All changes must be in writing and must be signed and dated by the individual making the change.

(5) The service plan, including changes when made, shall be followed as written.

(6) The agency shall maintain the original service plan and all updated service plans in each client's agency record. Complete and legible copies of the service plan shall be given to the client or client's representative.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0070

Caregiver Qualifications and Requirements

The personal care provided by the agency shall be rendered by qualified and trained employees or contracted caregivers under the supervision of the manager or designee. The services shall be provided as requested by the client or client's representatives in accordance with these rules and the service plan.

(1) The manager shall ensure that the agency has qualified and trained employees or contracted caregivers sufficient in number to meet the needs of the clients receiving services.

(2) Caregivers must be at least 18 years of age and shall have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients and other agency staff.

(3) Caregivers shall complete an agency-specific orientation, conducted by the agency manager or designee, before independently providing services to clients.

(a) The orientation shall include, but not be limited to, the following subject areas:

(A) Caregivers' duties and responsibilities;

(B) Clients' rights;

(C) Ethics, including confidentiality of client information;

(D) The agency's infection control policies;

(E) A description of the services provided by the agency;

(F) Assignment and supervision of services;

(G) Documentation of client needs and services provided;

(H) The agency's policies related to medical and non-medical emergency response;

(I) The roles of, and coordination with, other community service providers; and

(J) Other appropriate subject matter based on the needs of the special populations served by the agency.

(b) The content of the orientation, the date(s) and length, and the name(s) and signature(s) of the instructor(s) shall be clearly documented for each caregiver and maintained in personnel records.

(4) Caregivers shall complete appropriate training before independently providing services to clients.

(a) Caregiver training shall be based on the services provided by the in-home care agency, including, as applicable, the following topics:

(A) Caregivers' duties and responsibilities;

(B) Recognizing and responding to medical emergencies;

(C) Dealing with adverse behaviors;

(D) Nutrition and hydration, including special diets and meal preparation and service;

(E) Appropriate and safe techniques in personal care tasks;

(F) Methods and techniques to prevent skin breakdown, contractures, and falls;

(G) Handwashing and infection control;

(H) Body mechanics;

(I) Maintenance of a clean and safe environment;

(J) Fire safety and non-medical emergency procedures; and

(K) Assisting clients with self-directed or client's representative-directed non-injectable medication administration.

(b) The content of the training, the date(s) and length, and name(s) and signature(s) of the instructor(s) shall be clearly documented for each caregiver and maintained in personnel records.

(c) Caregivers with proof of current or previous Oregon health-care related licensure or certification are exempt from in-home caregiver training.

(d) Caregivers moving from one office to another in the same in-home care agency are not subject to additional training requirements, provided previous training is documented.

(e) Caregivers who have completed training previously, and have documentation of that training, shall have their competency evaluated by an agency representative, and any potential training may be limited to areas requiring improvement after the evaluation.

(f) Documentation of training and competency evaluations shall be included in the caregiver's personnel record.

(5) Caregiver Selection and Review of Service Plan.

(a) The skills of the caregiver must be matched with the care needs of the client. The manager or designee must assign caregivers to specific clients based on the care needs of the clients and the skills of the caregivers. The caregivers must receive additional training as appropriate to meet the individual needs of assigned clients.

(b) The client's service plan must be reviewed with each caregiver before the initial delivery of client care. The date of the review(s), the signature of the agency supervisor or designee and the list of assigned caregivers must be documented.

(c) The updated client's service plan must be reviewed with each caregiver when changes to the plan are made. The date of the review(s), the signature of the agency supervisor or designee and the list of assigned caregivers must be documented.

(d) Caregivers must provide services to clients in accordance with the service plans.

(6) Caregiver supervision.

(a) The manager or designee must conduct supervisory visits to the client's residence:

(A) Within two weeks of the initiation of the services while a caregiver is providing services, and

(B) Quarterly monitoring thereafter.

(b) Each supervisory visit must be documented, dated, and signed, and shall consist of an evaluation of:

(A) Whether appropriate and safe techniques have been used in the provision of care;

(B) Whether the service plan has been followed as written;

(C) Whether the service plan is meeting the client's needs;

(D) Whether the caregiver has received sufficient training for this client; and

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(E) Whether appropriate follow-up of any service or service plan issues or problems identified as a result of the supervisory visit will be necessary.

(c) If services are provided in a non-residential setting in accordance with the service plan, supervisory visits which conform to the requirements in paragraphs (a) and (b) of this section must also be conducted at the non-residential location.

(7) Caregivers shall receive a minimum of 6 hours of education related to caregiver duties annually.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - ORS 443.350

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0075

Medication Services

If the agency provides non-injectable medication services as described in OAR 333-536-0045(2)(a), the services shall be rendered persons who meet the requirements of (8) of this rule. The services shall be provided as requested by the client or client's representatives in accordance with these rules, accepted standards of medication practice, and the service plan.

(1) Medication assistance is defined as:

(a) Self-administration of non-injectable medication which the client fully self-directs, but is not physically able to perform. Prescription medications must be administered from the original container in accordance with the instructions on the original container or the physician's order. This also includes reminders to patients to take their medications.

(b) Medication Assistance is not subject to the requirements of 333-536-0075(2)-(8).

(2) If the agency provides medication administration or medication set-up, the services shall be rendered by qualified and trained employees or contracted caregivers. The services shall be provided as requested by the clients or client's representative in accordance with these rules, accepted standards of medication practice and the service plan.

(a) Medication administration occurs when agency staff administers medications to a client or directly supervises the client who is not able to self-direct, but may be physically able to perform the tasks.

(b) Medication set up occurs when agency staff set up the client's medications in advance from original containers into closed secondary containers designed and manufactured for this purpose. Agency staff may set up medications for up to thirty days in advance.

(3) The agency manager shall be responsible to develop and implement safe and appropriate medication administration delivery systems which ensure that every client receives the right medication, in the right amount, by the right route, and at the right time.

(a) The agency's medication practices must be consistent with the agency's current written policies and procedures which include, but are not limited to:

(A) Provisions to ensure that prescribed changes in each client's medication regimen are documented and implemented;

(B) Provisions to ensure that the caregivers are informed about the potential adverse reactions, side effects, drug-to-drug interactions and food-to-drug interactions, and contraindications associated with each client's medication regimen;

(C) Provisions to ensure that the caregivers promptly report problems or discrepancies related to each client's medication regimen to the caregivers' supervisor.

(4) The client's service plan must specify the medication tasks to be performed, and complete medication instructions that include the name of each medication, the dosage to be administered, the route of administration, the frequency of administration, and any special instructions necessary for safe and appropriate administration.

(5) Packaging and labeling:

(a) Prescription medications shall be in the original pharmacy containers and clearly labeled with the pharmacists' labels.

(b) Samples of medications received from the physician or practitioner shall be in the original containers and have the original manufacturers' labels.

(c) Over-the-counter medications shall be in the original containers and have the original manufacturers' labels.

(d) Secondary containers must be labeled with the client's name, the date and time of the set-up, and the name of the agency staff person who filled the container. Secondary container compartments must be labeled with the specific time the medications in that compartment are to be administered.

(6) The provision of medication tasks as described in this section shall be documented by the individuals performing the tasks. The documentation shall include the tasks completed, the date and signature of the individual(s) performing the task(s), and shall be maintained in the client's agency record.

(7) Visits by a registered nurse to provide periodic observation and inspection shall be conducted at least every 90 days.

(8) Agency caregivers assigned to provide medication services must be given basic non-injectable medication training before providing the services. The medication training must include successful return demonstrations of non-injectable medications tasks by the caregivers.

(a) The medication training shall include at least the following areas:

(A) Medication abbreviations;

(B) Reading medication orders and directions;

(C) Reading medication labels and packages;

(D) Setting up medication labels and packages;

(E) Administering non-injectable medications:

(i) Pill forms, including identification of pills which cannot be crushed;

(ii) Non-injectable liquid forms, including those administered by syringe or dropper and eye and ear drops;

(iii) Suppository forms; and

(iv) Topical forms.

(F) Identifying and reporting adverse medication reactions, interactions, contraindications and side effects; and

(G) Infection control and safety related to medication administration.

(b) Prior to providing medication services, the caregivers shall demonstrate appropriate and safe techniques in the provision of medication tasks described in this section.

(c) The content of the medication training, the dates and length of training, the identity of the instructor, evidence of successful return demonstrations, and the instructor's statement that the caregiver has been evaluated to be competent to provide the medication services described in this section shall be clearly documented for each caregiver and maintained in the agency's personnel records.

(d) An individual with a current Oregon State Board of Nursing medication assistant (CMA) certification who has worked as a CMA continuously for a one-year period within the two years before employment by the agency is exempt from the training requirements in this rule.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - ORS 443.350

Hist.: OH 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0080

Nursing Services

If the agency provides nursing services as described in OAR 333-536-0045(2)(b), the services must be provided by an Oregon-licensed registered nurse employed by or contracted with the agency and provided only to a client whose medical condition and health status is stable and predictable. The services shall be provided as requested by the client or the client's representative and shall be in accordance with the administrative rules of the Oregon State Board of Nursing (OAR Chapter 851), accepted standards of nursing practice, and the service plan:

(1) Nursing services shall consist of: assessment, monitoring, provision of intermittent nursing care, and delegation of special tasks of nursing care to unlicensed persons, for clients with stable, predictable, or chronic health conditions.

(2) Delegation to the agency caregivers of special tasks of nursing care, including the administration of subcutaneous injectable medications, for clients whose conditions are stable and predictable shall be in accordance with the Oregon State Board of Nursing Administrative Rules for Registered Nurse Delegation and Assignment of Nursing Care Tasks to Unlicensed Person (OAR 851-047-0000 through 851-047-0040).

(3) The registered nurse must conduct and document a nursing assessment of the client to identify the client's nursing needs before provision of nursing services as described in this section. The assessment must be dated and signed and maintained in the client's in-home care record.

(4) The registered nurse shall participate in the development and updates of the service plan when nursing services, as described in this section, have been requested.

(a) The service plan shall include the aspects of assessment and monitoring, the specific tasks of nursing care, and the delegation of special tasks of nursing care to be conducted by the registered nurse. The service plan shall also include measurable client goals or desired outcomes specific to the nursing services being provided.

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(b) When special tasks of nursing care have been delegated, the service plan shall clearly identify all delegated special tasks of nursing, the name of each caregiver to whom these tasks have been delegated, and the name of the registered nurse responsible for the delegation. The service plan shall include the date of delegation, the date the special task of nursing is to begin, and the frequency of supervision by the registered nurse.

(5) The registered nurse shall obtain written or telephone orders from the physician or other legally recognized practitioner for all medications and medical treatments managed or administered by the agency under this section. Written orders shall be signed and dated by the physician or practitioner.

(a) Telephone orders shall be immediately recorded, dated, and signed by the registered nurse, and transmitted to the physician or practitioner for countersignature within 72 hours. The orders which have been signed by the physician or practitioner shall be incorporated into the client's record within 30 days.

(b) Changes in medications and medical treatments managed or administered by the agency shall not be made without written or telephone orders from the physician or practitioner as described in this rule.

(c) Medications and medical treatments shall be managed or administered as ordered by the physician or practitioner.

(6) Signed and dated documentation of nursing assessments, ongoing monitoring, problem identification, appropriate follow-up, progress towards goals or outcomes, the provision of nursing care, and the delegation of special tasks of nursing care by the registered nurse must be maintained in the client's agency record.

(7) The registered nurse shall conduct and document supervisory visits to the client's residence when special tasks of nursing care have been delegated in accordance with the Oregon State Board of Nursing Administrative Rules (OAR 851-047-0000 through 851-047-0040).

(8) A licensed practical nurse may perform certain tasks of nursing as allowed by the Oregon State Board of Nursing Administrative Rules (OAR 851-045-0000 through 851-045-0025).

(9) An agency must not accept or retain a client for service who requires special tasks of nursing care unless the agency employs or contracts with nursing staff or unless appropriate delegation of the task by a registered nurse can occur.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0085

Client Records

(1) A client record shall be maintained for every client served by the agency.

(2) A legible, reproducible client record shall include at least the following:

- (a) Identification data;
- (b) Referral and intake information;
- (c) Start-of-service date;
- (d) Screening and disclosure documents and documentation required by these rules;
- (e) Clients' rights documentation required by these rules;
- (f) All client evaluation and assessment documentation;
- (g) Client service plan and updates;
- (h) All personal care, medication, and nursing services documentation required by these rules;
- (i) Documentation of all services rendered, coordinated with the service plan.

(j) Service and financial agreement signed by the client or the client's representative before the initiation of services that specifies the services to be provided in accordance with the service plan, and the costs for those services.

- (k) End-of-services date;
- (l) End-of-service summary, including the dates of service and the disposition of the client.

(3) All entries and documents in the record must be recorded in ink, typescript, or computer-generated.

(4) All entries in a client's record must be dated and signed, or otherwise authenticated by the person making the entry.

(5) The client records shall be filed in a manner which renders them easily retrievable.

(6) Precautions must be taken to protect the records from unauthorized access, fire, water, and theft.

(7) Precautions must be taken to protect client information and record confidentiality.

(8) Authorized employees of the Department shall be permitted to review client records upon request. Photocopies of the records shall be made upon request.

(9) All clients' records shall be kept for a period of at least seven years after the date of last end-of-service.

(10) Clients' records are the property of the agency.

(11) If an agency changes ownership, all clients' records shall remain in the agency, and it shall be the responsibility of the new owner to protect and maintain these records.

(12) Before an agency terminates its business, the agency shall notify the Department where the clients' records will be stored.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0090

Quality Improvement

In accordance with accepted quality improvement principles, the agency shall develop and implement written policies and procedures for an ongoing quality improvement program which monitors and evaluates the quality and appropriateness of the personal care, medication, and nursing services provided by the agency, including those services provided by contracted individuals.

(1) Quality improvement activities shall be conducted and documented at least quarterly.

(2) The quality improvement activities shall be conducted by a committee consisting of at least: an agency owner representative, administrative staff of the agency, and direct care staff of the agency.

(3) Corrective actions which address problems identified as a result of the activity shall be planned, implemented, and evaluated.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

333-536-0095

Exceptions to Rules

(1) While all agencies are required to maintain continuous compliance with the Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications or the conducting of pilot projects or research. Requests for exceptions to the rules must be:

- (a) Submitted to the Department in writing;
- (b) Identify the specific rule for which an exception is requested;
- (c) Indicate the special circumstances relied upon to justify the exception;
- (d) Identify what alternatives were considered, if any, and why alternatives (including compliance) were not selected;
- (e) Demonstrate that the proposed exception is desirable to maintain or improve the health and safety of the clients, and will not jeopardize client health and safety; and
- (f) The proposed duration of the exception.

(2) Upon finding that the agency has satisfied the condition of this rule, the Department may grant an exception.

(3) The agency may implement an exception only after written approval from the Department.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - ORS 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03

Adm. Order No.: OHD 20-2002

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Rules Adopted: 333-500-0056, 333-500-0057

Rules Amended: 333-500-0010, 333-500-0050, 333-505-0005, 333-510-0045, 333-515-0060

Subject: These rules implement the above sections of the Oregon Revised Statutes 441.160 through 441.192 that refer to nurse staffing in hospitals and to change the reference from Health Division to Health services.

Rules Coordinator: Jana Fussell—(503) 731-4320

333-500-0010

Definitions

As used in OAR chapter 333, divisions 500-535, unless the context requires otherwise, the following definitions apply:

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(1) "Health care facility" (HCF) has the meaning given the term in ORS 442.015, and includes but is not limited to the classifications defined in subsections (a) through (d) of this section. The phrases "subject health care facility(ies)" and "subject HCF(s)" refer to those classifications subject to Health Services licensure; i.e., hospitals, ambulatory surgical centers, and freestanding birthing centers.

(a) "Hospital" means a facility with an organized medical staff, with permanent facilities that include inpatient beds, and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for, but not limited to, acutely ill patients and accident victims, or to provide treatment for the mentally ill or to provide treatment in special inpatient care facilities. "Special inpatient care facilities" are facilities with permanent inpatient beds and other facilities designed and utilized for special health care purposes, to include but not be limited to: Rehabilitation center, college infirmary, chiropractic facility, facility for the treatment of alcoholism or drug abuse, freestanding hospice facility, infirmary for the homeless, or inpatient care facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the Department, after determination of the need for such classification and the level and kind of health care appropriate for such classification. "Acute inpatient care facility" means a licensed hospital with an organized medical staff, with permanent facilities that include inpatient beds, and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for, but not limited to, acutely ill patients and accident victims.

(b) "Long term care facility" (LTCF) means an establishment with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director of the Department of Human Services, to provide treatment for two or more unrelated patients. "Long term care facility" includes the terms "skilled nursing facility" and "intermediate care facility", but such definition shall not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

(c) An "ambulatory surgical center" (ASC) means a health care facility which performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure requirements.

(A) In the case of outpatient surgery involving termination of pregnancy, procedures routinely and customarily done in physicians' offices are the following:

- (i) Dilation and curettage;
- (ii) Suction curettage;
- (iii) Sharp curettage;
- (iv) Dilation and evacuation.

(d) A freestanding birthing center means a health care facility licensed for the primary purpose of performing low risk deliveries.

(2) As used in 333-510-0020, the term "assessment" means the complete nursing assessment. This includes:

- (a) Systematic and ongoing collection of information to determine an individual's health status and need for intervention;
- (b) Comparison with past information; and
- (c) Judgment, evaluation, or conclusion that occurs as a result of parts (a) and (b) of this definition.

(3) "Affiliated entity" means a health care facility that provides health care services with other health care facilities under 100% common ownership or management.

(4) "Assistive nursing personnel" means anyone who assists the registered nurse or the licensed practical nurse in the provision of nursing care including but not limited to: certified nursing assistants, operating room technicians, medical assistants, emergency room technicians, anesthesia aides.

(5) "Authentication" means verification that an entry in the patient medical record is genuine.

(6) "Certified Nursing Assistant" (CNA) means a person who is certified by the Oregon State Board of Nursing (OSBN) to assist licensed nursing personnel in the provision of nursing care. Responsibilities shall be limited to functions approved by the OSBN.

(7) "Certified Nurse Anesthetist" (CRNA) means a registered nurse certified by the American Association of Nurse Anesthetists.

(8) "Certified registered nurse anesthetist" means a registered nurse licensed by the Oregon State Board of Nursing as a certified registered nurse anesthetist.

(9) "Chiropractor" means a person licensed under ORS Chapter 684 to practice chiropractic.

(10)(a) "Discharge" refers to a patient who was an inpatient of a health care facility but who has been released from the facility, and includes newborn discharges and transfers to another facility, but does not include transfers between acute care departments of the same facility.

(b) A patient is also considered to have been discharged if the patient:

- (A) Has been discharged from an acute care section of the facility to be admitted to a long-term care section of the facility;
- (B) Has been discharged from a long-term care section of the facility to be admitted to an acute care section of the facility; or
- (C) Has died.

(c) An inpatient who leaves a health care facility for purposes of utilizing non-hospital owned or operated diagnostic or treatment equipment, and who is then returned as an inpatient of the same health care facility within a 24-hour period, is still considered to be an "inpatient" and is not considered to have been discharged.

(11) "Department" means the Department of Human Services.

(12) "Emergency Medical Services" means medical services that are usually and customarily available at the respective hospital and that must be provided immediately to sustain a person's life, to prevent serious permanent disfigurement or loss or impairment of the function of a bodily member or organ, or to provide care to a woman in her labor where delivery is imminent if the hospital is so equipped and, if the hospital is not equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(13) "Freestanding Hospice Facility" (FSHF) means a health care facility which:

(a) Only admits patients who have been certified by the attending physician to be terminally ill, to have a life expectancy not to exceed 12 months, and have given up active treatment aimed at cure, and

(b) Complies with ORS Sections 443.850 and 443.860.

(14) "Full employment benefits" means those benefits accorded to those employees who work on a full-time basis as defined by the employer.

(15) "Governing body" means the body or person legally responsible for the direction and control of the operation of the facility.

(16) "Governmental unit" means the state, or any county, municipality, or other political subdivision, or any related department, division, board or other agency.

(17) "Health Care Facility Licensing Law" means ORS 441.005 to 441.990 and rules thereunder.

(18) "Infirmary for the Homeless" means a health care facility designed to provide medical care to indigent, homeless members of the community.

(19) "Inpatient beds" means a bed in a facility available for occupancy by a patient who will or may be cared for and treated on an overnight basis.

(20) "Institutional health services" means health services provided in or through health care facilities and includes the entities in or through which such services are provided. In determining whether a health service is or will be offered in or through a hospital, the Department shall consider, as appropriate, the following:

(a) Whether or not the majority of patients served or to be served by such health services are the patients of a hospital;

(b) Whether or not the staff or portions of the staff for the health service will be employed or contracted by the hospital;

(c) Whether the hospital will receive reimbursement for the rendering of health services;

(d) Whether inpatients of a hospital will be served; and

(e) The type of legal entity involved, its ownership, and its corporate parts and relationships.

(21) "Licensed" means that the person or facility to whom the term is applied is currently licensed, certified or registered by the proper authority to follow his or her profession or vocation within the State of Oregon, and when applied to a subject health care facility means that the facility is currently and has been duly and regularly licensed by the Department.

(22) "Licensed nurse" means a Registered Nurse or a Licensed Practical Nurse.

(23) "Licensed Practical Nurse" means a person licensed under ORS Chapter 678 to practice practical nursing.

(24) "Major alteration" means changes other than repair or replacement of building materials and equipment with materials and equipment of a similar type.

(25) "Manager" means a person who:

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(a) Has authority to direct and control the work performance of nursing staff;

(b) Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or

(c) Has been designated by a hospital to receive the notice described in ORS 441.174(2).

(26) "Naturopath" means a person licensed under ORS Chapter 685 to practice naturopathy.

(27) "New Construction" means a new building or an addition to an existing building.

(28) "New institutional health service" means institutional health services that were not offered by the hospital on a regular basis within the 12-month period prior to the time such health services are to be offered.

(29) "NFPA" means National Fire Protection Association.

(30) "Nurse Midwife/Nurse Practitioner" means a registered nurse certified by the OSBN as a nurse midwife/nurse practitioner.

(31) "Nurse Practitioner" means a registered nurse who has been certified by the OSBN as qualified to practice in an expanded specialty role within the practice of nursing.

(32) "Nursing staff" means a registered nurse, a licensed practical nurse, or other assistive nursing personnel.

(33) "OB Unit" means a dedicated obstetrical unit as required by 333-530-0070 or 333-535-0120.

(34) "Oregon Sanitary Code" means the Food Sanitation Rules, OAR 333-150-0000 through 333-168-0020 except 333-157-0000 through 333-158-0030.

(35) "Patient audit" means review of the medical record and/or physical inspection and/or interview of a patient.

(36) "Person" means an individual, a trust or estate, a partnership or corporation (including associations, joint stock, companies and insurance companies, a state or a political subdivision or instrumentality including a municipal corporation).

(37) "Physician" means a person licensed under ORS Chapter 677 to practice medicine by the Board of Medical Examiners.

(38) "Physician's Assistant" means a person who is registered as a physician's assistant in accordance with ORS Chapter 677.

(39) "Podiatrist" means a person licensed under ORS Chapter 677 to practice podiatry.

(40) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a hospital certified in the manner described in subsection (2) of ORS 441.055 or in a licensed ambulatory surgical center and is under the supervision of or in collaboration with a physician licensed to practice medicine by the Board of Medical Examiners for the State of Oregon. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the foot.

(41) "Public body" has the meaning given that term in ORS 30.260.

(42) "Registered Nurse" means a person licensed under ORS Chapter 678 by the OSBN.

(43) "Respite care" means care provided in a temporary, supervised living arrangement for individuals who need a protected environment, but who do not require acute nursing care or acute medical supervision.

(44) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff person directly employed by the hospital, or other adverse action taken against a nursing staff person directly employed by the hospital in the terms or conditions of employment of the nursing staff person, as a result of filing a complaint.

(45) "Stable newborn" means a newborn who is four or more hours postdelivery and who is free from abnormal vital signs, color, activity, muscle tone, neurological status, weight, and maternal-child interaction.

(46) "Stable postpartum patient" means a postpartum mother who is four hours or more postpartum and who is free from any abnormal fluctuations in vital signs, has vaginal flow within normal limits, and who can ambulate, be independent in self care, and provide care to her newborn infant, if one is present.

Stat. Auth.: ORS 441.055
Stats. Implemented: ORS 441

Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11, f. 3-16-72, ef. 4-1-72; HD 11-1980, f. & ef. 9-10-80, HD 8-1985, f. & ef. 5-17-85; Renumbered from 333-023-0114; HD 13-1987, f. 9-1-87, ef. 9-15-87; HD 23-1987(Temp), f. 11-27-87, ef. 10-15-87 through 4-15-88; HD 10-1988, f. & cert. ef. 5-27-88; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-070-0000; HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 20-2002, f. & cert. ef. 12-10-02

333-500-0050

Denial or Revocation of a License

(1) A license for any subject health care facility may be denied, suspended or revoked by the Department when the Department finds that there has been a substantial failure to comply with the provisions of Health Care Facility licensing law.

(2) A person or persons in charge of a subject health care facility shall not permit, aid or abet any illegal act affecting the welfare of the licensee.

(3) A license shall be denied, suspended or revoked in any case where the State Fire Marshal certifies that there was failure to comply with all applicable laws, lawful ordinances and rules relating to safety from fire.

(4) A license may be suspended or revoked for failure to comply with a Department order arising from a subject health care facility's substantial lack of compliance with the rules or statutes, or for failure to pay a civil penalty imposed under ORS 441.170.

Stat. Auth.: ORS 441

Stats. Implemented: ORS 441

Hist.: HB 183, f. & ef. 5-26-66; HD 11, f. 3-16-72, ef. 4-1-72; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0120; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-070-0020; HD 21-1993, f. & cert. ef. 10-28-93; OHD 20-2002, f. & cert. ef. 12-10-02

333-500-0056

Annual Random Audits

The department shall conduct an annual random audit of not less than seven percent of all hospitals in the state to verify compliance with the requirements of ORS 441.162, 441.166 and 441.192, and OAR 333-510-0045. Surveys made by private accrediting organizations may not be used in lieu of the audit required by this rule.

(1) The audit shall include, at a minimum, confidential interviews of administrative and clinical staff, a review of the written staffing plan, the actual nursing staff scheduled and working as compared with the plan, all applicable committee meeting minutes, any reports filed by clinical staff regarding staffing inadequacy, and any patient outcome data including, but not limited to, nurse sensitive patient outcome data (e.g. nosocomial infections, pressure ulcers, patients' falls, patient satisfaction with pain management, medication errors).

(2) The department shall compile and maintain for public inspection an annual report of the audits which were conducted during each year.

(3) The costs of the audit required under this rule may be paid out of funds from licensing fees paid by hospitals under ORS 441.020 and OAR 333-500-0030.

Stat. Auth.: ORS 441

Stats. Implemented: ORS 441

Hist.: OHD 20-2002, f. & cert. ef. 12-10-02

333-500-0057

Civil Penalties

(1) The Department may impose civil penalties in the manner provided in ORS 183.090 or suspend or revoke a license of a hospital for a violation of any provision of ORS 441.162 or 441.166 or OAR 333-510-0045 (Nurse Staffing).

(2) Each violation of a nursing staff plan shall be considered a separate violation.

(3) Any hospital that willfully violates ORS 441.180(1) or OAR 333-510-0045(9) is subject to a civil penalty not to exceed \$500. Civil penalties may be imposed for violations of 441.162 and 441.166 in accordance with **Table 1** in this section. Civil penalties under this rule shall be imposed by the Department in the manner provided by ORS 183.090.

(4) Any license that is suspended or revoked under this rule shall be suspended or revoked as provided in ORS 441.030.

(5) The department shall maintain for public inspection records of any civil penalties or license suspensions or revocations imposed on hospitals penalized under this rule.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 441

Stats. Implemented: ORS 441

Hist.: OHD 20-2002, f. & cert. ef. 12-10-02

333-505-0005

Governing Body Responsibility

The governing body of each subject health care facility shall be responsible for the operation of the facility, the selection of the medical staff and the quality of care rendered in the facility. The governing body shall:

(1) Ensure that all health care personnel for whom state licenses or registration are required are currently licensed or registered;

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(2) Ensure that qualified individuals admitted to practice in the facility are granted privileges consistent with their individual training, experience and other qualifications;

(3) Ensure that procedures for granting, restricting and terminating privileges exist and that such procedures are regularly reviewed to assure their conformity to applicable law; and

(4) Ensure that qualified individuals admitted to practice in the facility are organized into a medical staff insofar as applicable in such a manner as to effectively review the professional practices of the facility for the purposes of reducing morbidity and mortality and for the improvement of patient care.

(5) The Governing Body shall be responsible to ensure that the hospital posts a notice summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178, 441.192 in a place where notices to employees and applicants are customarily displayed. The form shall be specified by the department and shall contain the contact information for the appropriate regulatory agency (Bureau of Labor and Industries).

Stat. Auth.: ORS 441 & ORS 442

Stats. Implemented: ORS 441

Hist.: HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0125; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-070-0050; HD 21-1993, f. & cert. ef. 10-28-93; Renumbered from 333-505-0000; HD 2-2000, f. & cert. ef. 2-15-00; OHD 20-2002, f. & cert. ef. 12-10-02

333-510-0045

Nursing Services Staffing

(1) The hospital shall be responsible for developing and implementing a written hospital-wide staffing plan for nursing services. The hospital shall have a process which ensures the consideration of input from direct-care clinical staff in the development, implementation, monitoring, evaluation and modification of the staffing plan. The staffing plan shall include the number, qualifications, and categories of nursing staff needed for all units. The written staffing plan for nursing services shall be evaluated and monitored for effectiveness, and revised as necessary, as part of the hospital's quality assurance process. Written documentation of these quality assurance activities shall be maintained.

(a) The written staffing plan shall be based on the nursing care required by aggregate and individual needs of patients. This nursing care shall be the major consideration in determining the number and categories of nursing personnel needed.

(b) The written staffing plan shall be based on the specialized qualifications and competencies of the nursing staff. The skill mix and the competency of the staff shall ensure that the nursing care needs of the patient are met and shall ensure patient safety.

(c) The written staffing plan shall be consistent with the scopes of practice for R.N.'s, L.P.N.'s, and the authorized duties of C.N.A.'s.

(d) The hospital shall maintain a list of qualified, on-call nursing staff and nursing services that may be called to provide qualified replacement or additional staff in the event of emergencies, sickness, vacations, vacancies and other absences of nursing staff and that provides a sufficient number of replacement staff for the hospital on a regular basis. The list shall be available to the individual responsible for obtaining replacement staff.

(2) The written staffing plan for nursing services shall establish minimum numbers of nursing staff personnel (licensed nurses and certified nursing assistants) on specified shifts. The number of nursing staff personnel on duty shall be sufficient to assure that the nursing care needs of each patient are met. In no case shall fewer than one registered nurse and one other nursing care staff member be on duty when a patient is present.

(3) Upon request of a hospital, the Department may grant variances in the written staffing plan requirements based on patient care needs or the nursing practices of the hospital. Such request for a variance shall follow the procedure set forth in OAR 333-515-0060.

(4) After a hospital learns about the need for replacement staff, the hospital shall make every reasonable effort to obtain registered nurses for unfilled hours or shifts before requiring a registered nurse to work overtime. Reasonable effort includes the hospital seeking replacement at the time the vacancy is known and contacting all available resources as described in (1)(d) of this section. Such efforts shall be documented.

(5) A hospital may not require a registered nurse to work:

(a) More than two hours beyond a regularly scheduled shift; and

(b) More than 16 hours in a 24-hour time period.

(6) The provisions of this rule do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan;

(b) In emergency circumstances. Emergency circumstances include, but are not limited to:

(i) Sudden unforeseen adverse weather conditions;

(ii) Infectious disease epidemic of staff; and

(iii) Any unforeseen event preventing replacement staff from approaching or entering the premises; or

(c) If a hospital has made reasonable efforts to contact all of the qualified, on-call nursing staff and nursing services on the list described in (1)(d) and is unable to obtain replacement staff in a timely manner.

(7) A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon shift or an agreed-upon extended shift without authorization from the appropriate supervisory personnel as required by the Oregon State Board of Nursing Oregon Administrative Rules 851-045-0015(1)(j) and (5).

(8) A hospital may not take retaliatory action against a nursing staff because the nursing staff person:

(a) Discloses or intends to disclose to a manager, a private accreditation organization, or a public body an activity, policy, or practice of the hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or is a violation of professional standards of practice that the nursing staff person reasonably believes poses a risk to the health, safety, or welfare of a patient or the public.

(b) Provides information to or testifies before a private accreditation organization or a public body conducting an investigation, hearing or inquiry into an alleged violation of law or rule or into an activity, policy or practice that may be in violation of professional standards of practice by a hospital that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(c) Objects to or refuses to participate in any activity, policy or practice of a hospital that the nursing staff reasonably believes is in violation of law or rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public; or

(d) Participates in a committee or peer review process or files a report or a complaint that discusses allegations of unsafe, dangerous or potentially dangerous care.

(9) A hospital shall post a notice summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178, and 441.192, in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

Stat. Auth.: ORS 441 & ORS 442

Stats. Implemented: ORS 441

Hist.: OHD 2-2000, f. & cert. ef. 2-15-00; OHD 3-2001, f. & cert. ef. 3-16-01; OHD 20-2002, f. & cert. ef. 12-10-02

333-515-0060

Exceptions to Rules (All Subject HCFs)

(1) While all subject health care facilities are required to maintain continuous compliance with the Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications or the conducting of pilot projects or research. Requests for exceptions to the rules must be:

(a) Submitted to the Department in writing; and

(b) Identify the specific rule for which an exception is requested; and

(c) The special circumstances relied upon to justify the exception; and

(d) What alternatives were considered, if any and why alternatives (including compliance) were not selected; and

(e) Demonstrate that the proposed exception is desirable to maintain or improve the health and safety of the patients, to meet the individual and aggregate needs of patients, and will not jeopardize patient health and safety; and

(f) The proposed duration of the exception.

(2) Upon finding that the facility has satisfied the conditions of this rule, the Department may grant an exception.

(3) The facility may implement an exception only after written approval from the Department.

Stat. Auth.: ORS 441 & ORS 442

Stats. Implemented: ORS 441 & ORS 442

Hist.: HD 14-1986, f. 7-7-86, ef. 6-31-86; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-070-0065; HD 21-1993, f. & cert. ef. 10-28-93; OHD 20-2002, f. & cert. ef. 12-10-02

Adm. Order No.: OHD 21-2002

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Rules Amended: 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130, 333-050-0140

Subject: Further defines medical exemption to differentiate between susceptibles and those who are immune. Clarifies that alternative programs and charter schools are subject to the same requirements as other schools. Gives a thirty-day grace period to provide immunization records for school children who are considered homeless. Allows health departments to rescind exclusion orders for vaccines given with the four-day grace period allowed by the Advisory Committee on Immunization Practices. Adds additional details about the process used to approve computer-tracking systems. Adds language about excluding children who are susceptible from school/facility attendance in case of disease outbreak. Adds language to college requirements about temporary suspension of vaccine requirements.

Rules Coordinator: Jana Fussell—(503) 731-4320

333-050-0010

Definitions Used in the Immunization Rules

As used in OAR 333-050-0010 through 333-050-0140:

(1) “Administrator” means the principal or other person having general control and supervision of a school/facility.

(2) “Certificate of Immunization Status” means a form provided or approved by Health Services on which to enter the child’s immunization record requiring the following:

(a) Evidence of Immunization signed by the parent, health care practitioner or an authorized representative of the Department; and/or

(b) A written statement of medical or immunity exemption signed by a physician or an authorized representative of the Department; and/or

(c) A written statement of religious exemption signed by the parent; and/or

(d) A written statement of disease history (immunity exemption) for varicella signed by a parent, physician or authorized representative of the Department.

(3) “Certificate of Immunization Status Addendum” means a form provided or approved by Health Services on which to enter the child’s immunizations received after the initial series of D/T, polio and MMR. It does not replace the Certificate of Immunization Status form. The Addendum should be attached to the child’s original Certificate of Immunization Status form. The dates do not need to be transcribed onto the original Certificate of Immunization Status form.

(4) “Children’s Facility” or “Facility” means:

(a) A certified child care facility as described in ORS 657A.250 to 657A.460;

(b) A program operated by, or sharing the premises with, a certified child care facility, school or post-secondary institution where care is provided to children, six weeks of age to kindergarten entry; or

(c) A program providing child care or educational services to children including Head Start and preschools, six weeks of age to kindergarten entry, in a residential or nonresidential setting;

(d) This definition does not apply to facilities that are exempted by Health Services. Exempted facilities are those which:

(A) Are primarily supervised training in a specific subject, including, but not limited to, dancing, drama, or music;

(B) Are primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group;

(C) Are operated at a facility where children may only attend on a limited basis not exceeding a total of five days per calendar year; or

(D) Are operated on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care.

(5) “Contraindication” means either a child or a household member’s physical condition especially any condition or disease which renders a particular vaccine improper or undesirable in accordance with the current recommendations of the Advisory Committee on Immunization Practices of the U.S. Public Health Services and the current issue of the **Red Book** (The Report of the Committee on Infectious Disease, The American Academy of Pediatrics).

(6) “County Immunization Status Form” means a form provided by Health Services to the Department (or school/facility if there is no Department) to report annually to Health Services the number of children as specified, in the area served, and the number susceptible to the vaccine preventable diseases covered by these rules.

(7) “Department” means the District or County Board of Health, Public Health Officer, Public Health Administrator or Health Department having jurisdiction within the area.

(8) “Evidence of Immunization” means an appropriately signed and dated statement indicating the month and year each dose of each vaccine was received. This is used for the determination of age-specific vaccine(s) requirements.

(9) “Exclude” or “Exclusion” means not being allowed to attend a school/facility pursuant to an exclusion order from the Department based on non-compliance with the requirements of ORS 433.267(1), and these rules. Exclusion occurs when records have not been updated by the starting time of the school/facility on the specified exclusion day.

(10) “Exclusion Order for Incomplete Immunization or Insufficient Information” means a form provided or approved by Health Services for the Departments’ and Health Services’ use in excluding a child whose record is in non-compliance with the vaccine requirements of OAR 333-050-0050(2) or who has insufficient information on his/her record. Forms submitted for approval must contain the substantive content of the Health Services form.

(11) “Exclusion Order for No Record” means a form provided or approved by Health Services for the Departments’, Health Services’ and schools/facilities’ use in excluding a child with no record. Forms submitted for approval must contain the substantive content of the Health Services form.

(12) “Health Care Practitioner” means a practitioner of the healing arts who has within the scope of the practitioner’s license, the authority to order immunizations, to include: M.D., D.O., licensed nurse practitioners with prescription writing privileges, and licensed physicians’ assistants with prescription writing privileges who are working under the sponsorship of an M.D., D.O., or a registered nurse working under the direction of an M.D. or a D.O.

(13) “Health Services” means the Oregon Department of Human Services, Health Services, Immunization Program.

(14) “Medical or Immunity Exemption” means a written statement signed by a physician or an authorized representative of the Department that the child should be exempted from receiving specified immunization(s). Medical or Immunity exemptions include both of the following:

(a) “Immunity Exemption” means an exemption due to a disease history based on a health care practitioner’s diagnosis or the results of an immune titer. Representatives of the Departments will automatically authorize parental signature for verification of history of varicella. Children with an immunity exemption are counted as complete for the vaccine series they are exempt from.

(b) “Medical Exemption” means an exemption based on a specific medical diagnosis resulting from a specific medical contraindication. Children with a medical exemption are counted as having a medical exemption and are considered susceptible to the diseases they have not received immunizations for.

(15) “New Enterer” means a child who meets one of the following criteria:

(a) Initially attending an Oregon facility (no previous attendance at any Oregon facility);

(b) Initially attending a school at the entry level (kindergarten or the first grade, whichever is the entry level);

(c) Initially attending a school/facility from a home-school setting at any grade (preschool through the 12th grade); or

(d) Initially attending a school/facility after entering the United States from a foreign country at any grade (preschool through 12th grade).

(16) “Non-Compliance” means failure to comply with any requirement of ORS 433.267(1) or these rules.

(17) “Parent” means a parent, guardian, any adult responsible for the child, a person who is emancipated or has reached the age of majority.

(18) “Physician” means a physician licensed by the Board of Medical Examiners for the State of Oregon or by the Naturopathic Board of Examiners or a physician similarly licensed by another state or country in which the physician practices or a commissioned medical officer of the Armed Forces or Public Health Service of the United States.

(19) “Primary Review Summary” means a form provided or approved by Health Services to schools/facilities for enclosure with records forwarded to the Department for secondary review and follow up. Forms submitted for approval must contain the substantive content of the Health Services form.

(20) “Private Provider” means any health care practitioner as defined in Section (12) of this rule and not identified as a public provider.

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(21) "Public Provider" means county health jurisdictions, their contractors and other governmental entities receiving vaccine from the Immunization Program, Oregon Department of Human Services.

(22) "Record" means a statement relating to compliance with the requirements of ORS 433.267(1)(a) through (d) and these rules.

(23) "Religion" means any system of beliefs, practices or ethical values.

(24) "Religious Exemption" means a statement signed by a parent that the child has not been immunized as prescribed by OAR 333-050-0050(2), because the child is being reared as an adherent to a religion, the teachings of which are opposed to such immunization.

(25) "School" means a public, private, charter or parochial educational program, alternative program or school offering kindergarten through grade 12 or any part thereof. Schools run by residential correctional facilities are also subject to the requirements of these rules.

(26) "School Year" or "SY" means an academic year as adopted by the school or school district (usually September through June).

(27) "Susceptible" means being at risk of contracting one of the diseases covered by these rules, by virtue of being in one, or more of the following categories:

(a) Not being complete on the immunizations required by these rules;

(b) Possessing a medical exemption from any of the vaccines required by these rules due to a specific medical diagnosis based on a specific medical contraindication; or

(c) Possessing a religious exemption for any of the vaccines required by these rules.

(28) "These Rules" means OAR 333-050-0010 through 333-050-0140.

(29) "Transferring Child" means a child who:

(a) Moves from one Oregon facility to another Oregon facility. In order to qualify as a transferring child, the facility must request records from the previous facility whose name must be documented on the Exclusion Order for No Record;

(b) Moves from one Oregon school to another Oregon school, except when the move is due to the normal progression of grade levels, such as to a junior high or senior high from a feeder school;

(c) Moves from a school in another state to an Oregon school.

(30) "Up-to-Date" means currently on schedule and not subject to exclusion, based on the immunization schedule for spacing doses, as prescribed in OAR 333-050-0120.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 443.006 & ORS 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 15-1986, f. & ef. 7-15-86; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0021; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02

333-050-0020

Purpose and Intent

(1) The purpose of these rules is to implement ORS 433 .235 et seq., which requires evidence of immunization or a medical or a religious exemption for each child as a condition of attendance in any school/facility and which requires exclusion from school/facility attendance until such requirements are met.

(2) The intent of the school/facility immunization statutes and these rules is to require that:

(a) A new enterer provide a signed and dated Certificate of Immunization Status form documenting either evidence of immunization or a religious and/or medical or immunity exemption. If age appropriate, required for the child's grade level, and the child has not claimed an exemption, a minimum of one dose each of the following vaccines must be received prior to attendance: Polio, Measles, Mumps, Rubella, Hepatitis B, Varicella, Haemophilus influenzae Type b vaccine and Diphtheria/Tetanus containing vaccine. (See OAR 333-050-0120);

(b) A transferring child provide evidence of immunization or an exemption(s), within 30 days of initial attendance; and

(c) A child currently attending not be allowed to continue in attendance without complete, incomplete but up-to-date evidence of immunization or an exemption(s). Beginning SY 2000/2001, Hepatitis B, Varicella and a second dose of measles containing vaccine will be phased in by grade (see OAR 333-050-0120).

(d) The only exception is for family child care homes, either registered or exempt from registration providing child care, six weeks of age to kindergarten entry, in a residential or nonresidential setting. These pro-

grams are exempt from all requirements except an up-to-date Certificate of Immunization Status form on each child in attendance.

(3) Nothing in these rules prohibits a public school from adopting additional or more stringent rules (in accordance with the law) as long as the rules are in compliance with U.S. Public Health Service Advisory Committee on Immunization Practices.

(4) Nothing prohibits a private school, children's facility, or post-secondary educational institution from adopting additional or more stringent requirements than the statutes or rules as long as medical and religious exemptions are included and the requirements are in compliance with the United States Public Health Advisory Committee on Immunization Practices recommendations.

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 433.006 & ORS 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0025; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02

333-050-0030

Visitors, Part-Time Students, and Residents

(1) Any child visiting or attending school for greater than five school days in a given school year or residing on the premises of a school/facility regardless of whether the child attends classes, at any grade preschool through Grade 12, shall be subject to the requirements of either a new enterer or transferring child as appropriate. Such residents and visitors for the purposes of these rules are in attendance.

(2) Children receiving child care in a certified child care facility are subject to these immunization requirements unless they attend fewer than five days in a calendar year.

(3) For facilities providing drop-in child care, a child may attend up to four days without a Certificate of Immunization Status on file. Before allowing attendance on the fifth visit, a Certificate of Immunization Status must be provided showing at least one dose of each required vaccine or an appropriately signed exemption.

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 433.006 & ORS 433.235 - 433.284

Stats. Implemented:

Hist.: HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0026; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02

333-050-0040

Statements (Records) Required

(1)(a) The statement initially documenting evidence of immunization or exemption under ORS 433.267(1)(a) through (d) must be on a Certificate of Immunization Status form. Evidence of immunization shall include at least the month and year of each dose of each vaccine received and must be appropriately signed and dated to indicate verification by the signer. Presigned Certificate of Immunization Status forms are not allowable. If a Certificate of Immunization Status form is signed but not dated, the person who receives the form at the school or facility should date the form with the date it was received; or

(b) The school/facility may choose to complete a Certificate of Immunization Status form by transcribing dates from and attaching an already appropriately completed, signed and dated record. The Certificate of Immunization Status needs to be signed and dated by the person transcribing the information. A reference should be made to the attached record; or

(c) The parent or school/facility may choose to complete a Certificate of Immunization Status form by transcribing dates from and attaching one of the following records listed in (A) through (C). The Certificate of Immunization Status form must be signed and dated by the person transcribing the information. A reference should be made to the attached record on the Certificate of Immunization Status form.

(A) A health care practitioner documented immunization record;

(B) An unsigned record on health care practitioner letterhead.

(C) An unsigned record printout from the statewide immunization information system, Oregon Immunization ALERT.

(d) The statements updating the initial evidence of immunization or exemption on a Certificate of Immunization Status form under ORS 433.267(1)(a) through (d) include only the following options:

(A) Entering the updated evidence of immunization or exemption on the initial Certificate of Immunization Status form, insuring that the parent, health care practitioner, or an authorized representative of the Department re-signs and dates the form;

(B) Entering the updated evidence of immunization or exemption on a new Certificate of Immunization Status form, insuring that the parent,

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health care practitioner, or an authorized representative of the Department signs and dates the form;

(C) Entering the updated evidence of immunization on a valid county-issued Exclusion Order for Incomplete Immunization or Insufficient Information insuring that the parent, health care practitioner, or an authorized representative of the Department signs and dates the form (or uses the official department stamp);

(D) Entering the updated evidence of immunization on a piece of paper, insuring that the parent, health care practitioner, or an authorized representative of the Department signs and dates the paper (or uses the official department stamp); or

(E) The school/facility may choose to update the evidence of immunization on a form provided by the school/facility containing the language shown in **Exhibit 3**;

(F) The parent or school/facility may choose to update the Certificate of Immunization Status by transcribing an already appropriately completed, signed and dated record which is attached to the Certificate of Immunization Status. The Certificate of Immunization Status needs to be signed and dated by the person transcribing the information. A reference should be made to the attached record;

(G) The parent may choose to update the evidence of immunization by attaching to a Certificate of Immunization Status form one of the following records:

- (i) A health care practitioner documented immunization record;
- (ii) An unsigned record on health care practitioner letterhead; or
- (iii) An unsigned record printout from the statewide immunization system, Oregon Immunization ALERT.

(e) The statement signed by the parent of a transferring child to a school/facility indicating that the record will be provided within 30 days of initial attendance, under ORS 433.267(1)(d), shall be printed on the top portion of the Exclusion Order for No Record which has been presigned by an authorized representative of the Department.

(A) The administrator shall make every effort to ensure that the parent of a transferring child signs the Exclusion Order for No Record when the parent brings the child to the school/facility to register or brings the child on the first day of attendance;

(B) The administrator shall determine the exclusion date to be used for the Exclusion Order for No Record. The exclusion date must be no sooner than 30 days after initial attendance, but no later than the next mandated "No Record" exclusion (third Wednesday in February). When the parent signs the Exclusion Order for No Record, the administrator provides the parent a copy of the order.

(C) If the parent did not accompany the transferring child to the school/facility to register or accompany the child on the first day of attendance, the administrator will so indicate on the Exclusion Order for No Record. If for some other reason the Exclusion Order for No Record was not signed by the parent, the administrator will so indicate on the order. If the parent did not receive a copy of the Exclusion Order for No Record, the administrator must mail a copy of the Exclusion Order for No Record to the parent no later than 14 days before the exclusion date;

(D) Where the parent does not comply (30 days or more have passed) with the signed statement in subsection (1)(e) of this rule, the administrator shall enforce the presigned Exclusion Order for No Record and exclude the child in accordance with the time schedule in OAR 333-050-0080(1)(b).

(2) If the child transfers to a new school district, except when the move is due to the normal progression of grade levels, such as to a junior high or senior high from a feeder school, the receiving school must assure that the transferred records are on a signed Certificate of Immunization Status form or another Health Services-approved form. The original transferred records that are not on an approved form shall be attached to a Certificate of Immunization Status form and the form shall be marked with a reference to the attached records, signed, and dated by the person transcribing the information on the form.

(3) The records relating to the immunization status of children in schools shall be part of the education record and shall be transferred to the receiving schools pursuant to ORS 326.575(2) within 30 days pursuant to ORS 433.267(1)(d).

(4) When a new enterer is admitted in error to a school or facility without an immunization history or appropriately signed exemption, the school or facility will immediately issue an Exclusion Order for No Record. The exclusion date shall be fourteen days after the date the exclusion order is mailed to the parent.

(5)(a) When a child is determined by the school or school district to be homeless and does not have a completed Certificate of Immunization Status on file with the school, an Exclusion Order for No Record will be issued

and a copy will be given to the parent or guardian. The exclusion date will be 30 days from the date of enrollment. If the parent is not at registration, a copy of the Exclusion Order for No Record will be sent to the parent via the student at least fourteen days prior to the exclusion date.

(b) School staff shall make every effort to help the family compile an immunization record for the student, including requesting a record from a previous school, Oregon Immunization ALERT or a previous medical provider.

(6) Where a child attends both a facility and a school, the school is responsible for reporting and for enforcing these rules in accordance with the school/facility vaccine requirements. However, because of the need for outbreak control when school is not in session, the facility administrator will be responsible for requesting that the parent also provide an up-to-date Certificate of Immunization Status to the facility. If the parent doesn't comply, the facility administrator shall inform the parent that in the event of an outbreak the child will be excluded until it is determined that the child is not susceptible.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 433.006 & ORS 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 15-1986, f. & ef. 7-15-86; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0030; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02

333-050-0050

Immunization Requirements

(1) For purposes of this section, the following definitions and procedures apply:

(a) "Diphtheria/Tetanus containing vaccines":

(A) "DTP" — Injectable Diphtheria and Tetanus toxoids combined with whole cell pertussis vaccine. DTP vaccine is for use in children up to the seventh birthday;

(B) "DTaP" — Injectable Diphtheria and Tetanus toxoids combined with acellular pertussis vaccine. DTaP vaccine is for use in children up to the seventh birthday;

(C) "DT" — Injectable combined Diphtheria and Tetanus toxoids. Although Pertussis containing vaccine is recommended (but not required) for children up to the seventh birthday, particularly those in early infancy where the hazard of Pertussis is greatest, pediatric Diphtheria/Tetanus vaccine (DT) may be substituted for DTP and DTaP. DT vaccine is for use in children up to the seventh birthday;

(D) "Td" — Injectable combined Tetanus and Diphtheria toxoids. This is for use in children past their seventh birthday. This vaccine is comparable to DTP, DTaP and DT vaccines for immunization against diphtheria and tetanus.

(b) "Polio vaccines":

(A) "TOPV" — Trivalent oral polio vaccine (Sabin); or

(B) "IPV" — Injectable inactivated polio vaccine.

(c) "Measles, Mumps, and Rubella injectable vaccines":

(A) "MMR" — Combined Measles, Mumps, and Rubella injectable vaccine;

(B) "MR" — Combined Measles and Rubella injectable vaccine;

(C) "Measles" — Single antigen injectable vaccine;

(D) "Mumps" — Single antigen injectable vaccine;

(E) "Rubella" — Single antigen injectable vaccine;

(F) These vaccines may be given in combined forms, and/or as a single antigen vaccine. It is recommended that these vaccines be given at 12 to 15 months of age.

(G) Measles containing vaccines — includes A through C above. Second dose, if required, must be at least 28 days after first dose.

(d) "Haemophilus influenzae Type b (Hib) vaccines" - A Hib vaccine is for use in children up to the fifth birthday.

(e) "Hepatitis B injectable vaccines."

(f) "Varicella (Chickenpox) vaccine."

(g) Interrupted series: If there is a lapse of time between doses longer than that recommended by the standard described in OAR 333-050-0120, the schedule should not be restarted. Immunization may resume with the next dose in the series.

(h) Partial doses: Because the efficacy of immunizing with partial doses of the vaccines listed in subsection (1)(a) through (f) of this rule is not known, this procedure does not satisfy the requirements of these rules.

(2) For purposes of ORS 433.267(1), immunizations are required as follows:

(a) Diphtheria/Tetanus containing vaccine — Four doses, unless:

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(A) The fourth dose was received prior to four years of age, in which case a fifth dose is also required;* or

(B) The third dose of Diphtheria/Tetanus containing vaccine was received on or after the seventh birthday, in which case the child is complete with three doses; or

(C) A child enrolled before SY 1998/99 is complete for Diphtheria/Tetanus containing vaccine with three doses of DTaP, DTP or DT, if the first dose of DTaP, DTP or DT was received at or after the first birthday and the third dose was received at or after the child's fourth birthday.

(b) Polio — Four doses* unless:

(A) The third dose was given at or after the fourth birthday, in which case the child is complete with three doses of polio vaccine; or

(B) The student is 18 years of age or older. Polio vaccination at or after the 18th birthday is not required.

(c) Measles — The first dose, must be received at or after 12 months of age. For the purposes of assessment for compliance with these rules, a dose is considered in compliance if the dose was given in the same month and year as the child's first birthday. Second dose, if required, must be received at least 28 days after first dose (See **Table 1**);

(d) Rubella — One dose, must be received at or after 12 months of age.

(e) Mumps — One dose, must be received at or after 12 months of age.

(f) *Haemophilus influenzae* Type b (Hib) vaccine — Up to four doses depending on the child's current age and when previous doses were administered. (See **Table 1** to determine the number of required doses.)

(g) Hepatitis B- Up to three doses (See **Table 1**). If the first dose was received at or after eleven years of age and the second dose is received at least four months after dose one, the child is complete with two doses.

(h) Varicella- Up to two doses, depending on the child's age when the first dose was administered. The first dose must be received at or after 12 months of age and after March 1995, the date the vaccine was licensed in the United States. For the purposes of assessment for compliance with these rules, a dose is considered in compliance if the dose was given in the same month and year as the child's first birthday. (See **Table 1** to determine the number of required doses).* A child cannot be excluded from school for not having the 5th dose of Diphtheria/Tetanus containing vaccine or 4th dose of Polio until kindergarten.

(3) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services shall give notice in writing to all local health departments when the suspension takes effect. Additional written notice shall be given to all local health departments when the suspension is lifted. Local health departments will notify schools/facilities of any temporary suspensions that affect their procedures under these rules. Any waived vaccine doses will be required at the next review cycle following the lifting of the suspension.

(4) The local public health officer, after consultation with Health Services, may allow a child to attend a school or facility without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the parent of the affected student detailing which vaccines the student is being exempted from. The letter must state that the student will receive an exclusion order if the student's record is not updated with the missing doses prior to the next exclusion cycle.

(b) A copy of the letter must be attached to the student's Certificate of Immunization Status on file at the school or facility.

(c) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one child.

(d) If the vaccine is still unavailable at the next exclusion cycle, the Department, with the agreement of Health Services, will not issue exclusion orders for the unavailable vaccine.

(5) Medical or immunity exemptions from immunization requirements are allowed as follows:

(a) The following immunity exemptions satisfy the immunization requirements for the specified vaccines:

(A) Exemption for Measles, Mumps or Rubella vaccination due to a disease history may be certified by a physician or an authorized representative of the Department for a child who has immunity based on a health care practitioner's diagnosis;

(B) Exemption for Measles, Mumps or Rubella vaccination due to a documented immune titer may be certified by a physician or an authorized representative of the Department;

(C) Exemption for Hib conjugate vaccination may be certified by a physician or authorized representative of the Department for a child who experienced invasive *Haemophilus influenzae* Type b disease at 24 months of age or older.

(D) Exemption for Varicella vaccine may be signed by the parent for history of varicella. The date of the disease is not required. This exemption will be automatically authorized by the Department.

(E) Exemption for Hepatitis B vaccination based on laboratory confirmation of immunity or confirmation of carrier status may be certified by a physician or authorized representative of the Department.

(b) Children possessing the following medical exemptions are susceptible to the diseases for which they are exempt from vaccination:

(A) Exemption for rubella or varicella vaccination may be certified by a physician or an authorized representative of the Department for a post-pubertal female when it is believed that there is a significant risk of her being or becoming pregnant within one month for varicella or three months for rubella;

(B) Exemption for one or more immunization(s), shall be established by a specific diagnosis based on a specific medical contraindication certified by a physician or an authorized representative of the Department. The vaccine(s) and the specific medical diagnosis must be documented on the record.

(c) Exemptions submitted to the school/facility must be in English.

(6) A child may attend a school/facility under ORS 433.267(1) if the child is incomplete but up-to-date and remains up-to-date and in compliance with immunization schedules for spacing between doses presented in OAR 333-050-0120.

(7) If evidence is presented to the Department that an exclusion order was issued in error because a vaccine was given within the four-day grace period recommended by the Advisory Committee on Immunization Practices as published in the General Recommendations on Immunization, the Department shall rescind the exclusion order. The Department shall notify the child's school or facility when an exclusion order is rescinded.

(8) In situations where a child's vaccine history presents an unusual problem not covered by these rules, the Department shall use its judgment to make a final determination of the child's immunization status.

(9) Religious exemption from immunization requirement is allowed for one or more of the vaccines. Where a specific vaccine is not indicated for the religious exemption, it shall be interpreted that the exemption covers all of the vaccines required by these rules.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 433.006 & ORS 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 12-2000, f. & cert. ef. 12-26-00; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0035; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02

333-050-0060

Primary Review of Records

(1) At least annually the administrator will conduct a primary review of each child's record to determine the appropriate category of each child. This review shall be completed no later than five weeks (35 days) prior to the third Wednesday in February (usually the second Wednesday in January) unless otherwise approved in writing first by the Department and then by Health Services.

(2) The administrator shall categorize all children as follows:

(a) "Complete": This category applies to any child whose record indicates that he/she is fully immunized as specified by OAR 333-050-0050(2) or (5)(a);

(b) "Religious Exemption": This category applies to any child whose incomplete immunizations are covered by a religious exemption;

(c) "Medical Exemption": This category applies to any child who is susceptible because of a Medical Exemption Statement on file as specified by OAR 333-050-0050(5)(b);

(d) "Incomplete Immunizations": This category applies to any child whose record indicates that he/she is not fully immunized as specified in OAR 333-050-0050(2). This category only includes a child who is past due on his/her immunizations on or before the date the Primary Review Summary form is due at the Department;

(e) "Insufficient Information": This category applies to any child whose record does not have enough information to make a proper determination about the child's immunization status, including unsigned records, vaccine dates before day of birth, dates out of sequence, missing doses in the middle of a vaccine series, more than two doses of a vaccine series

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given in the same month and dates before vaccine licensure. This category does not apply to signed but undated records;

(f) "No Record": This category applies to any child with no record on file at the school/facility.

(g) "Children not to be counted": School age children also attending a facility should be counted by the school. Children enrolled in a school but physically attending another school should be counted by the school they physically attend. Children attending a preschool or Head Start program and another facility should be counted by the preschool or Head Start program. Children physically attending more than one child care facility or school should be counted by the facility or school where they attend the most hours.

(3)(a) Five weeks (35 days) prior to the third Wednesday in February, unless otherwise approved in writing first, by the Department and then by Health Services, the administrator shall provide to the Department for secondary review:

(A) Organized alphabetically within category, copies of records or a computer printout of the records of all children with incomplete immunizations or insufficient information, except where the Department has explicitly indicated to the administrator that the child is not yet due for his/her next immunization. In this case the record or computer printout should not be forwarded for review until the specified secondary review date;

(B) Copies of Exclusion Order for No Record for children who have no record on file at the school/facility. If mutually agreed upon by the affected school/facility and the Department, a computer-generated list from a currently Health Services approved system of children with no record is an acceptable alternative;

(C) Copies of records of children with a medical or immunity exemption, except those records which:

(i) Are specified in OAR 333-050-0050(5)(a)(D); or

(ii) Have been certified by the Department as having a permanent medical or immunity exemption and are otherwise complete with no further review required.

(D) A completed Primary Review Summary Form, which includes an alphabetical list, for each category, of children whose records are enclosed, specifying each child's name, current grade level, parent(s) name and current mailing address. Also listed alphabetically should be the names of the children for whom an Exclusion Order for No Record has been attached. If mutually agreed upon by the affected school/facility and the Department, a computer-generated list from a currently Health Services approved system of children with no record is an acceptable alternative;

(E) The administrator shall review the completed Primary Review Summary Form for mathematical accuracy and correct any errors before forwarding the completed Primary Review Summary Form to the Department.

(b) All copies of records provided to the Department for secondary review must contain at least the following: The child's name; date of birth; current grade level; parent(s) name and current mailing address; and evidence of immunization or exemption. A copy of the records or a data processing printout of the records must be used in place of the original record.

(A) The computer printouts and the results from computer generated immunization assessments (computer outputs) must have the prior approval of Health Services. To receive approval to be used for the primary review report in January, computer printouts and computer outputs must be received by Health Services no later than the last working day of November in the year prior to the year in which the primary review reports are due.

(B) The computer printout will be reviewed for essential data elements and the sequence of data elements. Health Services reserves the right to require proof of specific test data and approval by Health Services of the test results as calculated by computerized system.

(C) Provisional approval will be given to a computer tracking system after correct assessment has been confirmed for test data and essential data elements in required reports. Computer tracking systems with provisional approval will be reviewed after use during the annual review and exclusion cycle. Final approval will be given after any programming errors identified during the cycle have been corrected by the tracking system and additional printouts have been approved by Health Services.

(D) Health Services also reserves the right to withdraw computer system approval.

(E) When ORS 433 .235 to 433.280 and/or these rules are amended, computer systems must be updated within 120 days. Health Services will then allow 60 days for review, needed changes and final approval. Computer outputs that are not in compliance will not be authorized for use during the annual review and exclusion cycle.

(4) Additional review cycles for incomplete/insufficient records with specific time-frames are allowable if mutually agreed upon in writing by the affected Department and schools/facilities. Exclusion dates shall be no less than 14 days from the date that the Exclusion Orders are mailed.

(5) It is the responsibility of the administrator to see that primary review of immunization records is accomplished according to these rules. All or part of the actual review may be delegated by mutual agreement of parties affected to a third party subject to this requirement.

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 433.006 & ORS 433.235 - 433.284
Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0040; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02

333-050-0080

Exclusion

(1) The Department may use one of two Exclusion Orders depending upon the reason the child is found to be in non-compliance with ORS 433.267(1) and these rules:

(a) Exclusion Order for Incomplete Immunization or Insufficient Information:

(A) No later than 21 days from the date that the secondary review began, the Department shall send an appropriately completed and signed order of exclusion to the parent of each child with an incomplete or insufficient record. If a student is emancipated or has reached the age of majority, the Exclusion Order will be sent to him/her. The original copy shall be mailed first class to the parent of the child to be excluded. In the event that the Department has knowledge that the address of the parent, provided on the Primary Review Summary Form is incorrect, the Department shall use all reasonable means to notify the parent, including inquiries to the school/facility administrator and the local Post Office to establish the appropriate mailing address and sending home from the school a copy of the Exclusion Order with the child. After all reasonable means have been exhausted, the administrator shall exclude the child on the stated exclusion date. For all orders issued, one copy of the Exclusion Order shall be sent to the administrator and the Department shall retain one copy. The Department shall also retain copies of the records of children to be excluded until notification from the school/facility that such children are in compliance;

(B) The Department shall indicate on the Primary Review Summary Form, the status of each child whose records it reviewed and shall submit a copy of that form to the administrator along with copies of Exclusion Orders issued;

(C) The date of exclusion shall be 35 days from the date that the secondary review began. Additional exclusion cycles with specific time frames are allowable if mutually agreed upon in writing by the affected Department and school/facilities. Exclusion dates shall be set at no less than 14 days from the date that the Exclusion Orders are mailed;

(D) For children excluded for insufficient information and/or incomplete immunizations, compliance will be achieved by submitting to the administrator one of the statements allowed in OAR 333-050-0040(1)(d)(A) through (G);

(E) When the administrator verifies that the requested information has been provided per the Exclusion Order or that an appropriate medical and/or religious exemption has been provided, the child shall be in compliance with ORS 433.267(1) and these rules and qualified for school/facility attendance.

(F) On the specified date of exclusion, the administrator shall exclude from school/facility attendance all children so ordered by the Department until the requirements specified by the Department are verified by the administrator;

(G) The Department shall maintain copies of immunization records of children excluded and shall maintain contact with administrators regarding the status of such children.

(b) Exclusion Order for No Record:

(A) Where the parent does not comply with the requirements of the Exclusion Order for No Record (30 days or more have passed since initial attendance), the administrator shall enforce the exclusion date indicated on the presigned order and exclude the child.

(B) If the exclusion date used is the mandated date (third Wednesday of February), it is recommended that the administrator mail the parent a second copy of the Exclusion Order for No Record five weeks prior to exclusion day;

(C) Five weeks prior to the mandated exclusion date (third Wednesday in February), a copy of each presigned Exclusion Order for No

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Record for all students for whom no record exists at that time shall be sent to the Department. If mutually agreed upon by the school/facility and the Department, a computer generated list is an acceptable alternative;

(D) Exclusion may be avoided before the date specified on the Exclusion Order for No Record, by submission to the school of evidence of immunization(s) which includes at least one dose of each vaccine required for that grade, or a medical or religious exemption. If the Exclusion Order for No Record is enforced and the child is excluded, the child may re-enter school after presenting evidence of immunization(s) which includes at least one dose of each vaccine required for that grade, or a religious or medical or immunity exemption.

(2) If children whose records are not updated on the specified exclusion day arrive at their school/facility, the administrator shall make every effort to contact their parent by phone. The administrator shall place excluded children in a space away from the other children until their parent arrives to pick them up or until they are returned home by regular school district transportation.

(3) If the excluded children do not meet the requirements specified by the Department and do not return to school within four school days, it is the responsibility of the public school administrator, as proper authority, to notify the attendance supervisor of the unexcused absence. The attendance supervisor is required to proceed as required in ORS 339.080 and 339.090.

(4) Children who have been issued an Exclusion Order are not entitled to begin or continue in attendance in any school or facility in Oregon while the Exclusion Order is still in effect. Administrators who receive, or are otherwise made aware of the records of a child from another school/facility containing an Exclusion Order, which has not been cancelled, shall notify the parent(s) and immediately exclude the child until the requirements specified on the Exclusion Order are met and verified by the administrator.

(5) Twelve days after the mandatory February exclusion date, the administrator shall ensure that the Primary Review Summary Form returned from the Department is updated by appropriately marking the current status of each child as specified (including children listed as having no record); that the mathematics on the Primary Review Summary Form are accurate; and that a copy of the revised Primary Review Summary Form is forwarded to the Department on that day by first class mail or hand delivery. The administrator shall maintain a file copy of the updated Primary Review Summary Form.

(6) The Department shall review the updated Primary Review Summary Form for mathematical accuracy. Any errors should be corrected by contacting the affected school/facility.

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 433.006 & ORS 433.235 - 433.284
Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 23-1981, f. & ef. 11-17-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0050; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02

333-050-0090

Administrative Hearings for Review of Exclusion Orders

(1) Each Exclusion Order issued under OAR 333-050-0080 shall contain a notice informing the recipient of the opportunity to obtain an administrative hearing to review the order, pursuant to this rule.

(2) An administrative hearing provides a parent who believes the order to be in error the opportunity to obtain a review in person before the Department. An administrative hearing is not for the purpose of challenging the propriety or validity of the law or rules, nor is it for the purpose of supplementing an existing record. A record may be supplemented at any time without the necessity of an administrative hearing by presentation of the required documentation, pursuant to OAR 333-050-0080(1)(a)(D) and (b)(D).

(3) A request for an administrative hearing shall be made in writing by the parent and must be received by the Department no later than seven (7) days prior to the date set for the exclusion of the child. If not, the right to a hearing shall be deemed waived, unless proof is provided by the parent that the order was not received at least 11 days prior to the date set for the exclusion of the child or that other good cause for the delay exists as determined by the Department. A parent's request for hearing shall explain in what respect the parent believes the order to be in error. The purpose of this explanation by the parent is to identify the issues to be addressed at the hearing and to determine whether there is a possibility of resolving the matter without a hearing. If the explanation is not provided, the Department shall request the parent to, in advance of the hearing, provide the reason. Unless the reason is provided prior to the date of exclusion, the hearing shall be deemed waived.

(4) If prior to the hearing the order of exclusion is found by the Department to be in error, or if prior to the hearing, compliance is achieved pursuant to OAR 333-050-0080(1)(a)(D) and (b)(D), the Exclusion Order may be rescinded without a hearing and formal decision.

(5) The Department shall schedule a requested hearing to commence prior to the date set for exclusion of the child from the school/facility. If it is not possible to do so, the hearing shall be scheduled to commence as soon as possible after the date set for exclusion. When a hearing is scheduled for on or after the date of exclusion, the Department shall provide written notice to the school/facility that the exclusion of the child should be held in abeyance pending a notification of the decision following the hearing. Notification of the date, time, and place of the administrative hearing shall be provided to the parent, together with a copy of this OAR rule. Notice sent by first class mail will suffice.

(6) The chief administrator of the Department or his or her designee shall be the hearing officer.

(7) The parent or his/her authorized representative shall have the right to:

(a) Inspect in advance of the administrative hearing any documentary evidence leading to the Exclusion Order;

(b) Be represented by legal counsel;

(c) Question and confront witnesses; and

(d) Present evidence that is relevant to the issues in the hearing, either through witnesses or documentary evidence.

(8) The Department shall present the evidence which is the basis for the Exclusion Order at the hearing.

(9) The hearing may be continued for good cause and for reasonable periods as determined by the hearing officer.

(10) The decision arrived at shall:

(a) Be based solely on the evidence presented at the hearing and such matters as the hearing officer takes judicial notice of;

(b) Be written and in a form and substance which either affirms or rescinds the Exclusion Order and which states the reasons and identifies the evidence relied upon for such affirmation or rescission; and

(c) Be maintained as a record of the Department and a copy provided to the parent and to the administrator of the school/facility if the school/facility has been previously notified to hold the order of exclusion in abeyance pending the decision.

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 433.006 & ORS 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 2-1982, f. & ef. 2-4-82; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0051; OHD 21-2002, f. & cert. ef. 12-13-02

333-050-0100

Follow Up

(1) In the event that any of the records are original documents the Department shall return such records to the administrator.

(2) The administrator shall be responsible for updating records each time the parents, health care practitioner, or an authorized representative of the Department provides evidence of immunization and/or a medical or religious exemption on each child.

(3) When a person is diagnosed as having one of the following school/facility restrictable diseases:

(a) Diphtheria, Measles, Pertussis, Rubella, or, in children's facilities only, Polio, the local health officer (or designee) may exclude from any school or facility in his/her jurisdiction, any student and/or employee who is susceptible to that disease.

(b) Varicella, the local health officer (or designee) may exclude from any school or facility in his/her jurisdiction, any student in a grade in which Varicella vaccine or disease history is required, who is susceptible to that disease.

(c) More information on disease restrictions for schools and facilities can be found in OAR 333-019-0010 and 333-019-0014.

(4) The administrator shall maintain a system to track susceptibles, in case of request by the local health department. The local health department may request that the list be sorted by disease susceptibility, classroom, grade, and/or school. The administrator will provide the sorted list within one calendar day in order to facilitate appropriate disease control measures.

(5) The Department and/or Health Services may conduct school/facility record validation surveys to insure compliance with ORS 433.235 through 433.280 and these rules.

(6) The Department and/or Health Services may require, if deemed necessary, that an additional review cycle be conducted on any school/facility records that were found in substantial non-compliance with these rules during the validation survey.

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(7) Health Services may issue exclusion orders as needed for compliance with these rules during the validation survey process and when Health Services is the recognized Public Health Authority in the county.

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 433.006 & ORS 433.235 - 433.284

Stats. Implemented:

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0055; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02

333-050-0130

Second Dose Measles in Post Secondary Educational Institutions

(1) Health Services shall require each post-secondary educational institution, except a community college and a private, proprietary vocational school, to require that each entering full-time student born on or after January 1, 1957, has two doses of measles vaccine prior to the student's second quarter or semester of enrollment on an Oregon campus, using procedures developed by the institution.

(2) The following records may be accepted as adequate proof of two doses of measles vaccine:

(a) Two doses (written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of each dose) on or after the first birthday, with a minimum of 28 days between the first and second dose; or

(b) No available month and year for the first dose but written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of the second dose in or after December, 1989.

(3) Each post-secondary educational institution under the jurisdiction of the law shall include a medical or immunity exemption and religious exemption

(4) Each post-secondary educational institution under the jurisdiction of the law shall develop procedures to implement and maintain this requirement.

(5) Health Services may conduct validation surveys to insure compliance.

(6) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services will notify in writing affected educational institutions. The notification will include the details of the suspension, not limited to: the suspended requirements, the anticipated duration of the suspension and policies to be implemented during the suspension.

(7) The local public health officer, after consultation with Health Services, may allow a student to attend an educational institution without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the affected student stating that the vaccine requirement is being postponed. The letter must give guidance to the school about when vaccine is expected to be available.

(b) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one student.

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 433.006 & ORS 433.235 - 433.284

Stats. Implemented:

Hist.: HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0080; OHD 21-2002, f. & cert. ef. 12-13-02

333-050-0140

Second Dose Measles in Community Colleges

(1) Health Services shall require each community college to require that students involved in clinical experiences in allied health programs, practicum experiences in education and child care programs and membership on intercollegiate sports teams have two doses of measles vaccine prior to each student's participation. The requirement shall apply only to those students born on or after January 1, 1957, using procedures developed by the institutions.

(2) The following records may be accepted as adequate proof of two doses of measles vaccine:

(a) Two doses (written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of each dose) on or after the first birthday, with a minimum of 28 days between first dose and second dose; or

(b) No available month and year for the first dose but written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of the second dose in or after December, 1989.

(3) Each community college under the jurisdiction of the law shall include a medical or immunity exemption and religious exemption.

(4) Each community college shall develop procedures to implement and maintain this requirement.

(5) Health Services may conduct validation surveys to insure compliance.

(6) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services will notify in writing affected educational institutions. The notification will include the details of the suspension, not limited to: the suspended requirements, the anticipated duration of the suspension and policies to be implemented during the suspension.

(7) The local public health officer, after consultation with Health Services, may allow a student to attend an educational institution without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the affected student stating that the vaccine requirement is being postponed. The letter must give guidance to the school about when vaccine is expected to be available.

(b) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one student.

Stat. Auth.: ORS 433.001, ORS 433.004, ORS 433.006 & ORS 433.235 - 433.284

Stats. Implemented:

Hist.: HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0090; OHD 21-2002, f. & cert. ef. 12-13-02

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

Adm. Order No.: AFS 18-2002(Temp)

Filed with Sec. of State: 11-19-2002

Certified to be Effective: 11-19-02 thru 5-18-03

Notice Publication Date:

Rules Amended: 461-145-0540

Subject: Rule 461-145-0540 is being amended to remove attorney fees related to establishing an income cap trust and trustee fees in excess of \$50, as costs that are allowed to be distributed from the trust.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-145-0540

Trusts

(1) Trust funds are money, securities or similar property held by a person or institution for the benefit of another person.

(2) This section applies to all trust funds in the FS, MAA, MAF, OHP, REF, SAC and TANF programs. It also applies to GA, GAM, OSIP, OSIPM and QMB for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group for items covered by program benefits.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(3) In the ERDC program, all trust funds are excluded.

(4) In the OSIP, OSIPM, and QMB programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) through (11) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) through (9) of this rule.

(5) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

(a) The client.

(b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

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(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(6) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(7) Except as provided in section (10) of this rule, the following factors are ignored when determining how to treat a trust:

(a) The purpose for which the trust was established.

(b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(8) If the trust is revocable, it is treated as follows:

(a) The total value of the trust is considered a resource available to the client.

(b) A payment made from the trust to or for the benefit of the client is considered unearned income.

(c) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(9) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(10) Notwithstanding the provisions above in this rule, the following trusts are not considered in determining eligibility for OSIPM and QMB:

(a) A trust containing the assets of a client determined disabled by SSI criteria, and created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

(A) The client's parent.

(B) The client's grandparent.

(C) The client's legal guardian or conservator.

(D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. A trust established under this provision enables a client who, because of income, would have been eligible for OSIPM-MN and ineligible for paid nursing facility care or waived services to qualify for OSIPM. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

(A) Personal-needs allowance.

(B) Community spouse monthly maintenance needs allowance.

(C) Medicare and other private medical insurance premiums.

(D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. A trust established under this provision enables a client who, because of income, would have been eligible for OSIPM-MN and ineligible for paid nursing facility care or waived services, to qualify for OSIPM. The trust contains all the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance.

(B) Reasonable administrative costs of the trust, not to exceed a total of \$50 per month, including the following:

(i) Trustee fees;

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income; and

(iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

(E) Other incurred medical care costs that are not reimbursed by a third party. Contributions to reserves for personal liabilities including but not limited to child support, alimony, and property and income taxes. Contributions to reserves for the purchase of an irrevocable burial plan on a monthly basis and contributions to a reserve for home maintenance if the client's name remains on the title.

(F) Patient liability not to exceed the cost of waived services or nursing facility care.

(d) A trust containing the resources or income of a client who is disabled as defined by OSIPM criteria and meeting the following conditions:

(A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who are disabled.

(D) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid.

(11) In the GA, GAM, OSIP, OSIPM and QMB programs, the provisions of this rule may be waived if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, ORS 411.816 & ORS 418.100

Stats. Implemented: ORS 411.060, ORS 411.700, ORS 411.816 & ORS 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef. 11-19-02 thru 5-18-03

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Adm. Order No.: AFS 19-2002(Temp)

Filed with Sec. of State: 12-10-2002

Certified to be Effective: 1-1-03 thru 5-31-03

Notice Publication Date:

Rules Amended: 461-135-0730, 461-155-0295

Subject: 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.

Rules Coordinator: Annette Tesch—(503) 945-6067

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

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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

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

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

Adm. Order No.: SDSD 11-2002(Temp)

Filed with Sec. of State: 12-5-2002

Certified to be Effective: 12-6-02 thru 6-3-03

Notice Publication Date:

Rules Amended: 411-015-0000, 411-015-0005, 411-015-0010, 411-015-0015, 411-015-0100

Subject: These amendments will clarify definitions and the new language will further support the actual intent of current policy. The amended rules will establish a more stable foundation for understanding eligibility for services and institute consistency statewide in the assessment process.

Thus, clients have stronger assurance of equity throughout the state in their eligibility determinations, subsequent case actions, and service benefits received.

Rules Coordinator: Pam Warren—(503) 945-6954

411-015-0000

Purpose

The purpose of establishing priorities for persons to be served is to assist the Department in addressing the following goals:

(1) To enable persons eligible for and receiving services to remain in the least restrictive and least costly setting consistent with their care needs; and

(2) To serve those persons who are the most functionally impaired and who have no or inadequate alternative service systems; and

(3) To assure access to services paid by the Department to eligible persons; and

(4) To assure that services paid by the Department, and the setting in which they are provided are safe and adequate; and

(5) To manage limited resources to enable the greatest possible number of persons to receive needed services through a priority system based on the Department's assessment of the client's functional impairment and alternative service resources.

Stat. Auth.: ORS 410

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; Former (2)(a) - (I) Renumbered to 411-015-0005; Former (3) renumbered to 411-015-0010; Former (4) Renumbered to 411-015-0015; SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03

411-015-0005

Definitions

(1) "Activities of Daily Living (ADL)" means those personal functional activities required by an individual for continued well-being which are essential for health and safety. This includes, but is not limited to eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

(2) "Alternative Service Resources" means other possible resources for the provision of services to meet the person's needs. This includes, but is not limited to, natural physical/social support systems, Risk Intervention services, Older Americans Act programs, or other community resources.

(3) "Assessment" for service eligibility means the process of evaluating the functional impairment levels including the individual's requirements for assistance or independence in performing activities of daily living, and determining nursing facility care. The Department requires use of the Client Assessment and Planning System (CA/PS) to determine service eligibility and planning.

(4) Assistance Types needed for activities of daily living include, but are not limited to the following terms:

(a) "Cueing" means giving verbal or visual clues during the activity to help the individual complete activities without hand-on assistance.

(b) "Hands-on" means a provider physically performs all or parts of an activity because the individual is unable to do so.

(c) "Reassurance" means to offer encouragement and support.

(d) "Redirection" means to divert the individual to another more appropriate activity.

(e) "Set-up" means getting personal effects, supplies, or equipment ready so that an individual can perform an activity.

(f) "Stand-by" means a person must be at the side of an individual ready to step in and take over the task should the individual be unable to complete the task independently.

(g) "Support" means to enhance the environment to enable the individual to be as independent as possible.

(5) "Assistance/Full Assistance" are defined for each activity of daily living as follows:

(a) Bathing/Personal Hygiene: This is comprised of two components. To be considered Assist, the individual must require Assistance in Bathing or Full Assistance in Hygiene. To be considered Full Assist, the individual must require Full Assistance in Bathing.

(A) Bathing means the activities of bathing and washing hair and if needed, using assistive equipment.

(i) Assist: The individual requires assistance from another person with bathing, even with assistive devices. This may include hands-on assistance for part of the task, cueing during the activity or stand-by presence for the duration of the activity.

(ii) Full Assist: The individual requires at least one other person to provide bathing, even with assistive devices. This means hands-on assistance in all phases of the task.

(B) Personal Hygiene means the activities of shaving and caring for the mouth.

(i) Assist: The individual requires assistance from another person with personal hygiene, even with assistive devices. This may include hands-on

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assistance for part of the task, cueing during the activity or stand-by presence for the duration of the activity.

(ii) Full Assist: The individual cannot do personal hygiene, even with assistive devices, without the regular assistance of another person. This means hands-on assistance for all phases of the task.

(b) Cognition/Behavior means functions of the brain, which assist in orientation to person, place and/or time, decision-making, learning, memory, and behaviors, which may affect living arrangements and/or jeopardize safety of self or others. Evaluation of functional limitation is based on eight components. To be considered Assist, the individual must require Assistance in at least three of the eight components. To be considered Full Assist, the individual must require Full Assistance in at least three of the components.

(A) Adaptation means response to major changes in relationship to the individual's environment, such as the possibility of a change in living situation, death of significant other, etc.

(i) Assist: The individual requires frequent reassurance with change. These occurrences are episodic, less than daily.

(ii) Full Assist: The individual requires constant support and reassurance or is unable to adapt to change. These occurrences are ongoing and daily.

(B) Awareness means accurate understanding of needs relating to health, safety, and welfare and how an individual's level of awareness affects others.

(i) Assist: The individual has difficulty understanding those needs, which must be met.

(ii) Full Assist: The individual does not have the capacity to understand those needs.

(C) Danger to Self or Others means behaviors, other than wandering, which may be a danger to the individual (including self injury), or to those around the individual.

(i) Assist: The individual is disruptive or aggressive in a non-physical way, agitated some of the time, or sexually inappropriate. These behaviors are challenging and the individual can generally be verbally redirected.

(ii) Full Assist: The individual is frequently disruptive or aggressive in a non-physical way, is agitated most of the time, or is dangerous, physically abusive, or sexually aggressive. These behaviors are extreme and necessitate intervention beyond verbal redirection.

(D) Demands on Others means behaviors, other than wandering, which negatively impact and affect living arrangements, providers and/or other residents.

(i) Assist: The individual's habits and emotional states limit the types of living arrangements and companions, but can be modified with individualized routines, changes to the environment e.g. roommates and/or non client specific training for the caregiver.

(ii) Full Assist: The individual's habits and emotional states can be modified only with a 24-hour specialized care setting and/or a client specific behavioral care plan that all staff are trained to deliver.

(E) Judgement means ability to make decisions, and conduct activities that affect the ability to function independently. Poor judgement would result in negative consequences that jeopardize the health, safety, and welfare of the individual.

(i) Assist: The individual's judgement is occasionally poor and needs protection, monitoring and guidance to make decisions.

(ii) Full Assist: The individual always or frequently makes poor decisions requiring daily intervention by a care provider.

(F) Memory means ability to remember and appropriately use current information, which impacts health, safety and welfare.

(i) Assist: The individual has difficulty remembering and using current information and requires reminding or occasional directions.

(ii) Full Assist: The individual cannot remember or use information and/or requires regular directions.

(G) Orientation means accurate understanding of person, place, and time as it relates to the ability to function independently.

(i) Assist: The individual is frequently disoriented to person, place or time. These occurrences are episodic during the week; less than daily.

(ii) Full Assist: The individual is disoriented to person, place or time and such occurrences are daily.

(H) Wandering: Moving about aimlessly, or elopement, without relationship to needs or safety.

(i) Assist: The individual wanders within the home or facility, but does not jeopardize safety.

(ii) Full Assist: The individual wanders inside or out and jeopardizes safety.

(c) Dressing/Grooming: This is comprised of two elements. To be considered Assist, the individual must require Assistance in Dressing or Full Assistance in Grooming. To be considered Full Assist the individual must require Full Assistance in Dressing.

(A) Dressing means the activities of dressing and undressing.

(i) Assist: The individual requires assistance from another person to do parts of dressing and undressing, even with assistive devices. This may include hands-on assistance for part of the task, cueing during the activity, or stand-by presence for the duration of the activity.

(ii) Full Assist: The individual must be dressed and undressed by another person, with or without use of assistive devices. Hands-on assistance is required for every phase of dressing activity.

(B) Grooming means nail care and the activities of brushing and combing hair.

(i) Assist: The individual requires help to do part of the task, even with special equipment.

(ii) Full Assist: The individual cannot do any part of the task, even with special equipment.

(d) Eating means the activity of feeding and eating, with special equipment, if regularly used.

(A) Assist: The individual requires another person to be immediately available during mealtime. This includes hands-on facilitation during the act of eating, hands-on assistance with special utensils, cueing during the course of the meal, monitoring to prevent choking or aspiration; or ensuring proper intake of food.

(B) Full Assist: The individual requires one-on-one assistance throughout the meal, for direct feeding (including IV or tube) or constant cueing or, to prevent choking or aspiration.

(e) Elimination: This is comprised of three components. To be considered Assist, the individual must require Assistance in at least one of the three components. To be considered Full Assist the individual must require Full Assist in any of the three components.

(A) Bladder means managing bladder care.

(i) Assist: The individual requires assistance from another person, for parts of the activity, even with special equipment or supplies, to manage dribbling, incontinence, catheter, or sheath changes

(ii) Full Assist: The individual is totally incontinent and requires another person for all phases of bladder care or catheter care.

(B) Bowel means managing bowel care.

(i) Assist: The individual requires assistance from another person to manage incontinence, ostomy care or suppository insertion, even with special equipment or supplies.

(ii) Full Assist: The individual is totally incontinent and requires another person to provide all phases of bowel care.

(C) Toileting means getting to and from the toilet (including bedpan, commode and urinal), cleansing after elimination and adjusting clothing.

(i) Assist: The individual requires assistance from another person to get to and from the toilet or any part of the task, even with special equipment and supplies.

(ii) Full Assist: The individual requires another person to manage all care.

(f) Mobility: This is comprised of two components, Ambulation and Transfer. In the Mobility cluster only, assistance is categorized into three levels. To be considered Minimal Assist, the individual must require Minimal Assistance in Ambulation. To be considered Substantial Assist, the individual must require Substantial Assistance with Ambulation or an Assist with Transfer. To be considered Full Assist, the individual must require Full Assistance with Ambulation or Transfer.

(A) Ambulation means the activity of moving around both inside and outside, using assistive devices, if needed.

(i) Minimal Assist: The individual can get around inside with assistive devices, if needed, without the assistance of another person, but requires assistance from another person when outside or in an unfamiliar environment.

(ii) Substantial Assist: The individual requires the occasional assistance of another person both outside and in a familiar environment, such as the home, even with assistive devices.

(iii) Full Assist: The individual cannot get around, even with assistive devices, without ongoing assistance from another person.

(B) Transfer means the activity of moving to or from a chair, bed or wheelchair using assistive devices, if needed.

(i) Assist: The individual can transfer, with assistive devices if needed, only if assisted by another person. This includes hands-on help for weight-bearing individuals or stand-by presence for safety in transfer.

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(ii) Full Assist: The individual cannot transfer even with special equipment, and is dependent on one or more other persons to perform the transfer. This includes hands-on transfer for non-weight bearing individuals.

(6) "Client Assessment and Planning System (CA/PS) is a single entry data system used for completing a comprehensive and holistic client assessment, comprised of critical elements of the individual's physical, mental, and social functioning, including identification of risk factors and outcome measurements. The CA/PS calculates the individual's service priority status, level of care and service payment rates, and accommodates client participation in care planning.

(7) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(8) "Functional Impairment" means a person's pattern of mental and physical limitations which, even in the best of environments, permanently or temporarily restrict his or her capability of functioning independently.

(9) "Home and Community Based Care Waiver Services" means services approved for Oregon by the Centers for Medicare and Medicaid Services for aged and physically disabled persons in accordance with Sections 1915 (c) and 1115 of Title XIX of the Social Security Act.

(10) "Independent" means the individual does not meet the definition of "Assist" or "Full Assist".

(11) "Service Priority" means the order in which Department clients are found eligible for nursing home, HCB waivers, spousal pay program, and Oregon Project Independence.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 410

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(2)(a) - (1); SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03

411-015-0010

Priority of Paid Services

To meet service priority, an individual must be found eligible, through a CA/PS assessment, as meeting at least the requirements for Assist or Full Assist in activities of daily living, in the following order and as designated in OAR 411-015-0015:

(1) Requires Full Assistance in Mobility, Eating, Elimination, and Cognition.

(2) Requires Full Assistance in Mobility, Eating, and Cognition.

(3) Requires Full Assistance in Mobility, or Cognition, or Eating.

(4) Requires Full Assistance in Elimination.

(5) Requires Substantial Assistance with Mobility, Assistance with Elimination and Assistance with Eating.

(6) Requires Substantial Assistance with Mobility and Assistance with Eating.

(7) Requires Substantial Assistance with Mobility and Assistance with Elimination.

(8) Requires Minimal Assistance with Mobility and Assistance with Eating and Elimination.

(9) Requires Assistance with Eating and Elimination.

(10) Requires Substantial Assistance with Mobility.

(11) Requires Minimal Assistance with Mobility and Assistance with Elimination.

(12) Requires Minimal Assistance with Mobility and Assistance with eating.

(13) Requires Assistance with Elimination.

(14) Requires Assistance with Eating.

(15) Requires Minimal Assistance with Mobility.

(16) Requires Full Assistance in Bathing or Dressing.

(17) Requires Assistance in Bathing or Dressing.

(18) Independent in the above levels but requires structured living for supervision for complex medical problems or a complex medication regimen.

Stat. Auth.: ORS 410

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(3); SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03

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 assessed as being eligible for Title XIX or GA funded services if they meet at least one of the priority levels (1) through (17) 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; SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 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 (1115 of Title XIX), or Spousal Pay, a person must:

(a) Be age 18 or older; or age 17 or younger and currently reside in a nursing facility; and

(b) Be eligible for Title XIX or GA pending SSI (Federal Supplemental Security Income Program); and

(c) Meet the functional impairment level within the service priority levels currently served by 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) Payment for nursing facility or community-based care services for persons eligible for GA but not pending SSI must be prior authorized by the Department's Central Office staff.

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; SDSD 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03

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Department of Justice

Chapter 137

Adm. Order No.: DOJ 7-2002(Temp)

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

Certified to be Effective: 12-12-02 thru 6-10-03

Notice Publication Date:

Rules Adopted: 137-009-0060, 137-009-0065, 137-009-0100, 137-009-0120

Rules Amended: 137-009-0000, 137-009-0005, 137-009-0010, 137-009-0045

Rules Suspended: 137-009-0015, 137-009-0020, 137-009-0025, 137-009-0030, 137-009-0035, 137-009-0040, 137-009-0055

Subject: The temporary rules set forth in this filing govern the screening and selection procedures to establish personal services contracts with individuals and entities to provide attorney services required by law to be performed by the Attorney General.

Rules Coordinator: Carol Riches—(503) 378-6313

137-009-0000

Purpose

The Department may contract for the services of special legal assistants or private counsel to provide legal services otherwise required by law

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to be performed by the Attorney General. These rules specify the screening and selection procedures the Department will use to select individuals or entities to perform such services.

Stat. Auth.: ORS 180.140(5), 279.051(1), 279.712(2)(g) & ORS 279.712(2)(i)
Stats. Implemented: ORS 180.140(5) & ORS 279.051(1)
Hist.: JD 2-1983, f. & ef. 5-17-83; DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0005

Definitions

For purposes of OAR chapter 137, division 009, these terms have the following meanings:

(1) "Attorney General" means the Attorney General of the State of Oregon.

(2) "Contractor" means an individual or entity that is obligated under a contract with the Department to provide legal services required by law to be performed by the Attorney General.

(3) "Department" means the Department of Justice of the State of Oregon.

(4) "Deputy" means the Deputy Attorney General, appointed by the Attorney General to that position pursuant to ORS 180.130.

(5) "Designated Practice Areas" means subject matter areas generally recognized within the legal profession as requiring specialized knowledge of a particular field of law.

(6) "Lowest Overall Cost" means the lowest cost to the state taken as a whole including the prospective Contractor's hourly rates (or other billing methods), available resources, expertise, and ability to accomplish an optimal, timely outcome to a particular matter.

(7) "Master Agreement" means a document that contains contractual provisions that will be included in certain future contracts between the parties. Each future contract will provide detail on scope of services, delivery terms, not-to-exceed amounts and other items necessary to establish a definite contract. A Master Agreement is not a contract, but is a document of understanding between the Department and an individual or entity.

(8) "Solicitation" means a written or oral request for offers, proposals, statements of qualifications, or other information from individuals or entities.

Stat. Auth.: RS 180.140(5), 279.051(1) & 279.712(2)(g)
Stats. Implemented: ORS 180.140(5) & ORS 279.051(1)
Hist.: JD 2-1983, f. & ef. 5-17-83; DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0010

Policy

The policy of the Department is to select Contractors in an expeditious and efficient manner that is consistent with the goal of delivering highly competent legal services at the Lowest Overall Cost to the State of Oregon.

Stat. Auth.: ORS 180.140(5), 279.051(1) & ORS 279.712(2)(g)
Stats. Implemented: ORS 180.140(5) & ORS 279.051(1)
Hist.: JD 2-1983, f. & ef. 5-17-83; DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0015

Conditions for Hiring Consultant

The Department will contract for consultant services only when at least one of the following factors exist:

(1) Work cannot be done within a reasonable time with the Department's own work force;

(2) The required skills or expertise are not available within the Department; or

(3) A consultant personal service contract will result in significant cost savings to the Department.

Stat. Auth.: ORS 279
Stats. Implemented:
Hist.: JD 2-1983, f. & ef. 5-17-83; Suspended by DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0020

Consultant Who Is a Member of PERS

A contract for the services of a consultant who is a member of Public Employees' Retirement System (PERS) and who is employed in another department will normally be in the form of an interagency agreement, OAR 122-020-0005.

Stat. Auth.: ORS 279
Stats. Implemented:
Hist.: JD 2-1983, f. & ef. 5-17-83; Suspended by DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0025

Consultant Who Is Not a Member of PERS

A consultant who is not a member of PERS will be selected through the selection process established herein, OAR 122-020-0015.

Stat. Auth.: ORS 279
Stats. Implemented:
Hist.: JD 2-1983, f. & ef. 5-17-83; Suspended by DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0030

Executive Department Approval Required

A contract with a consultant that will make a total contract amount of \$1,000 per contract or \$2,000 per consultant for the fiscal year shall be submitted to the Executive Department for approval after execution by the parties, unless an exemption is obtained. Funds for the contract shall be available and authorized for expenditure in the agency budget. The source of funds must be described in the contract. No costs can be incurred prior to approval by the Executive Department, OAR 122-020-0015.

Stat. Auth.: ORS 279
Stats. Implemented:
Hist.: JD 2-1983, f. & ef. 5-17-83; Suspended by DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0035

Exceptions

The Attorney General or Deputy Attorney General may approve the employment of a consultant directly without following the procedures established by these rules in the following instances. However, a contract shall be executed in all cases. Approval must still be obtained by the Executive Department before any work may be done by the consultant unless the Executive Department has delegated the approval authority or granted an exemption:

(1) Emergency — An emergency, either time-wise or because of unforeseen developments, where the person is needed in order for the Department to properly represent an agency in a legal matter or perform other necessary activities.

(2) Expert Witness — When the employment of an expert witness with particular qualifications is necessary for the Department to properly represent an agency in a legal matter, or where a technical expert is necessary to instruct or inform Department attorneys regarding the understanding and appropriate presentation of legal issues.

(3) Single Source — Where only a single individual known to the Department is qualified to do the particular job or perform the particular services required, or only the single individual has reasonable access to factual, technical or statistical information necessary to perform the services required (i.e., for purposes of these rules, the employment of individuals pursuant to requests from the Trial Division will be generally considered to fit within sections (2) or (3) of this rule. A contract complying with these rules is still mandatory.)

Stat. Auth.: ORS 279
Stats. Implemented:
Hist.: JD 2-1983, f. & ef. 5-17-83; Suspended by DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0040

Contract Form

The contract for Court Reporters (Non-PERS) shall be based on the format agreement, **Exhibit 1**. The contract for Non-PERS Special Assistant Attorneys General, Investigators and Expert Witnesses shall be based on the format agreement, **Exhibit 2**. For contracts involving PERS members, the format contract adopted to agency needs promulgated as **Exhibit 1** shall be utilized, if required. The format contract shall in all cases certify that adequate funds are available. Deviations to the format contract must be negotiated and require the approval of the Attorney General or the Deputy Attorney General.

[ED. NOTE: Exhibits referenced in this rule are available from the agency.]

Stat. Auth.: ORS 279
Stats. Implemented:
Hist.: JD 2-1983, f. & ef. 5-17-83; Suspended by DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0045

Methods for Selecting Contractors

(1) The Department will use one of the following methods to select a Contractor:

(a) The Department may select a Contractor from a list of individuals or entities established for a Designated Practice Area as set forth in OAR 137-009-060.

(b) The Department may select a Contractor from a group of respondents to a specific matter Solicitation as set forth in OAR 137-009-0065.

(c) The Department may select a Contractor through direct negotiation as set forth in OAR 137-009-0120.

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(2) Nothing in this section shall prevent the Department from entering into an amendment to a contract for legal services according to its terms.

Stat. Auth.: ORS 180.140(5), 279.051(1) & ORS 279.712(2)(g)
Stats. Implemented: ORS 180.140(5), ORS 279.051(1)
Hist.: JD 2-1983, f. & ef. 5-17-83; DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0055

Regarding Expert Witnesses and Consultants in Actions to Establish Paternity

(1) Notwithstanding any other provision of OAR 137-009-0000 to 137-009-0045, the Support Enforcement Division (SED) may retain consultants and expert witness as required in actions filed to establish paternity in accordance with this rule.

(2) SED may request orally or in writing that the physician or other health care professional who provided obstetrical care to the mother of the child for whom paternity is being established complete interrogatories regarding that care, including that person's opinion regarding the date of conception. Under the procedure authorized by this rule, SED may pay the physician or other health care professional a fee which is reasonable and customary within the local community.

(3) SED may request, orally or in writing, that the physician or other health care professional who provided obstetrical care to the mother of the child for whom paternity is being established appear and testify as an expert witness at any proceeding incident to the action to establish paternity. Under the procedure authorized by this rule SED may pay such a witness a fee which is reasonable and customary in the local community.

(4) No contract executed under the authority of this rule shall be for an amount in excess of \$1,000.

(5) The contractor shall perform all work as an independent contractor and will be responsible for any state or federal taxes applicable to the services rendered, nor shall the contractor be eligible for federal social security, workers' compensation or unemployment insurance as a result of this contract.

(6) The contractor, its subcontractors, if any, and all employers providing work, labor or materials under any contract entered into under this rule are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

(7) The hiring of a consultant or expert witness for any purpose not described in this rule must comply with the contracting provisions of OAR 137-009-0000 to 137-009-0045 and other applicable laws.

Stat. Auth.: ORS 279.051
Stats. Implemented:
Hist.: JD 8-1991(Temp), f. & cert. ef. 11-8-91; JD 11-1992, f. & cert. ef. 5-14-92; Suspended by DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0060

Procedure to Develop Lists of Individuals or Entities under Master Agreements

(1) The Department may use a Solicitation to request proposals or information that describes general or specific legal services to be performed within a defined period of time. The purpose of such a Solicitation is to establish a list of individuals or entities under Master Agreements for a specified period of time to provide legal services within Designated Practice Areas as requested by the Department and agreed to by the individual or entity.

(a) The Department shall provide notice of the Solicitation on the VIP System or its successor operated by the Department of Administrative Services or in any other manner the Department deems appropriate to provide notice to a sufficient number of individuals or entities to develop adequate lists of available individuals or entities.

(b) In accordance with ORS 200.035, the Department will notify the Advocate for Minority, Women and Emerging Small Businesses.

(2) The evaluation criteria in the Solicitation may include, without limitation, consideration of the following factors:

(a) Availability and capability to perform the work;

(b) Fees or costs, including proposed discounts from rates generally charged other clients;

(c) Geographic proximity to the location where the legal services will primarily be performed;

(d) Ethical considerations, such as the existence of conflicts of interest;

(e) Recommendations of subject matter experts, such as client agency representatives with special knowledge or insights into necessary or desirable non-legal knowledge or background;

(f) Any other criteria the Department determines relevant to the provision of legal services.

(3) In weighing the factors set forth above, no single factor shall be determinative. But if one factor strongly suggests the Department should enter into a Master Agreement with a proposer with respect to a Designated Practice Area, it may outweigh one or more other factors that favor other proposers.

(4) The Department may either sign a Master Agreement with qualified individuals or entities in particular Designated Practice Areas or cancel the Solicitation.

(5) For purposes of subsection (1)(b) of this section, if the Department has notified the Advocate for Minority, Women and Emerging Small Businesses of its intent to use the VIP System or its successor as its official vehicle for notifying the Advocate about opportunities to contract to provide legal services, the Department may satisfy the requirement for notice to the Advocate for Minority, Women and Emerging Small Businesses by posting the notice on the VIP System for at least five calendar days.

Stat. Auth.: ORS 180.140(5), ORS 279.051(1), ORS 279.712(2)(g)
Stats. Implemented: ORS 180.140(5), ORS 279.051(1), ORS 200.035
Hist.: DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0065

Solicitation to Engage a Contractor to Provide Legal Services for a Specific Matter

The Department may use a Solicitation to request proposals to provide legal services on a specific matter.

(1) The Department may provide notice of the Solicitation in any manner the Department deems appropriate to provide notice to a sufficient number of individuals or entities, but in no event shall notice of a Solicitation under this section be provided to fewer than three prospective proposers.

(2) In accordance with ORS 200.035, the Department will notify the Advocate for Minority, Women and Emerging Small Businesses. For purposes of this subsection, if the Department has notified the Advocate for Minority, Women and Emerging Small Businesses of its intent to use the VIP System as its official vehicle for notifying the Advocate about opportunities to contract to provide legal services, the Department may satisfy the requirement for notice to the Advocate for Minority, Women and Emerging Small Businesses by posting the notice on the VIP System for at least five calendar days.

Stat. Auth.: ORS 180.140(5), ORS 279.051(1), ORS 279.712(2)(g)
Stats. Implemented: ORS 180.140(5), 279.051(1) & ORS 200.035
Hist.: DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0100

Criteria for Selection of Contractor for Specific Matter under OAR 137-009-0060 or 137-009-0065

(1) If the Department decides to select a Contractor for a specific matter from a list of individuals or entities developed pursuant to OAR 137-009-0060, or from among the proposers to a Solicitation under OAR 137-009-0065, the Department will use the evaluation process described in this section.

(2) The Department will make its selection decision based on an evaluation of factors that the Department determines appropriate in any particular instance, which may include, without limitation:

(a) The experience and level of expertise of Contractor and Contractor's available personnel, as determined by the Department, in the Designated Practice Area and for the type of legal services the Department requires;

(b) Whether the Contractor's available personnel possess any required licenses or certifications required to perform the legal services for the specific matter, such as licenses to practice law in the appropriate jurisdiction, or license to appear in a certain forum;

(c) The legal and business constraints or requirements, if any, imposed by particular characteristics of the matter for which the Department seeks legal services;

(d) The extent and nature of any likely conflicts of interest that exist or could arise if Contractor provided legal services with respect to a particular matter;

(e) The training, expertise, temperament, style and experience of the particular Contractor personnel available to perform work on the specific matter and the training, expertise, temperament, style and experience of the particular State of Oregon agency personnel that will be working on the matter with the Contractor's personnel;

(f) Recommendations of subject matter experts, such as client agency representatives with special knowledge or insights into necessary or desirable non-legal knowledge or background.

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- (g) Lowest Overall Cost; or
- (h) Other factors the Department considers relevant to the selection of a Contractor to provide particular legal services.

(3) In weighing the evaluation factors, no single factor shall be determinative, but Lowest Overall Cost always will be considered.

(4) To reduce the Lowest Overall Cost to the state, the Department should select a Contractor from the list of firms established under OAR 137-009-0060 when the work is within an individual's or entity's Designated Practice Area under a Master Agreement and the Department determines:

(a) The administrative cost of selecting a Contractor under OAR 137-009-0065 outweighs potential cost savings under that process;

(b) The services are likely to be integrally related to other services provided by the Contractor under a Master Agreement, resulting in greater economy and efficiency; or

(c) The Department's need for services is of such urgency that selecting a Contractor under OAR 137-009-0065 would result in unacceptable delay.

Stat. Auth.: ORS 180.140(5), ORS 279.051(1), ORS 279.712(2)(g)

Stats. Implemented: ORS 180.140(5), ORS 279.051(1)

Hist.: DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

137-009-0120

Direct Negotiation and Contracting

(1) The Department may directly negotiate and enter into contracts with Contractors to provide legal services without following the procedures set forth in OAR 137-009-0060 through 137-009-0100 in the following circumstances:

(a) The contract's maximum consideration does not exceed \$25,000;

(b) The subject matter of the representation is highly confidential, and there is a substantial risk that the interests of the State of Oregon or the Department would be adversely affected by a more public Solicitation;

(c) The subject matter of the representation is highly time sensitive, and there is a substantial risk that the interests of the State of Oregon or the Department would be adversely affected by any delay in obtaining a Contractor;

(d) The cost of the representation will be borne in whole or in part by a nonstate entity and the nonstate entity has a legal right to influence selection of legal counsel; or

(e) Any other situation in which the Attorney General or the Deputy determines that the interests of the Department or the State of Oregon are best served by direct negotiation and contracting with Contractors.

(2) In directly negotiating and entering into a contract with a Contractor, the Department shall consider Lowest Overall Cost.

Stat. Auth.: ORS 180.140(5), ORS 279.051(1) & ORS 279.712(2)(g)

Stats. Implemented: ORS 180.140(5), ORS 279.051(1)

Hist.: DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03

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

Adm. Order No.: OSFM 10-2002

Filed with Sec. of State: 12-6-2002

Certified to be Effective: 12-6-02

Notice Publication Date: 11-1-02

Rules Amended: 837-020-0040, 837-020-0050, 837-020-0060, 837-020-0080, 837-020-0125

Subject: The Office of State Fire Marshal held hearing on November 18, 2002, on the proposed amendments to these rules.

The hearing included an opportunity for public comment. One portion of the amendment to the rules were made because of advice from the agency's legal counsel that the agency's rule may exceed its jurisdictional and statutory rulemaking authority.

These changes were made to conform the agency's administrative rule to the agency's jurisdictional and statutory rulemaking authority. Additional revisions were made for the purposes of updating and clarification.

Rules Coordinator: Glen Andreassen—(503) 373-1540, ext. 210

837-020-0040

General

(1) Nonretail and Conditional Nonretail Facility Operators desiring to engage in Nonretail and Conditional Nonretail Facility operations shall

comply with all applicable state, federal and local laws, rules and regulations pertaining to cardlock including:

(a) ORS 480.310 through 480.385;

(b) OAR 837-020-0025 through 837-020-0125;

(c) Oregon Uniform Fire Code, 1998 Edition;

(d) OAR chapter 837, division 85 — Hazardous Materials Reporting;

and

(e) NFPA 30 and 30A.

(2) In addition, each Nonretail and Conditional Nonretail Facility shall meet the following requirements as per OAR 837-020-0040:

(a) Proper drainage grades or curbs shall be situated to prevent any spills from flowing towards any building or other pump islands;

(b) Locations for the emergency fuel shutdown devices must be clearly and conspicuously posted;

(c) Instructions for the operation of Nonretail Dispensing devices shall be clearly and conspicuously posted;

(d) Locations and instructions for all fire extinguishers shall be clearly and conspicuously posted;

(e) Be adequately lighted at all times when available for use;

(f) A fire alarm transmitting device or a telephone not requiring a coin or credit card to operate shall be provided at each Nonretail and Conditional Nonretail Facility during all hours of operation. This equipment shall be maintained in good working order in the event Emergency assistance is needed; and

(g) All applicable provisions of the OUFCA shall be met.

(3) All Nonretail and Conditional Nonretail Facilities shall have the following warning signs posted. These signs shall:

(a) Be readily visible and readable from each Class 1 Flammable Liquid Dispensing pump from a distance of ten feet;

(b) State that it is a violation of law, subject to penalty, to dispense Class 1 Flammable Liquids without first receiving the training required by OAR 837-020-0055; and

(c) At all Nonretail Facilities (except Conditional Nonretail Facilities), state that it is a violation of law, subject to penalty, to dispense Class 1 Flammable Liquids for personal use or into Motor Vehicles or Containers not owned or used by a business, government, non-profit, or charitable organization, per ORS 480.345(4);

(4) In addition to the provisions required by OAR 837-020-0040, Nonretail Dual Operation Facilities shall:

(a) Have signs visible from each driveway access point directing customers to the "Retail" and/or "Nonretail" pump islands. Signs shall be readily visible and readable, be at least three feet by four feet in size, and have a minimum height of six-inch letters on a contrasting background;

(b) Where Retail and Nonretail Dispensing of Class 1 Flammable Liquids occurs during the same hours, Nonretail pump islands shall be separated from Retail pump islands by a space of at least 50 feet. Nonretail and Retail pump islands may be separated by a distance of no less than 20 feet, provided prior approval is given by the Office of State Fire Marshal, and that an approved barrier is installed according to the provisions of the OUFCA;

(c) Unless pump islands are separated by at least 50 feet, (20 feet if approved by the Office of State Fire Marshal), Retail and Nonretail Dispensing shall not occur during the same hours at a Facility.

(d) Where Retail and Nonretail Dispensing is separated only by time, signs shall be visible from each driveway access point and each Class 1 Flammable Liquid Dispensing pump stating the days and hours that separate retail and nonretail operations occur. These signs shall be readily visible and readable, be at least three feet by four feet in size, and have a minimum height of six-inch letters on a contrasting background.

(5) At least 45 days prior to the start of intended operations, the Facility Owner or Operator of each new Nonretail and Conditional Nonretail Facility covered by OAR 837-020-0040 shall file the appropriate License Application forms and certifications with the Office of State Fire Marshal.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.310 - ORS 480.385

Hist.: FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02

837-020-0050

Conditions for Operation of Dispensing Device by Nonretail Customers

Notwithstanding ORS 480.330 and 480.340 or OAR 837-020-0045, Persons, other than owners, may be authorized to dispense Class 1 Flammable Liquids at nonretail facilities only under the following conditions:

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(1) The Nonretail and Conditional Use Facility Customer satisfies all requirements of OAR 837-020-0045 through 837-020-0095.

Stat. Auth.: ORS 480.380
Stats. Implemented: ORS 480.345
Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02

837-020-0060

Quantity of Purchase Criteria

(1) Except as provided below, each Nonretail Customer must file Documentation with the Owner or Operator to show the Nonretail Customer purchases at least 900 gallons of Class 1 Flammable Liquids and/or diesel fuel every 12 months for business, government, nonprofit, or charitable purposes.

(2) The 900 gallons may have been purchased from any source. The Nonretail Customer shall provide Documentation to the Owner or Operator to demonstrate this requirement has been met if the Nonretail Customer does not purchase 900 gallons from the Owner or Operator they have entered into an agreement with. This Documentation shall be readily available for review by the OSFM.

(3) Nonretail Customers that do not meet the requirements of ORS 480.345 and this section shall have their access to Nonretail fuel Dispensing revoked by the Nonretail Facility Owner or Operator.

(4) Nonretail Customers who wish to dispense Class 1 Flammable Liquids at a Nonretail Facility are not required to meet the provisions of this section if:

(a) The Nonretail Customer annually provides Documentation that the fuel qualifies as a deductible farming expense on the Nonretail Customer's Schedule F of their federal income tax return; or

(b) The fuel was purchased by a governmental agency providing fire, ambulance or police services; or

(c) The Nonretail Customer was a Customer of the Nonretail Facility on and since June 30, 1991, and meets all other requirements of OAR 837-020-0050.

(5) Nonretail Customer applicants must certify under ORS 162.075 they will purchase the quantity of fuel required by OAR 837-020-0060 within 12 months of the date of their first fuel purchase or when their account was established. Failure to meet this requirement shall result in termination as a Nonretail Customer. Note: this section does not apply to Conditional Use Customers.

NOTE: this section does not apply to Conditional Use Customers.
Stat. Auth.: ORS 480.380
Stats. Implemented: ORS 480.345 & ORS 480.360
Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02

837-020-0080

Nonretail Fuel Dispensing During a Governor Declared Emergency

(1) During an Emergency as defined in ORS 401.025, a Nonretail Facility may permit Individuals who are not otherwise qualified under ORS 480.345 to dispense Class 1 Flammable Liquids if all conditions specified in this section are satisfied.

(2) The Owner or Operator of the Facility holds a valid Nonretail Facility License issued by the State Fire Marshal;

(3) The Owner or Operator has paid an application fee of \$250 as required by ORS 480.350 for each Nonretail Facility and an annual fee of \$5 for each Nonretail Customer that enters into a written agreement with the Owner or Operator.

(4) The Owner or Operator has provided a blank copy of the form required by ORS 480.345 and OAR 837-020-0070 that will be used as the written agreement between the Owner or Operator and Nonretail Customer that outlines the safety training and Emergency procedures to be used at the Facility.

(5) The Nonretail Customer and the Owner or Operator of the Nonretail Facility have entered into a written agreement that meets the requirements of OAR 837-020-0070.

(6) The Class 1 Flammable Liquid is dispensed only into a Motor Vehicle or Container of an Emergency Service Agency as defined in ORS 401.025 or to an entity authorized by an Emergency Service Agency to provide services during an Emergency.

(7) (a) The Nonretail Customer, other than the Owner or Operator, is an Emergency Service Worker as defined in ORS 401.025 and dispenses

Class 1 Flammable Liquids only into the fuel tank of a Motor Vehicle or Container owned or used by the Emergency Service Agency; or

(b) An owner or Employee of the entity authorized by the Emergency Service Agency to provide services during an Emergency and dispenses Class 1 Flammable Liquids only into the fuel tank of a Motor Vehicle or other Container owned or used by the entity authorized by that agency to provide services during an Emergency.

(8) The Nonretail Customer, other than the Owner or Operator or Employee, Dispensing Class 1 Flammable Liquids satisfies safety training requirements of OAR 837-020-0055.

(9) The Owner or Operator shall bear the burden of production and proof that the requirements of OAR 837-020-0040, and any other rules of the State Fire Marshal have been satisfied.

Stat. Auth.: ORS 480.347
Stats Implemented: ORS 480
Hist.: OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02

837-020-0125

Penalties

The State Fire Marshal may impose a civil penalty of up to \$500 for each violation of ORS 480.310 through 480.385, and OAR 837-020-0040. Penalties shall be imposed in accordance with the following penalty matrix established by the State Fire Marshal. Penalties may be based on history, violation types, number of instances of violations identified, and severity of violations.

(1) Violation Types, Instances, and Penalty Assessments:

(a) The Types of Violations are:

- (A) Least — Type I;
- (B) Minimal — Type II
- (C) Moderate — Type III
- (D) Severe — Type IV

(2) The violation instance is determined based on the number of times a Person, Individual, Owner, or Operator has committed a violation. A violation occurs each time a Person, Individual, Owner, or Operator breaks a rule established by OAR 837-020-0040.

PENALTY MATRIX: VIOLATION TYPE PENALTY INSTANCE

Level 1, 2, 3

I. LEAST WARNING, \$25 \$75

II. MINIMAL \$25 \$75 \$150

III. MODERATE \$75 \$150 \$250

IV. SEVERE \$125 \$250 \$500

TYPE I: LEAST

Eligibility Documentation (excluding safety training)

Falsified License Application

Signs -

Retail/nonretail locations

Phone # of Operator

It's a violation of law

Days/Hours of Operation of time separation facility not present or correct

Other _____

TYPE II: MINIMAL

Unlawful Dispensing at nonretail facilities

AST labels for above ground tanks not present

Dispensing instructions not present

Other _____

TYPE III: MODERATE

Signs -

No Smoking...

Emergency Fuel Shutdown Device location

Fire Extinguisher location

In Case of Fire,...

Other _____

TYPE IV: SEVERE

Required facility equipment not present or not in good working order

Safety training not provided prior to allowing customer to dispense fuel

Unlawful Dispensing at retail facilities

Operating a Nonretail Facility without a License

Other _____

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.380 & ORS 480.385

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92 (and corrected 6-22-92); OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 10-2002, f. & cert. ef. 12-6-02

Department of Public Safety Standards and Training Chapter 259

Adm. Order No.: BPSST 19-2002
Filed with Sec. of State: 11-21-2002
Certified to be Effective: 11-21-02
Notice Publication Date: 9-1-02
Rules Amended: 259-025-0000

ADMINISTRATIVE RULES

Subject: Update fee structure to bring it more in line with actual costs.

Rules Coordinator: Shawn M. Irish—(503) 378-2100, ext. 2223

259-025-0000

Fees

(1) Material printed by the Department may have a unit price appearing in the publication. In the absence of any such printed price, fees charged for in-stock publications, pamphlets or outlines will be as listed below.

- (a) 1-10 pages — \$ 5.00;
- (b) 11-25 pages — \$ 7.50;
- (c) 26-50 pages — \$ 10.00;
- (d) 51-100 pages — \$15.00;
- (e) Over 100 pages — \$15.00, plus twenty-five cents (\$.25) per page for each additional page over 100.

(2) Documents other than publications will be charged at the rate of \$5.00 for the first 1-10 pages and \$.50 for each additional page.

(3) The Department may charge fees for recovering actual costs of staff time;

(a) For locating, compiling, making available for inspection and delivering public records; and

(b) Researching and documenting information.

(4) No charge will be made for furnishing normal and necessary records or publications to public safety officers, or public safety agencies.

(5) Training which is not under the purview of the Department, shall be charged at the room and board charge fixed by Western Oregon University cost plus \$100.00 per week for instructors and materials.

(6) The Department may charge for the use of facilities at the Public Safety Academy.

(7) The Department may charge replacement cost for lost or damaged keys, equipment, or meal cards.

Stat. Auth.: ORS 181.640 & ORS 703.230

Stats. Implemented: ORS 181.640 & ORS 703.230

Hist.: PS 1-1983, f. & ef. 12-15-83; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 19-2002, f. & cert. ef. 11-21-02

Adm. Order No.: BPSST 20-2002

Filed with Sec. of State: 11-21-2002

Certified to be Effective: 11-21-02

Notice Publication Date: 8-1-02

Rules Amended: 259-008-0010

Subject: Adopts the rule to bring medical standards current for police, parole & probation and corrections officers. It also updates certain medical tests to bring them in line with current medical practices.

Rules Coordinator: Shawn M. Irish—(503) 378-2100, ext. 2223

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

(1) Citizenship. A person may not be employed as a police, corrections, or parole and probation officer for more than one year unless the person is a citizen of the United States.

(2) Age. No law enforcement unit in this state shall employ as a police officer, corrections officer or parole and probation officer, any person who has not yet attained the age of 21 years.

(3) Fingerprints. On or before the date of employment, each police, corrections, or parole and probation officer shall be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(a) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(b) The Oregon State Police Identification Services Section will notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(c) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section the Department shall comply with the most current requirements.

(d) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(4) Criminal Records. No police, corrections, or parole and probation officer shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(5) Moral Fitness (Moral Character). All law enforcement officers must be of good moral fitness as determined by a thorough background investigation.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement officer. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the officer's performance on the job which makes the officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the officer's ability to perform competently.

(c) If reliable evidence is received by the Board or Department that a law enforcement officer lacks good moral fitness, a rebuttable presumption will be raised that the law enforcement officer does not possess the requisite moral fitness to be a law enforcement officer. The burden shall be upon the law enforcement officer to prove good moral fitness.

(6) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) Graduation from an accredited high school;

(B) Successful completion of the General Educational Development (GED) Test.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(c) Reading and Writing Standard. Before beginning basic police training, challenging basic police training, or beginning the police career officer development course, each applicant shall provide evidence to DPSST that the applicant has attained a minimum of a 12th grade reading and writing level in the English language. The hiring agency is responsible for administering a reading and writing instrument, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic police training. Implementation of this rule will take effect within one year from September 1, 2001.

(7) Physical Examination. All law enforcement officers and applicants shall be examined by a licensed physician or surgeon. The medical examination shall be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and shall conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101. Individuals who have had a successfully completed physical examination (while at the same employer) that is less than two years old at the time of DPSST's receipt of a properly completed DPSST Form F-4 are not required by DPSST to be re-examined. If two years or more have passed since the date of the last successfully com-

ADMINISTRATIVE RULES

pleted physical examination (while at the same employer), an individual who is selected for a certifiable position in a discipline in which the individual is not yet certified shall complete and pass a new physical examination.

(a) Police, Corrections, and Parole and Probation applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision shall be at least 20/30 (Snellen) in each eye. Due to the demonstrated likelihood of dislodgment or breakage, candidates who are able to wear only glasses with frames shall meet an uncorrected standard not worse than 20/100 (Snellen) in each eye. Those candidates who use soft contact lenses (SCLs) shall have vision correctable to at least 20/30 in each eye, with no uncorrected standard, provided the employing agency will monitor compliance. Replacement glasses or lenses (as appropriate) shall be on the person or readily available at all times during each work shift.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Depth Perception. Depth Perception shall be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

(D) Peripheral Vision. Visual Field Performance shall be 140 degrees in the horizontal meridian combined.

(E) Night Blindness. A history of night blindness should be evaluated to determine applicant's capacity to perform essential tasks at night or in dark or low light settings.

(b) Applicants for the position of police or corrections officer must have hearing in both ears sufficient enough to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.

(c) Applicants for the position of parole and probation officer must have hearing in both ears sufficient to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 35 decibels (db) at the 500, 1000, 2000, and 3000 Hertz levels in either ear with no single loss in excess of 45 db.

(d) If amplification device(s) is (are) necessary to meet the criteria in (b) or (c) above, or if applicant cannot meet the above criteria and wishes to pursue application, applicant must:

(A) Obtain a hearing evaluation by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) to determine current hearing aid requirement; and

(B) Achieve a Speech Reception Threshold (SRT) of no greater than 25 db for each ear;

(C) Police, corrections and parole and probation officers shall achieve a Speech Discrimination test score of no less than 90% utilizing a standard 50-word presentation at 60 db Hearing Threshold Level (HTL). The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, and throat) designated by the Department to verify that the applicant's hearing meets the Board's minimum hearing standard. The verification examination shall be at the expense of the applicant and/or the applicant's employing agency. The equipment utilized for all of these evaluations shall be calibrated annually using current ANSI standards.

(D) Hearing amplification devices used to meet the hearing standard must be the type that protects the applicant from further hearing degradation due to amplification of loud sounds.

(e) Applicants for the position of police, corrections, or parole and probation officer must be able to use vocal chords and have significant speaking ability to perform speaking-related essential tasks. For police and corrections officers abnormalities of the nose, throat or mouth must not interfere with the applicant's breathing or proper fitting of gas mask or similar device.

(f) Applicants for the position of police, corrections, or parole and probation officer who have a history of organic cardio-vascular disease or a finding during the medical examination of organic cardio-vascular disease shall necessitate further medical evaluation.

(A) Resting blood pressure should be less than or equal to 140 mmHg systolic and 90 mmHg diastolic on three successive readings.

(B) Applicants shall not have a functional and therapeutic cardiac classification greater than the Heart Association's Class A.

(C) Failure to meet guidelines (f), (A) and (B) requires further medical evaluation.

(D) If the applicant has controlled hypertension not exceeding the above standards and is on medication with side effect profiles, which do not interfere with performance of duty, then the condition may not be excludable.

(E) Functional Capacity I patients with cardiac disease may not be excludable, if they have no limitations of physical activity and ordinary physical activity does not cause discomfort and they do not have symptoms of cardiac insufficiency, nor experience angina pain.

(F) Therapeutic Classification A patients with cardiac disease, whose physical activity is restricted, should be evaluated thoroughly.

(G) If further medical examination is required under (df), it shall be at the expense of the applicant or hiring authority.

(g) A current-version DPSST Medical Examination Report (DPSST Form F2), or a medical report completed by a licensed physician containing at a minimum the information on Form F2 and a signed statement by the examining physician that the applicant does not have any condition, physical, mental, or emotional, which, in his/her opinion, suggests further examination: Must be submitted on all law enforcement applicants. This Report will be furnished to the examining physician by the hiring agency. The physician must indicate that the applicant is or is not physically able to perform the duties of a law enforcement officer as prescribed by DPSST.

(h) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(i) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(j) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(k) A person or department head requesting a waiver of any physical requirement set forth in section (7) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. Such supporting documents shall include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing such documentation or testimony shall be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver shall be considered void. If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

[ED. NOTE: Forms referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1987, f. & ef. 10-26-87; Renumbered from 259-010-0015; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 4-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 9-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 3-2001, f. & cert. ef. 8-22-01; BPSST 12-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-2002; BPSST 20-2002, f. & cert. ef. 11-21-02

Adm. Order No.: BPSST 21-2002

Filed with Sec. of State: 11-21-2002

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Notice Publication Date: 9-1-02

Rules Amended: 259-008-0060

Subject: Training may be counted toward both disciplines if the training is applicable to each discipline when the officer holds a multi certification.

Rules Coordinator: Shawn M. Irish—(503) 378-2100, ext. 2223

ADMINISTRATIVE RULES

259-008-0060

Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, Executive and Instructor Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, experience; and the levels established by the employing law enforcement units, or public or private safety agencies. Emergency medical dispatchers may be awarded basic certification only.

(2) Basic certification is mandatory and shall be acquired by all police officers, telecommunicators, and emergency medical dispatchers within 18 months of employment, and by all corrections officers within one year of employment unless an extension is granted by the Department.

(3) To be eligible for the award of a certificate, law enforcement officers shall be full-time employees as defined by ORS 181.610 and OAR 259-008-0005 or part-time parole and probation officers, as described in ORS 181.610 and OAR 259-008-0066.

(4) To be eligible for the award of a certificate, law enforcement officers shall meet the Board's prescribed minimum employment standards as established by OAR 259-008-0010.

(5) To be eligible for the award of a certificate, law enforcement officers shall subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers shall subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T).

(6) Application for certification must be submitted on Form F7, with all applicable sections of the form completed. The form shall be signed by the applicant. In order to insure that the applicant does or does not meet the minimum standards of employment, training, education, and experience, and is competent to hold the level of certification for which the applicant has applied, the department head or authorized representative shall sign the form recommending that the certificate be issued or withheld. If the department head chooses not to recommend the applicant's request for certification, the reason for this decision shall be specified in writing and shall accompany the Application for Certification (Form F7).

(7) When a department head is the applicant, the above recommendation shall be made by the department head's appointing authority such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(8) In addition to the requirements set forth above, each applicant, for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate, shall have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule shall equal one (1) education point. (Example: 15 college credits equals 15 education points.)

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule shall equal one and one-half (1-1/2) education points. (Example: 10 semester credits equals 15 education points.)

(c) All college credits shall be supported by certified true copies of official transcripts.

(9) Training Points. Twenty (20) classroom hours of job-related training approved by the Department shall equal one (1) training point. (Example: 200 training hours equal 10 training points.)

(a) Basic, Intermediate, Advanced, Supervisory, Middle Management, Executive, or Specialized courses certified, sponsored, or presented by the Department shall be approved.

(b) The Department may award training points for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records shall include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented may be accepted, subject to staff evaluation and approval. These records shall include the subject, date, and classroom hours, and shall be certified true copies of the original.

(d) With proper documentation, instructors may claim course completion for law enforcement classes instructed. Training points for repeat instruction of the same class within a 12-month period shall not be awarded.

(e) Upon receipt of documentation which shall include the source, syllabus, number of hours, dates and successful completion of the course, the Department or its designated staff may award training points for correspondence courses.

(f) College credits earned may be counted for either training points or education points, whichever is to the advantage of the applicant. Three (3) quarter credits equals three (3) training points. Three (3) semester credits equals four point five (4.5) training points.

(10) Experience/Employment:

(a) Experience acquired as a corrections, parole and probation, or police officer employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the field in which certification is requested and is approved by the Department. For the purpose of this rule, casual, seasonal, or temporary employment shall not qualify as experience toward certification. Experience as a certified part-time parole and probation officer, as defined under OAR 259-008-0005(22) and (23) and OAR 259-008-0066, shall count on a pro-rated basis.

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the field in which certification is requested and is approved by the Department.

(c) Police, corrections, parole and probation, telecommunicator, or emergency medical dispatch experience in fields other than that in which certification is requested may receive partial credit when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(11) The Basic Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants shall have completed a period of service of not less than nine (9) months with one or more law enforcement units, or public or private safety agencies in a certifiable position, in the field in which certification is being requested.

(b) Applicants shall have satisfactorily completed the required Basic Course in the field in which certification is requested or have completed equivalent training as determined by the Department.

(c) Applicants shall have valid first aid and cardiopulmonary resuscitation (CPR) card(s).

(d) Before the eligibility date for certification, each telecommunicator and emergency medical dispatcher shall be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(A) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(B) The Oregon State Police Identification Services Section shall notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(C) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department shall comply with the most current requirements.

(D) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(12) The Intermediate Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants shall possess a Basic Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of police, corrections, parole and probation or telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(13) The Advanced Certificate. In addition to the requirements set forth in section (1) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants shall possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points combined with the prescribed years of corrections, parole and probation, police, telecommunications experience, or the college degree designated combined with the prescribed years of experience: [Table not included. See ED. NOTE.]

(14) The Supervisory Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Supervisory Certificate:

ADMINISTRATIVE RULES

(a) Applicants shall possess or be eligible to possess the Advanced Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 45 education points as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Supervision Course or an equivalent number of hours of Department approved supervisory level training within five (5) years prior to application for the Supervisory Certificate.

(d) Applicants shall be presently employed in, or have satisfactorily performed the duties associated with the position of a first level supervisor, as defined in ORS 181.610 and OAR 259-008-0005(16), as attested to by the applicant's department head during the time such duties were performed, for a period of one (1) year. The required experience shall have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, supervisory duties.

(15) The Management Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants shall possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education points as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Middle Management Course or an equivalent number of hours of Department approved management level training within five (5) years prior to application for the Management Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in ORS 181.610 and OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, management duties.

(16) The Executive Certificate. In addition to requirements set forth in section (1) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants shall possess or be eligible to possess the Management Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education points as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed 100 hours of Department approved executive level training within five (5) years prior to application for the Executive Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in OAR 259-008-0005, for a period of two (2) years. The required experience must have been acquired within five (5) years prior to the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of subsection (d) of this section, provided the employing agency demonstrates that the applicant performs, on a regular basis, the duties associated with that of a department head or assistant department head.

(17) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer shall meet the following requirements for the award of multi-discipline certification:

(a) Basic certification: A person who is certified in one discipline may apply for multidiscipline certification, if employed in or transferred to another discipline within the same law enforcement unit. The applicant shall demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification: Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine (9) months

experience in the discipline in which they are requesting certification, and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the EMD discipline since it only exists at the basic certification level.

(c) Retention of Multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every twelve (12) months. The training must be reported to the Department, as follows:

(A) For the EMD certificate; a minimum of four (4) hours of training, specific to this discipline, must be reported annually on a Form F-15M.

(B) For the Telecommunicator certification, a minimum of twelve (12) hours of training, specific to this discipline, must be reported annually on a Form F-15M.

(C) For all other disciplines, a minimum of twenty (20) hours of training, specific to each discipline in which certification is held, must be reported annually on a Form F-15M.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) Failure to comply with subsection (c) of this rule shall result in the recall of the multi-discipline certification by the Board.

(f) Upon documentation of compliance with subsection (c) of this rule, a law enforcement officer may reapply for single or multi-discipline certification as outlined by this rule.

(18) Certificates Are Property of Department. Certificates and awards are the property of the Department, and the Department shall have the power to revoke or recall any certificate or award as provided in the Act.

[ED. NOTE: Tables and Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.640, ORS 181.644, ORS 181.651, ORS 181.652, ORS 181.653, ORS 181.654 & ORS 181.665

Stats. Implemented: ORS 181.640, ORS 181.644, ORS 181.651, ORS 181.652, ORS 181.653, ORS 181.654 & ORS 181.665

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055; PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02

Adm. Order No.: BPSST 22-2002
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Rules Amended: 259-008-0000, 259-008-0005, 259-008-0020, 259-008-0035, 259-008-0065, 259-008-0070, 259-008-0080, 259-008-0085

Rules Repealed: 259-008-0062, 259-008-0063, 259-008-0087

Subject: Currently, all rules with fire services professionals are interspersed throughout Division 8. The Secretary of State has given authority for the rules dealing with fire services professionals to be moved to a new division.

The fire discipline's rules are expanding as the discipline grows and new rules are added. Some rules are unique to the fire discipline and need to be in an area specific only to fire service professionals.

Rules Coordinator: Shawn M. Irish—(503) 378-2100, ext. 2223

259-008-0000

Policies and Objectives

(1) The policies of the Board and Department in response to ORS 181.630 are:

(a) The Board and Department exist to develop talented individuals into public safety providers who are:

(A) Culturally competent;

(B) Ethically, physically and emotionally fit; and

(C) Well trained, highly skilled and responsive to the needs of their communities.

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(b) The Board and Department shall promote the safety, efficiency, effectiveness, self-sufficiency and competence of public safety agencies and professionals.

(c) The Board and Department shall support collaboration among public and private security, law enforcement, telecommunications and corrections organizations, the related organizations with whom they work and the interests of the communities they serve.

(d) The Board and Department shall consult with and inform each other fully on matters of public safety standards, training and certification.

(e) The Board may adopt or approve all policies, standards and minimum requirements for public safety certifications and training.

(f) The Department may administer operations and procedures and implement or apply the policies and standards of the Board.

(g) The Department is and remains a full department of the state.

(2) The objectives of the Board and Department are:

(a) To improve public safety services in Oregon by raising the level of competence of police, corrections, parole and probation officers, telecommunicators, emergency medical dispatchers, and support staffs:

(A) By establishing minimum standards for all levels of career development in such matters as employment; promotion; education; physical, emotional, intellectual, and moral fitness; and such other matters that relate to the competence and reliability of persons seeking employment or promotion within the police, corrections, and parole and probation services;

(B) By establishing minimum standards for the training and certification of police, corrections, parole and probation officers, telecommunicators, and emergency medical dispatchers, for all levels of career development, basic through executive;

(C) By providing, sponsoring, certifying or coordinating police, corrections, parole and probation, telecommunication, and emergency medical dispatch training courses.

(b) To conduct, facilitate, and promote studies and research designed to improve public safety within the state, and to assist in the implementation of Board recommendations.

Stat. Auth.: ORS 181.630 & ORS 181.640

Stats. Implemented: ORS 181.630 & ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0000; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 22-2002, f. & cert. ef. 11-18-02

259-008-0005

Definitions

(1) "Assistant Department Head" means an officer occupying the first position subordinate to a Department Head, and is primarily responsible for supervision of middle managers and/or supervisors.

(2) "Board" means the Board on Public Safety Standards and Training.

(3) "Casual employment" means employment that is occasional, irregular, or incidental and the employee does not receive seniority rights nor fringe benefits.

(4) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.

(5) "Commissioned" means an authorization granting the power to perform various acts or duties of a police officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(6) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(7) "Corrections Officer" means an officer or member of a law enforcement unit who is employed full-time thereby and is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; and any full-time employee of the Board who possesses requisite qualifications and is so certified pursuant to ORS 181.651.

(8) "Department" means the Department of Public Safety Standards and Training.

(9) "Department Head" means the chief of police, sheriff, or chief executive of a law enforcement unit or a public or private safety agency directly responsible for the administration of that unit.

(10) "Director" means the Director of the Department of Public Safety Standards and Training.

(11) "Disability leave" means leave from the law enforcement officer's certifiable position, as defined in ORS 181.610(2), (6), (7), for more than 90 days but less than two and one-half years, for pregnancy, parental leave, family medical leave, illness, or injury other than permanent disability.

(12) "Educational Credits" are credits earned for studies satisfactorily completed at an accredited post-secondary education institution recognized under 259-008-0025.

(13) "Educational leave" means leave for education or training related to the job which removes the law enforcement officer from a certifiable position, as defined in ORS 181.610(2), (6), (7), for more than 90 days, but less than two and one-half years.

(14) "Emergency medical dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(15) "First-Level Supervisor" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between the operational level and the middle manager position who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.

(16) "Full-time employment" means the employment of a person who has the responsibilities as defined in ORS 181.610(2), (6) and (7) and sections (8), (10) and (11) of this rule, who has the responsibility for, and is paid to perform the duties described in the above statute and administrative rule for more than 80 hours per month for a period of more than 90 consecutive calendar days.

(17) "High School" is a school accredited as a high school by the Oregon Department of Education, or a school accredited as a high school by the recognized regional accrediting body, or a school accredited as a high school by the state university of the state in which the high school is located.

(18) "Law Enforcement Officers" as used throughout this manual collectively means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610, and 181.651.

(19)(a) "Law Enforcement Unit" means a police force or organization of the state, a city, port, school district, mass transit district, county, county service district authorized to provide enhanced law enforcement services under ORS 451.010, Indian reservation, Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, or common carrier railroad whose primary duty, as prescribed by law, ordinance, or directive, is any one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control, or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision, and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation.

(b) "Law enforcement unit" also means a police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area whose employees are commissioned by a county sheriff.

(20) "Middle Manager" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between first level supervisor and department head position and is primarily responsible for management and/or command duties. A middle manager position does not include a position with limited, or acting middle management duties.

(21) "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties described in statutes and administrative rules for public safety personnel for 80 hours per month, or less, for a period of more than 90 consecutive calendar days.

(22) "Parole and Probation Officer" means

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(a) Any officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers, or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(b) Any officer who:

(A) is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) is employed part-time by the Department of Corrections, a county or a court; and

(C) is charged with and performs the duty of:

(i) community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation.

(23) "Police Officer" means an officer or member of a law enforcement unit who is employed full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide enhanced law enforcement services under ORS 451.010, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, or the Governor, or a member of the Department of State Police who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security; and any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.651.

(24) "Public or private safety agency" means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, police, ambulance or emergency medical services.

(25) "Public safety personnel" and "Public safety professional" include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, and telecommunicators.

(26) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public Safety Academy.

(27) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181.690, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses incurred while officers attend approved training courses certified by the Department.

(28) "Reserve Officer" means an officer or member of a law enforcement unit:

(a) Who is a volunteer or who is employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor or who is a member of the Department of State Police;

(b) Who is armed with a firearm; and

(c) Who is responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(29) "Seasonal employment" means employment that can be carried on only at certain seasons or fairly definite portions of the year.

(30) "Special assignment leave" is leave from the law enforcement officer's certifiable position, as defined in ORS 181.610(2)(6)(7), for more than 90 days but less than two and one-half years, for such duties as determined by the law enforcement unit administrator. Examples of such leave include, but are not limited to, strategic planning, budget preparation, special task force, or other similar duties.

(31) "Staff" are those employees occupying full-time, part-time, and/or temporary positions with the Department.

(32) "Telecommunicator" means any person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 401.720.

(33) "Temporary employment" means employment that lasts for a limited time, not of long duration and is not permanent.

(34) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(35) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0010; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 3-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-2000, f. & cert. ef. 9-29-00; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 22-2002, f. & cert. ef. 11-18-02

259-008-0020

Personnel Action Reports

(1) All law enforcement units and public or private safety agencies shall furnish to the Department the name, address, and other pertinent information concerning any newly appointed public safety professional on a Personnel Action Report (DPSST Form F-4) within ten (10) business days after employment.

(2) Whenever public safety personnel resign, retire, or terminate employment, are promoted, demoted, discharged, deceased, or within a law enforcement unit, or private or public safety agency, the department head shall report this information to the Department on a Personnel Action Report (DPSST Form F-4) within ten (10) business days of the action.

(3) All applicable sections of the Personnel Action Report (DPSST Form F-4) must be completed and signed by the department head or an authorized representative.

(4) All applicants shall furnish to the Department on a Personnel Action Report (DPSST Form F-4) their social security number. The social security number is used to accurately identify the applicant during computerized criminal history (CCH) and Department record checks and to verify information provided by public safety officers under the Act in connection with revocation proceedings.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; Renumbered from 259-010-0050; PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0026; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 2-2001, f. & cert. ef. 2-8-01; BPSST 22-2002, f. & cert. ef. 11-18-02

259-008-0035

Waiver for Equivalent Training or Experience — Reciprocity

(1) The Board or its designee may waive the completion of any course required by OAR 259-008-0025 upon presentation of documentary evidence by a law enforcement unit or public or private safety agency that a law enforcement officer, telecommunicator, or emergency medical dispatcher has satisfactorily completed equivalent training or experience.

(2) In order to be considered for equivalency, training received in a state with laws governing or regulating training of law enforcement officers shall, if subject to such review, have been approved or certified by the employing agency in the state in which the training was received.

(3) The Department may elect to prescribe as a condition of certification successful completion of specified courses or remedial training.

(4) The Department may enter into standing reciprocity compacts or agreements with those states which by law regulate and supervise the quality of police, corrections, parole and probation, telecommunications, emergency medical dispatch, and which require a minimum number of hours of classroom training equivalent to standards established by the Board.

Stat. Auth.: ORS 181.660

Stats. Implemented: ORS 181.660

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0045; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 22-2002, f. & cert. ef. 11-18-02

259-008-0065

Lapsed Certification

(1) All levels of certification of any police, corrections or parole and probation officer shall be considered lapsed if the officer has not been employed as such for a period of three (3) consecutive months or more.

(2) Upon reemployment as a police, corrections, or parole and probation officer, the person whose certification has lapsed may apply for certification in the manner provided in ORS 181.610 to 181.690.

(3) All levels of certification of any telecommunicator or emergency medical dispatcher shall be considered lapsed if the individual has not been employed as such for a period of twelve (12) consecutive months or more.

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(4) Upon reemployment as a telecommunicator or emergency medical dispatcher, the person whose certification has lapsed may apply for certification in the manner provided in ORS 181.610 to 181.690.

Stat. Auth.: ORS 181.652, ORS 181.653 & ORS 181.667

Stats. Implemented: ORS 181.652, ORS 181.653 & ORS 181.667

Hist.: PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 22-2002, f. & cert. ef. 11-18-02

259-008-0070

Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, in such a way to insure the highest levels of professionalism and discipline.

(a) These standards shall be upheld at all times unless there is a specific finding of substantial and compelling reason that demonstrates that neither the safety of the public or respect of the profession will be compromised by a waiver.

(A) In the event that a waiver of denial or revocation is granted the decision shall be made in writing.

(2) The Department shall deny or revoke the certification of any police officer, corrections officer, parole and probation officer, telecommunicator, emergency medical dispatcher or instructor after written notice and hearing, based upon a finding that:

(a) The officer, telecommunicator, or emergency medical dispatcher has been discharged for cause from employment as a police officer, corrections officer, parole and probation officer, telecommunicator, or emergency medical dispatcher.

(b) For purposes of (a) above, "discharged for cause", means an employer initiated termination of employment for any of the following reasons:

(A) Gross Negligence: means where the public safety professional's act or failure to act creates a danger or risk to persons, property, or to the efficient operation of the department, recognizable as a gross deviation from the standard of care that a reasonable public safety professional would observe in a similar circumstance;

(B) Insubordination: means a refusal by a public safety professional to comply with a rule or order where the rule or order was reasonably related to the orderly, efficient, or safe operation of the public or private safety agency and where the public safety professional's refusal to comply with the rule or order constitutes a substantial breach of that person's duties; or

(C) Incompetence or Gross Misconduct: in determining what constitutes "incompetence or gross misconduct," sources the Department may take into account include but are not limited to practices generally followed in the profession, current teaching at public safety training facilities, and technical reports and literature relevant to the fields of law enforcement, telecommunications, or emergency medical dispatch.

(c) The officer, telecommunicator, emergency medical dispatcher or instructor has been convicted in this state or any other jurisdiction of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(d) The officer, telecommunicator, emergency medical dispatcher, or instructor has been convicted of violating any law of this state or any other jurisdiction involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug except the Department may deny certification for a conviction of possession of less than one ounce of marijuana, which occurred prior to certification; or

(e) The officer, telecommunicator, emergency medical dispatcher, or instructor has been convicted in this state of violating 162.075 (False swearing), 162.085 (Unsworn falsification), 162.145 (Escape in 3rd degree), 162.235 (Obstructing government or judicial administration), 162.315 (Resisting arrest), 162.335 (Compounding a felony), 162.355 (Simulating legal processes) 162.365 (Criminal impersonation), 162.369 (Possession of false law enforcement ID card), 162.375 (Initiating a false report), 162.385 (Giving false information to a police officer), 162.405 (Official misconduct 2nd degree), 162.415 (Official misconduct 1st degree), 163.200 (Criminal mistreatment 2nd degree), 163.207 (Female genital mutilation), 163.208 (Assaulting public safety officer), 163.212 (Unlawful use stun gun/tear gas/mace 2nd degree), 163.415 (Sexual abuse 3rd degree), 163.435 (Contributing to sexual delinquency of minor), 163.445 (Sexual misconduct), 163.465 (Public indecency), 163.545 (Child neglect 2nd degree), 163.575 (Endangering welfare of a minor), 163.675 (sale or exhibition of visual reproduction of sexual conduct by a child), 163.687 (Encouraging child sex abuse 3rd degree), 163.693 (Failure to report child pornography), 164.045 (Theft 2nd degree), 164.170

(Laundering a monetary instrument), 164.172 (Engaging in financial transaction in property derived from unlawful activity), 164.235 (Possession of burglar's tools), 165.007 (Forgery 2nd degree), 165.017 (Criminal possession of forged instruments 2nd degree), 165.037 (Criminal simulation), 165.042 (Fraudulently obtaining a signature), 165.080 (Falsifying business records), 165.095 (Misapplication of entrusted property), 165.100 (Issuing false financial statement), 165.102 (Obtain execution of documents by deception), 165.577 (Cellular counterfeiting 3rd degree), 165.800 (Identity theft), 166.155 (Intimidation 2nd degree), 166.350 (Unlawful possession of armor-piercing ammunition), 166.416 (Providing false information regarding gun transfer), 166.418 (Improperly transferring handgun), 166.425 (Unlawful purchase of firearm), 166.427 (Register of transfers of used firearms), 166.480 (Sale/gift of explosives to children), 167.007 (Prostitution), 167.062 (Sodomasochistic abuse or sexual conduct in live show), 167.065 (Furnishing obscene materials to minors), 167.070 (Sending obscene materials to minors), 167.075 (Exhibiting an obscene performance to minor), 167.080 (Displaying obscene materials to minors), 167.087 (Disseminating obscene materials), 167.090 (Public display of nudity/sex for advertising), 167.122 (Promoting gambling 2nd degree), 167.132 (Possession of gambling records 2nd degree), 167.147 (Possession of gambling device), 167.222 (Frequenting place controlled substance is used), 167.262 (Adult using minor in controlled substance offense), 167.320 (Animal abuse 1st degree), 167.352 (Interfere with assisted search or rescue of animal), 167.355 (Involvement in animal fighting), 167.820 (Concealing birth of infant), 475.960 (Illegally selling drug equipment), any misdemeanor involving any acts of domestic violence as defined in ORS 135.230, or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(A) There is not an option of waiver for the crimes listed above.

(3) Grounds for Denying or Revoking Certification of a Public Safety Professional:

(a) The Department may deny or revoke the certification of any public safety professional or instructor, as stated in OAR 259-008-0070(4)(b)(A), after written notice, and a hearing, if requested, based upon a finding that:

(A) The public safety professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The officer, telecommunicator, emergency medical dispatcher or instructor has been convicted of a crime, other than a mandatory denial or revocation as listed above, in this state or any other jurisdiction.

(i) In making a decision on a discretionary denial or revocation the policy committees may use the criminal disqualifier and decision matrix approved by the Board. (Exhibit A)

(ii) The matrix is designed as an aid in guidance to decision-making only and provides parameters for deviation.

(iii) Policy committees may consider mitigating circumstances from the criminal disqualifier matrix for the parameters included but not limited to the list below:

- Was the conviction a felony, misdemeanor, or violation?
- How long ago did the conviction occur? (refer to the matrix)
- Was the person a minor at the time or tried as an adult?
- Did it occur before, during, after, or in between employment in law enforcement?
- Did the individual serve time in prison/jail? If so, how long?
- If restitution was involved, has the person met all obligations?
- Was the individual on parole or probation? If so, when did the parole or probation end? Is the person still on parole or probation?
- Are there any aggravating or mitigating circumstances that should be considered?
- Do the actions violate the rule definition of moral fitness (OAR 259-08-010(5)), i.e., moral turpitude, dishonesty, fraud, deceit, misrepresentation, conduct prejudicial to the administration of justice, conduct that reflects adversely on the profession, or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation?
- How many other convictions does this person have? Over what period of time?
- Has this person been convicted of this same crime more than once?
- If a DUI, is this the first, second, or third time within the previous 10 years? (Has this DUI become a felony (it's a felony if this is the fourth conviction and the last three were within the previous ten-year period)?
- Does this conviction involve any domestic violence situation?

(C) The public safety officer or instructor does not meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640(1)(a) to (d).

(4) Scope of Revocation. Whenever the Department revokes the certification of any public safety professional, the revocation shall embrace all certificates the Department has issued to that person.

(5) Revocation and Denial Procedure.

(a) Agency Request: When the hiring authority having employed the public safety professional requests that the person's certification be revoked or denied, it shall submit in writing to the Department the reason for the

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requested revocation or denial and all factual information supporting the request.

(b) **DPSST Initiated Request:** Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the person's certification be revoked or denied.

(c) **Department Staff Review:** The Department shall review the request and the supporting factual information to determine if the request for revocation or denial meets statutory and administrative rule requirements. If the reason for the request does not meet the statutory and administrative rule requirements for revocation or denial the Department shall so notify the requestor. If the reason for the revocation or denial meets statutory and administrative rule requirements but is not supported by adequate factual information, the Department shall request further information from the requesting hiring authority or conduct its own investigation of the matter. If the Department makes a determination that a person's certification should be revoked or denied, as a result of a conviction deemed to be discretionary, the request must be presented to the Board, through a Policy Committee, for review. If the Board should consider a request for waiver of the denial or revocation action, it is the responsibility of the applicant to present to the Board all information relative to the request for waiver, not less than fifteen days prior to the next scheduled Board meeting. The Board may consider a request for waiver under unique circumstances, and only if substantial and compelling reasons have been clearly demonstrated by the applicant.

(d) **Initiation of Proceedings:** Upon determination that the reason for revocation or denial is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice shall be prepared.

(e) **Contested Case Notice:** The Department shall prepare, or the Board shall cause the Department to prepare a "Contested Case Notice" in accordance with OAR 137-003-0001 of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department shall have a copy of the notice served on the public safety professional.

(f) **Response Time:** A party who has been served with the "Contested Case Notice" shall have 20 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(g) **Default Order:** In the absence of a timely request for a hearing, the Contested Case Notice will become a final order revoking or denying certification pursuant to OAR 137-003-0075(5).

(h) **Hearing Request:** When a request for a hearing is received in a timely manner, the Department shall refer the matter to the Hearings Officer Panel in accordance with OAR 137-003-0515.

(i) **Findings of Fact, Conclusions of Law and Proposed Final Order.** The presiding officer of the Hearings Officer Panel shall prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(j) **Exceptions and Arguments to the Findings of Fact, Conclusions of Law and Proposed Final Order.** A party shall have 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order to file specific written exceptions and arguments with the Department.

(A) The Department may extend the time within which the exceptions and arguments shall be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments shall serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

[ED. NOTE: Exhibits b referenced in this rule are available from the agency.]
Stat. Auth.: ORS 181.640, ORS 181.661, ORS 181.662, ORS 181.664 & 183.341
Stats. Implemented: ORS 181.640, ORS 181.661, ORS 181.662 & ORS 181.664
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 6-2000, f. & cert. ef. 9-29-00; BPSST 14-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp) f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-02; BPSST 22-2002, f. & cert. ef. 11-18-02

259-008-0080

Certification of Instructors

(1) The Department shall certify instructors deemed qualified to teach in any of the certified training courses.

(2) Instructors will be certified on the basis of minimum qualifications as established by the Department in the areas of education, training,

and experience. It shall be the continuing responsibility of the Department to see that instructors are assigned only topics which they are qualified to teach and the instruction is evaluated on a regular basis to insure that excellence is maintained.

(3) Instructors for corrections, parole and probation, police, telecommunications, or emergency medical dispatch, shall have a minimum of three (3) years experience in their respective professions or possess other qualifying professional experience.

(4) Review and approval of instructors shall be the responsibility of the Department.

(5) Applications for instructor certification, shall be submitted on an Instructor Certification Application (BPSST Form F-9) and shall be accompanied by a detailed resume of individual qualifications.

(6) If certification is denied, the requesting agency shall be notified in writing and advised of the reasons for denial.

(7) Instructor certification is not required for teaching assignments in non-Department certified courses.

(8) Review of instructor certification may be initiated upon the request of a department head, staff, or other reliable source.

(9) Instructor certification shall be valid for the term of the associated course.

[ED. NOTE: Form referenced in this rule are available from the agency.]
Stat. Auth.: ORS 181.640 & ORS 181.650
Stats. Implemented: ORS 181.640 & ORS 181.650
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0060; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98, BPSST 22-2002, f. & cert. ef. 11-18-02

259-008-0085

Certification of Courses and Classes

(1) The Department shall certify courses, and classes deemed adequate to effectively teach one or more approved public safety subject(s) to police, corrections, adult parole and probation, telecommunications, and/or emergency medical dispatch.

(2) Certification shall be based on the evaluation of course curriculum or subjects for instruction, instructor qualifications, facilities for instruction, and method of instruction. The Department may cause inspections to be made pursuant to ORS 181.640(2).

(3) Facilities and equipment used for certified training shall be accessible to all interested and qualified individuals.

(4) The Department shall certify courses at two levels: Content and Topical.

(a) Courses certified at the content level require a student demonstration of acquired knowledge, skill, or ability. Agencies, organizations, or individuals requesting course certification at the content level shall submit an Application for Certification of Course (DPSST Form F-20), accompanied by clearly-defined performance objectives, test questions and/or evaluation criteria, and evidence of instructor certification as provided in OAR 259-008-0080. Applications received later than thirty (30) calendar days prior to the start of the course, shall not be certified at the content level.

(b) Courses certified at the topical level are informational in nature. Agencies, organizations, or individuals requesting course certification at the topical level shall submit an Application for Certification of Course (DPSST Form F-20), accompanied by a detailed course outline and evidence of instructor certification as provided in OAR 259-008-0080. Applicants are encouraged to apply for certification no later than thirty (30) calendar days prior to the start of the course, to ensure adequate administrative processing time. Shorter time frames may be allowed for non-recurring, pressing circumstances.

(5) The Department shall certify courses of instruction prior to course completion, or may approve exceptions to this requirement under documented special and/or unique circumstances. Records of attendance for this training shall be maintained by the agencies, organizations, or individuals, and may be submitted to the Department on a Continuing Log of Training (DPSST Form F-15), when applying for certification.

(6) The Department shall notify the requester, in writing, of the denial or the granted level of course certification. If certification is granted, that notification shall be accompanied by Course Rosters (DPSST Form F-6).

(7) Course rosters shall be completed, indicating the actual number of hours attended by each student. If the course was certified at the content level, rosters shall also indicate whether each student passed or failed. Rosters shall be returned to the Department within thirty (30) calendar days of course completion; otherwise, the Department may decertify the course.

(8) It is the responsibility of the requesting agency, organization, or individual, to:

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(a) Oversee the preparation of curriculum and to insure its compliance with the requirements of the Department;

(b) Obtain a facility and instructor(s) to be used for the course, and insure their compliance with the requirements of the Department;

(c) Develop rules and regulations governing the operation of the facility and the conduct of the trainees;

(d) Administer the course;

(e) Maintain an accurate record of attendance; and

(f) Maintain all forms required by the Department, forwarding them within the stipulated time period.

(9) Once a course is certified, it remains certified for unlimited delivery during that calendar year, unless there is a significant change in course content, number of hours or instructor(s); or unless it is decertified by the Department as provided in section (7) and (11) of this rule. The Department shall be notified of significant changes.

(10) All course certification shall expire on December 31 of each year. Agencies, organizations or individuals shall request recertification to continue a course into a new calendar year.

(11) The Department may decertify a course whenever that course is deemed inadequate. The course may be recertified by the Department when satisfactory proof has been presented to the Department that the deficiencies have been corrected.

(12) Any law enforcement unit or public or private public safety agency, or any college, university, or academy may align their training or education programs with the standards set by the Department (OAR 259-008-0025) and apply for course certification in the manner described in section (4) of this rule.

(13) Unless written approval is granted otherwise, any course that has been declared mandatory by the Department shall require a minimum number of training hours in each specific subject that constitutes the course, as determined and modeled by the course being offered at the Oregon Public Safety Academy.

(14) Effective July 1, 2004, the department may not accredit any public safety personnel training program provided by a public safety agency or any educational program as equivalent to the minimum training required for basic certification as a police officer. Subsection (14) does not apply to the Department of State Police.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 181.640 & ORS 181.650

Stats. Implemented: ORS 181.640 & ORS 181.650

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0065; PS 1-1990, f. & cert. 2-7-91; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 15-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 9-2002, f. & cert. ef. 4-3-02; BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0000

Policies and Objectives

(1) The policies of the Board and Department in response to ORS 181.630 are:

(a) The Board and Department exist to develop talented individuals into public safety providers who are:

(A) Culturally competent;

(B) Ethically, physically and emotionally fit; and

(C) Well trained, highly skilled and responsive to the needs of their communities.

(b) The Board and Department shall promote the safety, efficiency, effectiveness, self-sufficiency and competence of fire service professionals.

(c) The Board and Department shall support collaboration among fire service organizations and the related organizations with whom they work and the interests of the communities they serve.

(d) The Board and Department shall consult with and inform each other fully on matters of fire standards, training and certification.

(e) The Board may adopt or approve all policies, standards and minimum requirements for public safety certifications and training.

(f) The Department may administer operations and procedures and implement or apply the policies and standards of the Board.

(g) The Department is and remains a full department of the state.

(2) The objectives of the Board and Department are:

(a) To improve public safety services in Oregon by raising the level of competence of fire service professionals.

(A) By establishing minimum standards for the training and certification of fire professionals.

(B) By providing, sponsoring, certifying or coordinating fire training courses.

(b) To conduct, facilitate, and promote studies and research designed to improve fire service within the state, and to assist in the implementation of Board recommendations.

Stat. Auth.: ORS 181.630 & ORS 181.640

Stats. Implemented: ORS 181.630 & ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0005

Definitions

(1) "Authority having jurisdiction" shall mean the Department of Public Safety Standards and Training.

(2) "Board" means the Board on Public Safety Standards and Training.

(3) "Chief Officer" means an individual of an emergency fire agency at a higher level of responsibility than a company officer. A chief officer supervises two or more fire companies in operations or manages and supervises a particular fire department program such as training, communications, logistics, prevention, emergency medical services provisions and other staff related duties.

(4) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(5) "Company Officer" means a fire officer who supervises a company of fire fighters assigned to an emergency response apparatus.

(6) "Department" means the Department of Public Safety Standards and Training.

(7) "Agency Head" means the chief officer of a fire department directly responsible for the administration of that unit.

(8) "Director" means the Director of the Department of Public Safety Standards and Training.

(9) "Entry Level Fire Fighter" means an individual at the beginning of his/her fire service involvement. During the probationary period an entry level fire fighter is in a training and indoctrination period under constant supervision by a more senior member of a fire service agency.

(10) "Fire service professional" means a paid or volunteer fire fighter, an officer or a member of a public or private fire protection agency who is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. "Fire service professional" does not include forest fire protection agency personnel.

(11) "Fire Fighter" is a term used to describe an individual who renders a variety of emergency response duties primarily to save lives and protect property. This applies to career and volunteer personnel.

(12) "Fire Company" means a group of fire fighters, usually 3 or more, who staff and provide the essential emergency duties of a particular emergency response apparatus.

(13) "Fire inspector" means an individual whose primary function is the inspection of facilities in accordance with the specific jurisdictional fire codes and standards.

(14) "Fire Training Officer" means a fire service member assigned the responsibility for administering, providing, and managing and/or supervising a fire department training program.

(15) "NFPA" stands for National Fire Protection Association which is a body of individuals representing a wide variety of professions, including fire protection, who develop consensus standards and codes for fire safety by design and fire protection agencies.

(16) "NFPA Fire Fighter I" mean a member of a fire department who has met the level I job performance requirements of NFPA standard 1001. Sometimes referred to as a journeyman fire fighter

(17) "NFPA Fire Fighter II" means a member of a fire department who met the more stringent level II job performance requirements of NFPA Standard 1001. Sometimes referred to as a senior fire fighter

(18) "NFPA Driver-Operator" means a member of a fire agency licensed to operate a fire department vehicle/apparatus in accordance with the job performance requirements of NFPA 1002 and who are certified as an Entry Level Firefighter. Fire department vehicle/apparatus operators are required to be certified at NFPA 1001 fire fighter I standard prior to driver operator duties. Additional requirements are involved for those driver operators of apparatus equipped with a attack or fire pump, aerial devices, a tiller, aircraft firefighting and rescue vehicles, wildland fire apparatus, and mobile water supply apparatus (tanker/tender).

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(19) "NFPA Fire Officer I" means the fire officer, at the supervisory level, who has met the job performance requirements specified in NFPA 1021 Standard Fire Officer Professional Qualifications. (Company officer rank)

(20) "NFPA Fire Officer II" means the fire officer, at the supervisory/managerial level, who has met the job performance requirements in NFPA Standard 1021. (Station officer, battalion chief rank)

(21) "NFPA Fire Officer III" means the fire officer, at the managerial/administrative level, who has met the job performance requirements in NFPA Standard 1021. (District chief, assistant chief, division chief, deputy chief rank)

(22) "NFPA Fire Officer IV" means the fire officer, at the administrative level, who has met the job performance requirements in NFPA Standard 1021. (Fire Chief)

(23) "NFPA Fire Inspector I" means an individual who conducts basic fire code inspections and has met the level I job performance requirements of NFPA Standard 1031.

(24) "NFPA Fire Inspector II" means an individual who conducts complicated fire code inspections, reviews plans for code requirements, and recommends modifications to codes and standards. This individual has met the level II job performance requirements of NFPA standard 1031.

(25) "NFPA Fire Investigator" means an individual who conducts post fire investigations to determine the cause and the point of origin of fire. This individual has met the job performance requirements of NFPA Standard 1033.

(26) "Public or private fire safety agency" means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, fire fighting, ambulance or emergency medical services.

(27) "Staff" are those employees occupying full-time, part-time, and/or temporary positions with the Department.

(28) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(29) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0010

Personnel Action Forms

(1) All public or private fire safety agencies shall furnish to the Department the name, address, and other pertinent information concerning any newly appointed fire service professional on a Personnel Action Form (DPSST Form PAF-1) within thirty (30) business days after employment.

(2) Whenever fire service personnel resign, retire, or terminate employment, are discharged, or deceased, the agency head shall report this information to the Department on a Personnel Action Form (DPSST Form PAF-1) within thirty (30) business days of the action.

(a) The agency must notify the Department in writing when a fire service professional is promoted to a fire chief position, when a new agency head designee is assigned, or when a fire service professional is promoted to a training officer position.

(b) The agency must notify the Department in writing when a fire service professional is no longer assigned the duties of a fire chief, agency head designee or training officer.

(3) All applicable sections of the Personnel Action Form (DPSST Form PAF-1) must be completed and signed by the agency head or an authorized representative.

(4) All applicants shall furnish to the Department on a Personnel Action Form (DPSST Form PAF-1) their social security number. The social security number is used to accurately identify the applicant and to verify information provided by public safety officers under the Act in connection with revocation proceedings.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0020

Waiver for Equivalent Training or Experience — Reciprocity

(1) The Board or its designee may waive the completion of any course required by OAR 259-009-0025 upon presentation of documentary evidence by a fire service agency that the fire service professional has satisfactorily completed equivalent training or experience.

(2) In order to be considered for equivalency, training received in a state with laws governing or regulating training of fire service professionals shall, if subject to such review, have been approved or certified by the employing agency in the state in which the training was received.

(3) The Department may elect to prescribe as a condition of certification successful completion of specified courses or remedial training.

(4) The Department may enter into standing reciprocity compacts or agreements with those states which by law regulate and supervise the quality of fire service training and which require a minimum number of hours of classroom training equivalent to standards established by the Board.

Stat. Auth.: ORS 181.660

Stats. Implemented: ORS 181.660

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0025

College Education Credits

(1) College credits used for certification shall have been earned at a recognized college or university listed below or under subsection (2) of this rule.

(a) The Department shall only recognize those credits awarded by an accredited, degree-granting college or a university of post secondary education which is recognized by the Council for Higher Education (CHEA) or by the Council on Postsecondary Accreditation (COPA)/Commission of Recognition of Postsecondary Accreditation (CORPA), as outlined in the current edition of the Higher Education Directory (HED).

(2) College credits used for certification obtained in a foreign country, which certificate, credential, or degree is claimed to be comparable to a certificate, credential, or degree granted by a licensing body in the United States or US Territories must be evaluated by a credentialing agency that is a member of the National Association of Credential Evaluation Services (NACES). The Department/Board has no responsibility for obtaining and/or paying for the evaluation and arranging for an official copy to be sent by the evaluating agency to the Department. The evaluation must be approved by the Department, based upon review of an official copy sent by the evaluating agency directly to the Department, before the educational credit is accepted as equivalent.

(3) Certification Credit. Persons wishing to document college education shall furnish the Department official transcripts or a certified true copy of official transcripts.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0030

Fire Policy Committee

(1) The Fire Policy Committee consists of:

(a) All of the board members who represent the fire service discipline; and

(b) The following, who may not be current board members, appointed by the chairperson of the board:

(A) One person recommended by and representing a statewide association of fire instructors;

(B) One person recommended by and representing a statewide association of fire marshals;

(C) One person recommended by and representing community college fire programs; and

(D) One non-management fire fighter recommended by a statewide organization of fire fighters.

(2) Policies and Objectives

(a) In making appointments to the policy committees under this section, the chairperson of the board shall seek to reflect the diversity of the state's population. An appointment made by the chairperson of the board must be ratified by the board before the appointment is effective.

(b) The chairperson of the board may remove an appointed member for just cause.

(c) An appointment to a policy committee that is based on the member's employment is automatically revoked if the member changes employment.

(d) The chairperson of the board shall fill a vacancy in the same manner as making an initial appointment.

(e) The term of an appointed member is two years.

(f) An appointed member may be appointed to a second term.

(3) (a) A policy committee may meet at such times and places as determined by the policy committee in consultation with the Board and Department.

(b) A majority of a policy committee constitutes a quorum to conduct business.

(c) A policy committee may create subcommittees if needed.

(4)(a) Each policy committee shall develop policies, requirements, standards and rules relating to its specific discipline.

ADMINISTRATIVE RULES

(A) A policy committee shall submit its policies, requirements, standards and rules to the board for the board's consideration.

(B) When a policy committee submits a policy, requirement, standard or rule to the board for the board's consideration, the board shall:

- (i) Approve the policy, requirement, standard or rule;
- (ii) Disapprove the policy, requirement, standard or rule; or
- (iii) Defer a decision and return the matter to the policy committee for revision or reconsideration.

(b) The board may defer a decision and return a matter submitted by a policy committee under paragraph (a) of this subsection only once. If a policy, requirement, standard or rule that was returned to a policy committee is resubmitted to the board, the board shall take all actions necessary to implement the policy, requirement, standard or rule unless the board disapproves the policy, requirement, standard or rule.

(c) Disapproval of a policy, requirement, standard or rule under paragraph (a) or (b) of this subsection requires a two-thirds vote by the members of the board.

(5) At any time after submitting a matter to the board, the chairperson of the policy committee may withdraw the matter from the board's consideration.

(6) Past decisions of the advisory committees will not dictate precedence for decisions to be made by the policy committees.

(7) Policy committees are to be governed by the most recent edition of their by-laws.

Stat. Auth.: ORS 181.640 & ORS 181.765
Stats. Implemented: ORS 181.640 & ORS 181.765
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0035

Certificates Are Property of Department

Certificates and awards are the property of the Department, and the Department shall have the power to revoke or recall any certificate or award as provided in the Act.

Stat. Auth.: ORS 181.640, ORS 181.644, ORS 181.651, ORS 181.652, ORS 181.653, ORS 181.654 & ORS 181.665
Stats. Implemented: ORS 181.640, ORS 181.644, ORS 181.651, ORS 181.652, ORS 181.653, ORS 181.654 & ORS 181.665
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0062

Fire Service Personnel Certification

(1) A fire service professional affiliated with an Oregon fire department may be certified by satisfactorily completing the requirements specified in section (2) of this rule: through participation in a fire department training program accredited by the Department; or through a course certified by the Department; or by evaluation of experience as specified in OAR 259-009-0063. The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance evaluations if applicable.

(2) The following standards for fire service personnel are hereby adopted by reference:

(a) The provisions of the NFPA Standard No. 1001, Edition of 1997, entitled "Fire Fighter Professional Qualifications", including Tentative Interim Amendment 97-1 are adopted subject to the following definitions and modifications:

(A) "Authority having jurisdiction" shall mean the Department of Public Safety Standards and Training.

(B) Delete section 1-3 (Note: this references NFPA 1500)

(C) Delete section 2-1(c) (Note: this references NFPA 1582)

(D) Delete section 2-2 (Note: These are physical requirements for Fire Fighter)

(E) Entry Level Fire Fighter shall mean an individual trained to the requirements of Section 2-1 Student Prerequisites, NFPA Standard No. 1403, Edition of 1997, entitled "Live Fire Training Evolutions" and the applicable safety requirements adopted by OR-OSHA. An individual trained to this level and certified so by the agency head is qualified to perform live-fire training exercises and to perform on the emergency scene under close supervision. An Entry Level Fire Fighter should be encouraged to complete Fire Fighter I training within one year.

(F) All applicants for certification as a Fire Fighter I shall complete either the Task Performance Evaluation or a Department of Public Safety Standards and Training approved Task Book.

(b) The provisions of the NFPA Standard No. 1002, Edition of 1998, entitled "Fire Department Vehicle Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications hereinafter stated:

(A) Delete Section 1-3.2.

(B) 3-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 3-1 through 3-2, shall be met prior to certification as a fire department driver/operator-pumper.

(C) 4-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 4-1 through 4-2, shall be met prior to certification as a fire department driver/operator-aerial.

(D) 5-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Chapter 4 and Section 5-2, shall be met prior to certification as a fire department driver/operator-tiller.

(E) 6-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 6-1 through 6-2, shall be met prior to certification as a fire department driver/operator-wildland fire apparatus.

(F) 7-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 7-1 through 7-2, shall be met prior to certification as a fire department driver/operator-aircraft rescue and fire-fighting apparatus (ARFF).

(G) 8-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 8-1 through 8-2, shall be met prior to certification as a fire department driver/operator-mobile water supply apparatus.

(H) Delete "the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program, Section 4-2" from Sections 2-3.1, 3-1.3, 4-1.3, 5-2.2, 6-1.3, 6-1.4-1.3, and 8-1.3.

(I) Either a Task Performance Evaluation must be completed or a Task Book for Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Firefighting Apparatus Operator or Mobile Water Supply Apparatus Operator must be completed and signed off by the Agency head or Training Officer before an applicant can qualify for certification as a Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Firefighting Apparatus Operator or Mobile Water Supply Apparatus Operator.

(K) An individual who completes the requirements of Chapter 2 and meets the requirements of Entry Level Fire Fighter, may be certified as a Fire Driver.

(c) The provisions of the NFPA Standards No. 1003, Edition 1994, entitled Standard for Airport Fire Fighter Professional Qualifications, are adopted subject to the following definitions and modifications:

(A) Complete an approved Task Book.

(B) Amend section 1-3.1 by deleting "Airport fire fighters who drive aircraft rescue and fire fighting (ARFF) vehicles shall meet the requirements of Chapter 7 of NFPA 1002, Standard for Fire Department Vehicle Driver/Operator Professional Qualifications."

(d) The provisions of the NFPA Standard No. 1031, Edition of 1998, entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) November 1, 2000, all new certifications will be based on NFPA 1031.

(ii) November 1, 2000, through July 31, 2003, any certified Fire Prevention/Investigation Officer I may become certified at NFPA Fire Inspector I.

(iii) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer II will be certified as an NFPA Fire Inspector II.

(iv) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer III will be certified as an NFPA Fire Inspector III.

(v) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until July 31, 2003.

(B) All applicants for certification as a Fire Inspector shall successfully complete a Department of Public Safety Standards and Training approved Task Book.

(C) All applicants for certification as a Fire Inspector shall pass a written certification exam administered by the Department of Public Safety Standards and Training. The applicant shall have completed all required training before taking this exam.

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(D) All applicants for certification as a Plan Examiner shall successfully complete a Department of Public Safety Standards and Training approved Task Book.

(E) All applicants for certification as a Plan Examiner shall successfully complete a written certification exam administered by the Department of Public Safety Standards and Training. The applicant shall have completed all required training before taking this exam.

(F) Tentative interim amendment 98-I(NFPA 1031).

(G) Task books shall be monitored by a Field Training Officer approved by the Department of Public Safety Standards and Training. The Field Training Officer should be certified at or above the level being monitored and have at least 5 years inspection experience. Exception: Any Deputy State Fire Marshal (not Entry) with 5 years experience as a deputy in inspections will be approved as a Field Training Officer for Fire Inspector I until July 31, 2003. The Department of Public Safety Standards and Training may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department of Public Safety Standards and Training Staff.

(e) The provisions of the NFPA Standard No. 1033, Edition of 1998, entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) Beginning November 1, 2000, all new certifications will be based on NFPA 1033

(ii) November 1, 2000, through July 31, 2003, any certified Fire Prevention/Investigation Officer I may become certified at NFPA Fire Investigator.

(iii) November 1, 2000, anyone certified as an Oregon Fire Investigator II will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator II. No new Oregon Fire Investigator II certificates will be issued after July 31, 2003.

(iv) November 1, 2000, anyone certified as an Oregon Fire Investigator III will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator III. No new Oregon Fire Investigator III certificates will be issued after July 31, 2003.

(v) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until July 31, 2003.

(B) All applicants for certification as a Fire Investigator shall successfully complete a Department of Public Safety Standards and Training approved Task Book.

(C) All applicants for certification as a Fire Investigator shall pass a written certification exam administered by the Department of Public Safety Standards and Training. The applicant shall have completed all required training before taking this exam. Exception: Anyone holding a valid IAAI Fire Investigator Certification may take the written certification exam and become certified after passing the written exam.

(D) Task books shall be monitored by a Field Training Officer approved by the Department of Public Safety Standards and Training. The Field Training Officer should be certified at or above the level being monitored and have at least 5 years fire investigation experience. Exception: Any Deputy State Fire Marshal (not Entry) with 5 years experience as a deputy in fire investigation will be approved as a Field Training Officer for Fire Investigator until July 31, 2003. The Department of Public Safety Standards and Training may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department of Public Safety Standards and Training Staff.

(f) The provisions of the NFPA Standard No. 1035, Edition of 2000, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) Chapter 6 (Six) "Juvenile Firesetter Intervention Specialist I" and Chapter 7 (Seven) "Juvenile Firesetter Intervention Specialist II", Oregon-amended, shall be adopted with the following changes:

(i) Change the following definitions:

1-4.4 Change the definition of "Assessment" to read: "A structured process by which relevant information is gathered for the purpose of determining specific child or family intervention needs conducted by a mental health professional."

1-4.11 Change the title and definition of "Fire Screener" to "Fire Screening" to read "The process by which we conduct an interview with a firesetter and his or her family using state approved forms and guidelines. Based on recommended practice, the process may determine the need for referral for counseling and/or implementation of educational intervention strategies to mitigate effects of firesetting behavior."

1-4.14 Include "insurance" in list of agencies.

1-4.15 Change the definition to read: "...that may include screening, education and referral for assessment for counseling, medical services..."

1-4.16 Change "person" to "youth" and change age from 21 to 18.

1-4.17 Add "...using state-approved prepared forms and guidelines..."

1-4.22 Add "...or by authority having jurisdiction."

1-4.24 Add "...or as defined by the authority having jurisdiction"

(ii) Under 6-1 General Requirements, delete the statement, "In addition, the person shall meet the requirements for Public Fire and Life Safety Educator I prior to being certified as a Juvenile Firesetter Intervention Specialist I."

(iii) Bridging will be available for 12 months after adoption of the standard. To bridge to Juvenile Firesetter Intervention Specialist I, a person will be eligible to take an 8-hour update class if s/he documents all of the following:

- Involvement in three fire investigations
- Use of the 10-J and Oregon Screen Tool forms three times
- Five years experience in fire service or a related field
- Attendance in the current Juvenile Firesetter Intervention class or show participation in the Juvenile Firesetter Network by having the application signed off by the local network.

(B) A task book shall be completed prior to certification as a Public Fire and Life Safety Educator I, II or III.

(C) A task book shall be completed prior to certification as a Public Information Officer.

(D) A task book shall be completed prior to certification as a Juvenile Firesetter Intervention Specialist I and II.

(g) The provisions of the NFPA Standard No. 1041, Edition of 1996, entitled Standard for Fire Service Instructor Professional Qualifications, are adopted subject to the following definitions and modifications:

(A) "Fundamentals of Instruction" shall mean a 16-hour instructor training course for those instructors used for in-house training. This course includes a task book. This course does not lead to certification.

(B) Successfully complete an approved task book for each level of Fire Service Instructor certification.

(i) This requirement is effective for any application for certification after January 4, 2002.

(h) The provisions of the NFPA Standard No. 1021, Edition of 1997, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 2-1 General. For certification at the Fire Officer Level I, the candidate shall be certified at Fire Fighter II, as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Sections 2-2 through 2-7 of this standard.

(i) 2-1.1 General Co-requisite Knowledge: the organizational structure of the department, departmental operating procedures for administration, emergency operations, and safety; departmental budget process; information management and record keeping; the fire prevention and building safety codes and ordinances applicable to the jurisdiction; incident management system; socioeconomic and political factors that impact the fire service; cultural diversity; methods used by supervisors to obtain cooperation within a group of subordinates; the rights of management and members; agreements in force between the organization and members; policies and procedures regarding the operation of the department as they involve supervisors and members.

(ii) 2-1.2 General Prerequisite Skills: the ability to communicate verbally and in writing, to write reports, and to operate in the incident management system. These skills may be documented through the following course work: Advanced Writing (such as WR121 or equivalent); Advanced Speech (such as SP111 or equivalent); Technical Writing (such as WR227 or equivalent); Math (such as MTH 052 or equivalent); Physical Science (such as PH201 or equivalent). The following are recognized courses for portions of the training requirements 2-2 through 2-7: Fire Fighter Law; Managing Fire Personnel currently #39-13; Increasing Personal Effectiveness & Increasing Team Effectiveness or 3 or more credit college level course in principles of supervision or NFA Leadership I, II, and III; Fire Fighter Safety and Survival for Company Officers currently #61-01; MCTO-P, D & T; Instructor I or equivalent.

(iii) Successfully complete an approved task book for Fire Officer 1.

(B) 3-1 General. For certification as Fire Officer Level II, the candidate shall be certified as Fire Officer I and Fire Instructor I, as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Section 3-2 through 3-7 of this standard.

(i) 3-2.3 Existing Curricula: Public Education, Relations, and Information; College Fire Codes and Ordinances; or National Fire Academy Fire Inspection Principles; or International Fire Codes Institute Uniform Fire Code Certificate; Fire Detection Systems & Alarms; College or State Major Emergency Strategy and Tactics; or National Fire Academy Command and Control of Fire Department Operations at Multi-Alarm Incidents; or National Fire Academy Command and Control of Fire Department Operations at Target Hazards; or National Fire Academy Hazardous Materials Incident Management; Incident Safety Officer;

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Department of Public Safety Standards and Training Fire Instructor II; or Department of Public Safety Standards and Training Instructor Development Course; National Fire Academy Initial Fire Investigation; or National Fire Academy Arson Detection for Fire Responders; or College Fire Investigation Course; or National Fire Academy Fire Cause Determination for Company Officers; or Fire Investigation #35-10; Washington Oregon Interface/National Wildfire Coordinating Group (WOI-NWCG) -- S-205 (Wildland); College Strategy and Tactics; or National Fire Academy Managing Company Tactical Operations -- Tactics and Decision Making; or National Fire Academy Incident Command System; or National Fire Academy Fire Command Operations.

(ii) Successfully complete an approved task book for Fire Officer II.

(C) 4-1 General. For certification at the Fire Officer III/Administrator Level, the candidate shall be certified as Fire Officer II as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Sections 4-2 through 4-7 of this standard; or, for certification at the Fire Protection Administrator Level, the candidate shall be certified as either Fire Officer II, Fire Prevention Officer III, Public Education Officer III, Instructor IV, or Fire Investigator III as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Sections 4-2 through 4-7 of this standard.

(i) 4-1.3 Existing Curricula -- Basic Institute Classes which would meet Fire Protection Administrator Course Requirements: Inspection and investigation (new); Emergency Service Delivery (new); Principles of Fire Protection Management; Personnel Management; Organization for Fire Protection; Legal Aspects; Fiscal Management;

(D) 5-1 General. For certification at the Fire Officer IV/Executive Level, the candidate shall be certified as Fire Officer III as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Sections 5-2 through 5-7 of this standard, or, for certification at the Fire Protection Executive Level, the candidate shall be certified as either Fire Officer III Fire Protection Administrator as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Sections 5-2 through 5-7 of this standard.

(i) 5-1.2 General Co-requisite Skill: the ability to effectively apply prerequisite knowledge.

(ii) 5-1.3 Existing Curricula -- Advanced Institute Classes which would meet Fire Protection Executive Course Requirements: Master Planning; Advanced Legal Aspects; Advanced Fiscal Management; Local Government and Community Politics; Organizational Psychology; Management Information Systems; Labor Management Relations.

(i) Hazardous Materials Responder (DPSST-P-12 1/96).

(j) Fire Ground Leader, (DPSST, 2001)

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader shall first be certified as an NFPA Fire Fighter II.

(C) An applicant would need to document training in nine areas:

(i) Fire Resistive Building Construction

(ii) Ordinary Building Construction

(iii) Incident Safety Officer or Fire Fighter Safety

(iv) Water Supplies

(v) Strategy and Tactics I, II, and III

(vi) Incident Command System

(vii) Fire Investigation

(D) A task book shall be completed before certification is awarded.

The task book has been made a part of the Fire Officer I Task Book.

(k) Wildland Interface Fire Fighter, Wildland Interface Engine Boss/Company Officer, Wildland Strike Team leader, Wildland Division/Group Supervisor (DPSST-P-20 2/99).

(l) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book.

(m) Certification guide for Wildland Fire Investigator (August, 1999).

(n) The provisions of the NFPA Standard No. 1006, Edition of 2000, entitled, "Professional Qualifications for Rescue Technician" are adopted subject to the following modifications:

(A) The Authority Having Jurisdiction shall mean the local or regional fire department.

(B) Historical Recognition:

(i) Application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application to use historical recognition shall be submitted to

DPSST on or before March 31, 2003.

(C) Instructors

(i) Curriculum must be certified by DPSST to meet NFPA 1006.

(ii) An instructor delivering training under a department's accreditation agreement must be a certified technician in that specialty rescue area.

(D) Task Books

(i) A task book must be completed for each of the six specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can sign off the Task Book.

(iii) The requirements in Chapters 2 and 3 need to be met only one time for all six specialty rescue areas.

(3) Task performance evaluations, where prescribed, shall be required prior to certification. Such examinations shall be conducted in the following manner:

(a) Task performance competency shall be evaluated by three people nominated by the employing fire department's Chief Officer for approval by the Department or its designated representative.

(b) The employing department's equipment and operational procedures shall be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, shall be used for administration of the evaluation.

(d) The training officer for an accredited fire department training program must notify the Department or its designated representative prior to performing a Task Performance Evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire department whose training program is not accredited.

(4) The following are recommendations for skills maintenance training:

(a) Certified fire personnel should annually complete the following prescribed hours of accredited education and/or training in the area in which they are certified and performing as a primary duty:

Fire Fighter I and Driver — 30 hours/year

Fire Fighter II, Airport Fire Fighter, Pumper Operator, Aerial Operator,

Tiller Operator, Aircraft Rescue and Firefighting Apparatus Operator,

Wildland Fire Apparatus Operator and Mobile Water Supply Apparatus

Operator — 60 hours/year

Instructor personnel — 4 hours of accredited training per year or eight

hours per year of successful teaching

All other levels(including Hazardous Materials Operations Level) — 12

hours/year

(b) An individual certified and performing duties in more than one area need only have training hours equal to the single highest requirement.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0063

Credit for Experience

(1) A fire service professional with three years experience in a fire department may apply to be evaluated for certification based upon experience and accumulated knowledge.

(2) A fire service professional may petition for credit for prior learning. The individual shall describe in writing all experience and training pertinent to the standard being challenged. The material presented shall be reviewed by a panel of three fire service professionals, appointed by the Department or designated staff. The fire service professionals shall determine what credit, if any shall be granted to the individual.

(3) Applicants may take a competency examination, if available. Applicants who fail examinations for any specific requirement may not be re-examined for a period of sixty days. Applicants who fail examinations for specific requirements may, after a sixty day interim period, apply to the Department to be re-examined by written or oral examination. Oral examinations shall be conducted by a representative of the Department.

(4) The Department may enter into a learning contract with a fire service professional for any standards that are needed. Upon successful completion of the contract the individual shall be granted credit for the job performance requirements. The contract shall be in writing and signed by the Director or designated representative and the individual seeking credit. The contract shall include a course of study, an evaluation process and a completion date.

(5) The Department or its designated representative shall notify the applicant of the results of the evaluation within sixty (60) days.

(6) The Department or its designated representative may grant certification to the applicant when the evaluation indicates the applicant's experience and knowledge exceed the minimum established standards. (Note: See also OAR 259-009-0020)

Stat. Auth.: ORS 181.660

Stats. Implemented: ORS 181.660

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

ADMINISTRATIVE RULES

259-009-0067

Lapsed Certification

(1) All levels of certification of any fire service professional shall be considered lapsed if the individual has not been employed as such for a period of twelve (12) consecutive months or more.

(2) Upon reemployment as a fire service professional the person whose certification has lapsed may apply for certification in the manner provided in ORS 181.610 to 181.690.

Stat. Auth.: ORS 181.652, ORS 181.653 & ORS 181.667
Stats. Implemented: ORS 181.652, ORS 181.653 & ORS 181.667
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0070

Denial/Revocation

(1) It is the policy of the Board to set the standards, and of the Department to uphold them, in such a way to insure the highest levels of professionalism and discipline.

(a) These standards shall be upheld at all times unless there is a specific finding of substantial and compelling reason that demonstrates that neither the safety of the public or respect of the profession will be compromised by a waiver.

(A) In the event that a waiver of denial or revocation is granted the decision shall be made in writing.

(2) Grounds for Denying or Revoking Certification of a Fire Service Professional:

(a) The Department may deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing if requested, based upon a finding that:

(A) The fire service professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The fire service professional has been discharged for cause from employment as a fire service professional.

(C) For purposes of this rule, "discharged for cause", means an employer initiated termination of employment for any of the following reasons:

(i) Gross Negligence: means where the fire service professional's act or failure to act creates a danger or risk to persons, property, or to the efficient operation of the department, recognizable as a gross deviation from the standard of care that a reasonable fire service professional would observe in a similar circumstance;

(ii) Insubordination: means a refusal by a fire service professional to comply with a rule or order where the rule or order was reasonably related to the orderly, efficient, or safe operation of the fire safety agency and where the fire service professional's refusal to comply with the rule or order constitutes a substantial breach of that person's duties; or

(iii) Incompetence or Gross Misconduct: in determining what constitutes "incompetence or gross misconduct," sources the Department may take into account include but are not limited to practices generally followed in the profession, current teaching at fire safety training facilities, and technical reports and literature relevant to the fields of fire.

(3) Scope of Revocation. Whenever the Department revokes the certification of any fire service professional, the revocation shall embrace all certificates the Department has issued to that person.

(4) Revocation and Denial Procedure.

(a) Agency Request: When the hiring authority having employed the fire service professional requests that the person's certification be revoked or denied, it shall submit in writing to the Department the reason for the requested revocation or denial and all factual information supporting the request.

(b) DPSST Initiated Request: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the person's certification be revoked or denied.

(A) If the Department makes a recommendation that a person's certification be revoked or denied the request must be presented to the Board, through the Fire Policy Committee, for review.

(c) Department Staff Review: The Department shall review the request and the supporting factual information to determine if the request for revocation or denial meets statutory and administrative rule requirements. If the reason for the request does not meet the statutory and administrative rule requirements for revocation or denial the Department shall so notify the requestor. If the reason for the revocation or denial meets statutory and administrative rule requirements but is not supported by adequate factual information, the Department shall request further information from the requesting hiring authority or conduct its own investigation of the matter.

(d) Initiation of Proceedings: The Department shall determine if the reason for revocation or denial and supporting factual data meet the statutory and administrative rule requirements.

(e) Contested Case Notice: The Department shall cause to be prepared a "Contested Case Notice" in accordance with OAR 137-003-0001 of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department shall have a copy of the notice served on the fire service professional.

(f) Response Time: A party who has been served with the "Contested Case Notice" notifying the fire service professional that his/her certification shall be denied or revoked, shall have 20 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(g) Default Order: In the absence of a timely request for a hearing, the Contested Case Notice will become a final order revoking or denying certification pursuant to OAR 137-003-0075(5).

(h) Hearing Request: When a request for a hearing is received in a timely manner, the Department shall refer the matter to the Hearings Officer Panel in accordance with OAR 137-003-0515.

(i) Findings of Fact, Conclusions of Law and Proposed Final Order. The presiding officer of the Hearings Officer Panel shall prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(j) Exceptions and Arguments to the Findings of Fact, Conclusions of Law and Proposed Final Order. A party shall have 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order to file specific written exceptions and arguments with the Department.

(A) The Department may extend the time within which the exceptions and arguments shall be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments shall serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

Stat. Auth.: ORS 181.640, ORS 181.661, ORS 181.662, ORS 181.664 & 183.341
Stats. Implemented: ORS 181.640, ORS 181.661, ORS 181.662 & ORS 181.664
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0072

Department Representative at Contested Case Hearing

(1) Subject to approval of the Attorney General, an officer or employee of the Department is authorized to appear on behalf of the Department in all contested case hearings conducted by the Department or Board.

(2) The Department representative may not make legal argument on behalf of the Board or Department.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the Department to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case hearing.

(b) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application to the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the Department in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and

(D) The admissibility of evidence or the correctness of procedures being followed.

(3) When the Department officer or employee represents the Board or Department, the presiding officer shall advise each representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the Department's officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 181.640, ORS 181.661, ORS 181.662, ORS 181.664 & 183.341
Stats. Implemented: ORS 181.640, ORS 181.661, ORS 181.662 & ORS 181.664
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

ADMINISTRATIVE RULES

259-009-0080

Certification of Instructors

(1) The Department shall certify instructors deemed qualified to teach in any of the certified training courses.

(2) Instructors will be certified on the basis of minimum qualifications as established by the Department in the areas of education, training, and experience. It shall be the continuing responsibility of the Department to see that instructors are assigned only topics which they are qualified to teach and the instruction is evaluated on a regular basis to insure that excellence is maintained.

(3) Instructors for fire subjects shall have a minimum of three (3) years experience in their respective professions or possess other qualifying professional experience.

(4) Review and approval of instructors shall be the responsibility of the Department.

(5) Applications for instructor certification, shall be submitted on an Instructor Certification Application (DPSST Form F-9F) and shall be accompanied by a detailed resume of individual qualifications.

(6) If certification is denied, the requesting agency shall be notified in writing and advised of the reasons for denial.

(7) Instructor certification is not required for teaching assignments in non-Department certified courses.

(8) Review of instructor certification may be initiated upon the request of an agency head, staff, or other reliable source.

(9) Instructor certification shall be valid for the term of the associated course.

Stat. Auth.: ORS 181.640 & ORS 181.650
Stats. Implemented: ORS 181.640 & ORS 181.650
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0085

Certification of Courses and Classes

(1) The Department shall certify courses, and classes deemed adequate to effectively teach one or more approved public safety subject(s) to fire service personnel and/or emergency medical dispatchers.

(2) Certification shall be based on the evaluation of course curriculum or subjects for instruction, instructor qualifications, facilities for instruction, and method of instruction. The Department may cause inspections to be made pursuant to ORS 181.640 (2).

(3) Facilities and equipment used for certified training shall be accessible to all interested and qualified individuals.

(4) The Department shall certify courses at two levels: Content and Topical.

(a) Courses certified at the content level require a student demonstration of acquired knowledge, skill, or ability. Agencies, organizations, or individuals requesting course certification at the content level shall submit an Application for Certification of Course (DPSST Form F-20), accompanied by clearly-defined performance objectives, test questions and/or evaluation criteria, and evidence of instructor certification as provided in OAR 259-009-0080. Applications received later than thirty (30) calendar days prior to the start of the course, shall not be certified at the content level.

(b) Courses certified at the topical level are informational in nature. Agencies, organizations, or individuals requesting course certification at the topical level shall submit an Application for Certification of Course (DPSST Form F-20), accompanied by a detailed course outline and evidence of instructor certification as provided in OAR 259-009-0080. Applicants are encouraged to apply for certification no later than thirty (30) calendar days prior to the start of the course, to ensure adequate administrative processing time. Shorter time frames may be allowed for non-recurring, pressing circumstances.

(5) The Department shall notify the requester, in writing, of the denial or the granted level of course certification. If certification is granted, that notification shall be accompanied by Student Rosters.

(6) Student rosters shall be completed, indicating the actual number of hours attended by each student. If the course was certified at the content level, rosters shall also indicate whether each student passed or failed. Rosters shall be returned to the Department within thirty (30) calendar days of course completion; otherwise, the Department may decertify the course.

(7) It is the responsibility of the requesting agency, organization, or individual, to:

(a) Oversee the preparation of curriculum and to insure its compliance with the requirements of the Department;

(b) Obtain a facility and instructor(s) to be used for the course, and insure their compliance with the requirements of the Department;

(c) Develop rules and regulations governing the operation of the facility and the conduct of the trainees;

(d) Administer the course;

(e) Maintain an accurate record of attendance; and

(f) Maintain all forms required by the Department, forwarding them within the stipulated time period.

(8) Once a course is certified, it remains certified for unlimited delivery during that calendar year, unless there is a significant change in course content, number of hours or instructor(s); or unless it is decertified by the Department as provided in section (6) and (10) of this rule. The Department shall be notified of significant changes.

(9) All course certification shall expire on December 31 of each year. Agencies, organizations or individuals shall request recertification to continue a course into a new calendar year.

(10) The Department may decertify a course whenever that course is deemed inadequate. The course may be recertified by the Department when satisfactory proof has been presented to the Department that the deficiencies have been corrected.

(11) Fire departments may accredit their training programs as provided in OAR 259-009-0087.

Stat. Auth.: ORS 181.640 & ORS 181.650
Stats. Implemented: ORS 181.640 & ORS 181.650
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0087

Accreditation of Fire Department Training Programs

(1) The Department may accredit fire department training programs which meet the following requirements:

(a) The program shall be under the direction of a designated training officer.

(b) Qualified instructors shall be provided to teach the various subjects.

(c) The organizational structure of the program shall be submitted to the Department along with course outlines of subject content, instructor qualifications, and the appropriate application form for accreditation. A plan shall be included which explains how the required training hours will be provided.

(d) The training officer shall schedule and make available annually to fire service personnel the following minimum hours of acceptable education and/or training:

DISCIPLINE — HOURS PER YEAR
Fire Fighting Personnel — 60 Hours
All Other Disciplines — 12 Hours

(e) At the conclusion or as a part of the accredited training, the training officer shall require appropriate written examination and/or task performance examination in accordance with standards and procedures adopted by the Department.

(f) Fire Service Personnel training records shall be maintained by the employing department for at least five years on the progress and amount of instruction completed by all fire service personnel in the fire department.

(g) The fire department shall possess at least one triple combination pumper that conforms to the minimum standards for automotive fire apparatus as outlined in the National Fire Protection Association (NFPA) Pamphlet #1901. Apparatus may be accepted by judgment of the Department when it is of a special fire suppression need, and/or will adequately meet the training needs of the proposed program.

(h) A written accreditation agreement shall be prepared by the Department, defining the specific requirements of accreditation, including the specific training the fire department is accredited to deliver. The agreement shall be signed by DPSST's department designee; the Agency head of the fire department; City Manager or Chairman of the Rural Fire Protection District Board; and the training officer.

(i) The Agency head shall agree as a part of the accreditation agreement to allow access by Department examiners to the fire department's personnel training records to verify training received by fire department personnel, and to monitor testing processes.

(j) The fire department shall conduct a manipulative skills evaluation of all personnel accredited at a level requiring a task performance at least once each year. Records of such evaluations shall be maintained until the next review of the training program for re-accreditation. The fire department shall provide a process of retraining individuals not able to perform the tasks.

(2) The Agency head, on behalf of the fire department, shall have the right to appeal to the Department any proposed termination of the agreement.

Stat. Auth.: ORS 181.640 & ORS 181.650
Stats. Implemented: ORS 181.640 & ORS 181.650
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

ADMINISTRATIVE RULES

259-009-0090

Training Records

(1) Upon receipt by the Department of a Personnel Action Form (DPSST Form PAF-1), properly identifying a fire service professional, the Department shall initiate a file for that individual and record completion of approved training, as well as other personnel information, if properly documented.

(2) Upon display of proper identification, an agency head, or authorized representative, may review their employee's file as maintained by the Department. Proper identification shall also be required of individuals interested in reviewing their own file.

(3) If an agency or employee requests a copy of their training record the request must be made in writing.

(4) Review and/or release of non-public information under Oregon law to other than the individual whose file is the subject of the information request or to the employing public or private fire safety agency shall only be permitted by the Department upon advisement by the Attorney General, by court order, or with a signed consent from the individual whose file is the subject of the information request.

Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

259-009-0100

Miscellaneous Activities of the Board or Department

(1) The Board or Department may make or encourage studies of any aspect of fire administration, including the stimulation of research by public and private agencies which shall be designed to improve the Fire Protection System.

(2) The Board or Department may cooperate and consult with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, community colleges, and other institutions concerning the development of fire safety training schools and programs or courses of instruction.

(3) The Board or Department may cooperate and consult with official bodies or individuals charged by law with the responsibility for fire selection and training standards in other states.

(4) The Board or Department may periodically publish or recommend that other governmental agencies publish curricula, manuals, lesson plans, brochures, newsletters, and other materials to aid departments in achieving the objectives of the Act.

(5) The Department may direct, operate, or sponsor training schools and set reasonable rules and regulations for the operation and use by trainees.

Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640
Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02

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

Adm. Order No.: DMV 21-2002

Filed with Sec. of State: 11-18-2002

Certified to be Effective: 11-18-02

Notice Publication Date: 9-1-02

Rules Amended: 735-010-0045, 735-090-0000, 735-090-0020, 735-090-0040, 735-090-0110

Rules Repealed: 735-090-0010, 735-090-0030, 735-090-0050, 735-090-0060, 735-090-0070, 735-090-0080, 735-090-0090, 735-090-0100

Subject: Chapter 849, Oregon Law 1999 created the Hearing Officer Panel and made some agencies, including the Department of Transportation, subject to model rules of procedure for contested cases adopted by the Department of Justice. Many of the provisions of the implied consent contested case hearing procedures were nullified by that action. The affected rules are repealed and amended to delete the provisions that were nullified. Rules specific to DMV substantive authority under the Implied Consent Law remain. Also, OAR 735-090-0000 is amended to clarify definitions and OAR 735-010-0045 is amended to add the fee for a copy of an implied consent hear tape. The fee is currently specified in OAR 735-090-0070, which is being repealed.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-010-0045

Other Department Records and Their Fees

(1) Other records available and the fees for the records are:

(a) Driving Under the Influence of Intoxicants Convictions and Alcohol Diversion Enrollment List (DUI and Diversion Lists) — A list of persons who have been convicted of driving under the influence of intoxicants or have enrolled in an alcohol diversion program. The list includes the name, address if known, date of birth, arrest date, conviction or enrollment date, the court type and location and the zip code, if available. The list is available weekly at a fee of \$7.50 per list.

(b) Duplicate Photo Image — A copy of a duplicate image of a driver license or identification card photograph is available exclusively to law enforcement officials at a fee of \$6.50 per photograph.

(c) MCO Copies — Copies of manufacturer's certificates of origin (MCO) for manufactured structures are available. These are copies of the MCOs for all manufactured structures that have been recently titled and are provided weekly at a fee of \$1 per page, plus postage.

(d) Hearing Tapes — Upon request, a copy of the tape recording of a hearing will be provided to qualified requestors. The request must be in writing and accompanied by a fee of \$6 per tape.

(2) Personal information shall not be included in any motor vehicle record requested unless the requester qualifies to receive such information under ORS 802.175 to 802.179 and OAR 735-010-0200 to 735-010-0230.

(3) Requests for information where a fee is not specified in rule or law shall be charged actual cost only, using the criteria set forth in OAR 735-010-0000.

Stat. Auth.: ORS 184.616, ORS 184.619, ORS 192.440, ORS 802.179, ORS 802.183, ORS 802.220 & ORS 802.230.

Stats. Implemented: ORS 802.177, ORS 802.179, ORS 802.200, ORS 802.220 & ORS 802.230

Hist.: DMV 16-1998, f. 12-17-98, cert. ef. 1-1-99; DMV 21-2002, f. & cert. ef. 11-18-02

735-090-0000

Definitions

As used in OAR 735-090-0000 through 735-090-0120, unless the context requires otherwise:

(1) "Agency" means Driver and Motor Vehicle Services Division (DMV) of the Oregon Department of Transportation.

(2) "Hearings Program" means and is a section of the Hearing Officer Panel that performs services under contract for DMV and includes the Hearings Case Management Unit.

(3) "Error of the Department," as used in ORS 813.440(1)(c), means:

(a) An act or omission of the agency, which by its occurrence, prevented the petitioning party from being present at a recorded or reported hearing that determines the validity of a suspension of driving privileges; or

(b) An act or omission of the agency in subpoenaing a witness, including a police officer, to a recorded or reported hearing that determines the validity of a suspension of driving privileges and where the witness' presence at the reported or recorded hearing is required in order for the agency to establish the required elements under ORS 813.410(5); or

(c) An act or omission of the agency in subpoenaing a necessary witness where:

(A) The agency receives the petitioning party's request to subpoena a necessary witness more than 72 hours prior to the time and date that a recorded or reported hearing that determines the validity of a suspension of driving privileges is scheduled; and

(B) The act or omission, by its occurrence, prevented the necessary witness from being present at the hearing; or

(d) An act or omission of the agency that prevents a recorded or reported hearing that determines the validity of a suspension of driving privileges from being conducted.

(4) "Other just cause" as used in ORS 813.440(1)(f) means:

(a) Circumstances beyond the reasonable control of the petitioning party and beyond the ability of a reasonable person to foresee, which:

(A) Prevented the petitioning party from filing of a timely request for a hearing as set forth in ORS 813.410(3); or

(B) Prevented the petitioning party from requesting the agency to subpoena a necessary witness more than 72 hours prior to the time and date that a recorded or reported hearing that determines the validity of a suspension of driving privileges is scheduled; or

(C) Prevented the petitioning party from being present at a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(b) Circumstances where a petitioning party moves for a continuance of a hearing or a request that a necessary witness be subpoenaed to a hearing and, due to circumstances beyond the control of the petitioning party:

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(A) The necessary witness does not appear at the hearing because the necessary witness was unknown to the petitioning party prior to a recorded or reported hearing that determines the validity of a suspension of driving privileges; or

(B) The necessary witness does not appear at the hearing and could not be served with a subpoena at least 72 hours prior to a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(c) Circumstances beyond the control of the agency that prevented a hearing officer from conducting a recorded or reported hearing that determines the validity of a suspension of driving privileges.

(5) "Necessary witness" means a witness whose testimony is essential to support a material fact or position of the petitioning party. The fact or position to be supported by the necessary witness must be within the scope of an implied consent hearing as set forth in ORS 813.410(5).

(6) "Petitioner" means the person whose driving privileges may be suspended.

(7) "Petitioning Party" means the petitioner or the petitioner's attorney.

(8) "Received by the Hearings Case Management Unit" means:

(a) Personally delivered to 1905 Lana Ave. NE, Salem, OR;

(b) Delivered by mail to 1905 Lana Ave. NE, Salem, OR 97314; or

(c) Transmitted by facsimile machine to telephone number (503) 945-5521 and received by the Hearings Case Management Unit.

Stat. Auth.: ORS 183.341, ORS 184.616, ORS 813.410 & ORS 813.440
Stats. Implemented: ORS 813.410 & ORS 813.440

Hist.: MV 5-1984, f. 6-29-84, ef. 7-1-84; MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0100; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 7-1997, f. & cert. ef. 9-18-97; DMV 21-2002, f. & cert. ef. 11-18-02

735-090-0020

Hearings Requests

(1) Hearings requests shall be in writing. Request should include:

(a) Petitioner's full name;

(b) Petitioner's complete mailing address;

(c) Date of arrest;

(d) Petitioner's Oregon driver license number;

(e) Petitioner's date of birth;

(f) Telephone number where petitioner can be called between 8 a.m. and 5 p.m.;

(g) Brief statement of the issues the petitioner proposes to raise at the hearing;

(h) Dates and times the petitioner or attorney cannot appear at a hearing.

(2) To be considered timely, a hearing request submitted pursuant to ORS 813.132 or 813.410(3), for failure of a breath test or refusal of a breath, blood or urine test, must be received by the Hearings Case Management Unit no later than 5 p.m. of the tenth day following the arrest of the petitioner. Oregon Rules of Civil Procedure 10A (ORCP 10A) shall be used to determine the computation of time.

(3) To be considered timely, a hearing request submitted pursuant to ORS 813.410(3), for failure of a blood test, must be received by the Hearing Case Management Unit no later than 5 p.m. of the tenth day from the date the department sends notice of suspension. ORCP 10A shall be used to determine the computation of time.

(4) Hearings Program shall issue a final order denying an untimely hearing request unless the petitioning party demonstrates that the request should be granted under ORS 813.440.

[Publications: Publications referenced are available from the agency.]

Stat. Auth: ORS 183.341, 184.616, 813.410 & 813.440

Stats. Implemented: ORS 813.410, 813.440 & Ch. 676, OL 1995

Hist.: MV 5-1984, f. 6-29-84, ef. 7-1-84; MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0110; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 3-1996, f. & cert. ef. 7-26-96; DMV 21-2002, f. & cert. ef. 11-18-02

735-090-0040

Document Submission Requirements

(1) The following documents, sent by police agencies, shall be received by the Hearings Case Management Unit by 5 p.m. of the tenth day following arrest. These documents are:

(a) Original and a copy of the Implied Consent Combined Report, Form 735-0075, and if applicable, the CDL Implied Consent Addendum, Form 735-0075A; and

(b) The Oregon driver license or permit if confiscated.

(2) An Implied Consent Combined Report, Form 735-0075, and if applicable, a CDL Implied Consent Addendum, Form 735-0075A, not received within ten days following the arrest and failure of the breath test or refusal of a breath, blood or urine test, are inadmissible at any hearing

conducted within 30 days following the arrest pursuant to ORS 813.132 or 813.410, but are admissible in a hearing authorized under ORS 813.440.

(3) The original and a copy of the Implied Consent Blood Test Failure Report, Form 735-0055, sent by police agencies, shall be received by the Hearings Case Management Unit by 5:00 p.m. of the 45th day following arrest. If form 735-0055 is not received within 45 days following the date of arrest, no license suspension action will be taken by DMV.

[ED. NOTE: Forms & Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.341, ORS 184.616, ORS 813.410 & ORS 813.440

Stats. Implemented: ORS 813.131, ORS 813.132, ORS 813.410, ORS 813.440

Hist.: MV 5-1984, f. 6-29-84, ef. 7-1-84; MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0120; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 3-1996, f. & cert. ef. 7-26-96; DMV 7-1997, f. & cert. ef. 9-18-97; DMV 21-2002, f. & cert. ef. 11-18-02

735-090-0110

Just Cause Petitions

Persons wishing to have the agency consider, under ORS 813.440, their grounds for not filing a timely hearing request or for not attending a hearing shall include the following in their petition:

(1) The information specified in OAR 735-090-0020(1);

(2) The date and DMV case number of the defaulted hearing, when applicable; and

(3) A statement of the circumstances relied upon for just cause and an explanation of how those circumstances caused the failure to file a timely hearing request or to appear at a scheduled hearing; and

(4) Any other documentation relied upon.

Stat. Auth.: ORS 183.341, ORS 184.616, ORS 184.619, ORS 813.410, ORS 813.440

Stats. Implemented: ORS 813.410

Hist.: MV 10-1985, f. 9-19-85, ef. 9-20-85; Administrative Renumbering 3-1988, Renumbered from 735-021-0165; MV 2-1991, f. & cert. ef. 3-18-91; MV 15-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 21-2002, f. & cert. ef. 11-18-02

Adm. Order No.: DMV 22-2002

Filed with Sec. of State: 11-18-2002

Certified to be Effective: 1-1-03

Notice Publication Date: 9-1-02

Rules Adopted: 735-050-0115

Rules Amended: 735-050-0110, 735-050-0120

Subject: One way to satisfy motor vehicle financial responsibility requirements under ORS 806.060 is to make a deposit of at least \$60,000 to the Department of Transportation in cash or appropriate securities. The terms and conditions for holding the deposit are to be established, by the department, by rule. OAR 735-050-0115 establishes the conditions for deposits made to DMV. The amendments to OAR 735-050-0110 and 735-050-0115 are necessary with the adoption of OAR 735-050-0115, as these rules have segments that deal with security deposits that are not reflective of the new rule. The amendments are also made to update references to statutes, the Division and a form, and to clarify language.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-050-0110

Bonds Used for Compliance With Financial Responsibility Requirements

(1) Persons using a bond, as described in ORS 806.090, to comply with the financial responsibility requirements of this state under ORS 806.060, must notify the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) of such action within seven days after the date such bond is obtained. The notification must be in writing and must be accompanied by a copy of the bond.

(2) Failure to file a copy of such bond with DMV, as required by this rule, will constitute prima facie evidence that no such bond exists.

(3) Upon receipt of a copy of the bond, and after determining the bond meets Oregon financial responsibility law requirements, DMV will place a notation on the person's driving record.

Stat. Auth.: ORS 184.616, ORS 184.619, ORS 806.090

Stats. Implemented: ORS 806.090

Hist.: MV 56-1989, f. & cert. ef. 12-21-89; DMV 22-2002, f. 11-18-02, cert. ef. 1-1-03

735-050-0115

Deposits Used for Compliance with Financial Responsibility Requirements

(1) The purpose of this rule is to establish the terms and conditions for deposits made to comply with financial responsibility requirements as provided in ORS 806.115.

(2) The following definitions apply to terms in OAR 735-050-0115:

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(a) "Cash" means U.S. currency, or negotiable instruments such as cashier's checks, certified checks, traveler's checks or money orders;

(b) The definition of "Certificate of Deposit" found in ORS 73.0104(10) is adopted.

(c) "Depositor" means the person making a deposit under ORS 806.115 to satisfy the financial responsibility requirements for the ownership, operation, maintenance or use of a motor vehicle, and may include the person's court appointed legal guardian or in the event of the depositor's death, the executor of the person's estate, when applicable.

(d) "Financial responsibility requirements" means the financial responsibility requirements described under ORS 806.060 and the future responsibility requirements described under ORS 806.240.

(e) "General obligation" means a negotiable instrument that is a legally issued general obligation guaranteed by the United States, including U.S. treasury bonds or notes, or general obligation bonds or notes issued by an agency or instrumentality of the United States, the States of Oregon, Washington, Idaho or California.

(3) A person making a deposit with the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV), as provided in ORS 806.115, to comply with the financial responsibility requirements, must:

(a) Deposit with DMV cash, or a certificate(s) of deposit or any combination of the two, in the amount required under ORS 806.060. If the person uses any other financial instrument authorized by ORS 806.115(1)(b), the amount deposited with DMV must be at least 125% of the amount required under ORS 806.060;

(b) File a written application on DMV Form 735-6794, Financial Responsibility Deposit Application, and submit the required \$80 application fee. The application fee is non-refundable. The application must designate to which motor vehicle the deposit applies;

(c) Provide evidence that there are no unsatisfied judgments of any type against the depositor in any county where the depositor has resided in the past three years, if the deposit is submitted to DMV for compliance with the future responsibility requirements under ORS 806.240. Such evidence must consist of one of the following:

(A) A written statement on court letterhead from each court in the counties where the depositor has resided in the past three years that the judgment record of the court has been checked and there is no judgment of any type filed against the depositor in that court; or

(B) A report from a credit reporting business, indicating there is no judgment of any type filed against the depositor in the counties where the depositor has resided in the past three years; or

(C) A notarized affidavit from the depositor attesting under penalty of perjury that there are no judgments of any type against the depositor filed in the judgment record of any court in any county where the depositor has resided in the past three years.

(4) For purposes of a deposit made under ORS 806.115:

(a) A certificate of deposit must be:

(A) Insured by the Federal Deposit Insurance Corporation (FDIC); and

(B) In certificate form so that it can be deposited with DMV.

(b) Any instrument or certificate of deposit that is deposited with DMV must:

(A) Be marketable or payable upon demand;

(B) Be payable to the bearer or indorsed in blank; and

(C) Maintain a market value in the amount required by ORS 806.060 while in the possession of the State of Oregon.

(c) DMV will not accept assignment of, a pass-book savings account, a deed or any other account or instrument not described above to meet the financial responsibility requirements;

(d) The deposit will not be considered to be in effect for purposes of compliance with the financial responsibility requirements until the deposit is received, approved by DMV and a Certificate of Compliance issued to the depositor.

(5) A person convicted of driving under the influence of intoxicants under ORS 813.010, who must comply with the financial responsibility requirements under ORS 806.075, may not use a deposit under ORS 806.115 to satisfy those requirements.

(6) DMV will not accept a deposit until the depositor has submitted a properly completed application. Upon receiving the application and the deposit DMV will:

(a) Immediately issue a receipt to the depositor acknowledging that the deposit has been received by DMV. DMV will retain a copy of the receipt;

(b) Determine whether the deposit meets the financial responsibility requirements and the requirements of this rule;

(c) Submit the deposit to the State Treasurer or Designated Trustee/Escrow Agent and obtain a safekeeping receipt;

(d) Place a notation on the depositor's driving record and the motor vehicle record of the vehicle to which the deposit has been designated by the depositor;

(e) Issue to the depositor a "Certificate Evidencing Compliance With Financial Responsibility Requirements Under ORS Chapter 806" as evidence of the deposit. The Certificate of Compliance must be carried at all times in the motor vehicle to which the deposit applies as proof of compliance with the financial responsibility requirements; and

(f) Issue to the depositor a copy of the safekeeping receipt issued by the Oregon State Treasury.

(7) The State of Oregon will not pay interest on deposits and is not responsible for the collection and payment of any interest that accrues on any deposit made to comply with the financial responsibility requirements while such deposit is in the possession of the State of Oregon for the purposes of compliance with the financial responsibility requirements.

(8) A deposit satisfies the financial responsibility requirements for only the one vehicle designated and identified by the depositor in the application submitted to DMV.

(9) Subject to the payment schedule established by ORS 806.070, DMV has the exclusive right to issue an order to the State Treasurer or Designated Trustee/Escrow Agent to assign, liquidate or release the deposit as necessary to:

(a) Satisfy any execution on a judgment of the type described under ORS 806.040 that is against the depositor and that results from a cause of action that accrued after the deposit was made;

(b) Satisfy a written nonjudicial settlement agreement entered into between the depositor and a third party, as against the depositor, for damages of the type described under ORS 806.040(4) which accrued after the deposit was made and arising from a motor vehicle accident on public or private property involving the motor vehicle to which the deposit applies; or

(c) Return any remaining amount of the deposit or remaining instrument(s) to the depositor as provided in section (10) of this rule.

(10) Except as provided in section (11) of this rule, DMV may order the release of all or any remainder of the deposit upon receipt of a written request for release signed by the depositor or the depositor's court appointed legal guardian, or in the event of the depositor's death, upon receipt of a written request for release signed by the executor of the depositor's estate and submission of:

(a) Proof that the motor vehicle will be in compliance with the financial responsibility requirements when the deposit is released; or

(b) Proof that the depositor or the depositor's estate no longer owns, maintains, operates or uses the vehicle; and

(c) A written statement certifying that the motor vehicle has not been involved in an accident within the last three years.

(11) If records of the department indicate that the motor vehicle to which the deposit applies has been involved in an accident for which there is a possibility of a judgment of the type described in ORS 806.040 accruing after the deposit was made, DMV will not release the deposit to the depositor or reassign the deposit to another vehicle unless the depositor provides proof to DMV that:

(a) No lawsuit for damages has been filed within three years from the date of the accident;

(b) All lawsuits for damages have been resolved and all judgments against the depositor resulting from the accident and accruing after the deposit was made have been satisfied; or

(c) A release of all claims for damages resulting from the accident has been executed by all claimants involved in the accident; or

(d) A written nonjudicial settlement agreement(s) as described in subsection (9)(b) of this rule has been executed between the depositor and all claimants involved in the accident and any damages owed by the depositor pursuant to the agreement(s) have been satisfied.

(12) Subject to the payment schedule established in ORS 806.070 and the requirements of section (13) of this rule, DMV will issue an order to the State Treasurer or Designated Trustee/Escrow Agent to assign, liquidate or release all or part of a deposit upon receipt of:

(a) A writ of execution, pursuant to ORS chapter 23, indorsed by a sheriff and issued to enforce a judgment of the type described under ORS 806.040 that is against the depositor and that results from a cause of action that accrued after the deposit was made, along with a copy of the judgment from which the writ arises; or

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(b) A written request from a third party claimant or the depositor that includes a copy of a nonjudicial settlement agreement as described in subsection (9)(b) of this rule, entered into between the depositor and the third party, including the amount of the settlement to be paid by the depositor.

(13) Upon receipt of a written request and copy of a nonjudicial settlement agreement as described in subsection (9)(b) of this rule, DMV will check the records of the department to confirm that the motor vehicle was involved in an accident involving the third party claimant. If the department's records confirm the accident, and if the agreement submitted qualifies as a settlement agreement described by subsection (9)(b) of this rule, DMV will:

(a) If the request is from the depositor, issue an order to the State Treasurer or Designated Trustee/Escrow Agent to use the deposit to satisfy the agreement; or

(b) If the request is from the third party claimant:

(A) Notify the depositor in writing that a request for payment from the third party claimant has been made and that within 20 days from the date the notice is sent an order will be issued to the State Treasurer or Designated Trustee/Escrow Agent to use the deposit to satisfy the terms of the agreement, unless the depositor files a written objection with DMV; and

(B) After 20 days from the date the notice is sent to the depositor, issue an order to the State Treasurer or Designated Trustee/Escrow Agent to use the deposit to satisfy the agreement, if no objection has been filed by the depositor; or

(C) If the depositor submits a written objection within the time period required, provide written notice to the depositor and the third party claimant that DMV will not issue an order to the State Treasurer until a judgment as described in ORS 806.040 is filed and execution of the judgment is issued by a court.

(14) Upon written request by the depositor, a deposit may be reassigned to a different motor vehicle if proof is submitted that the motor vehicle to which the deposit currently applies will be in compliance with the financial responsibility requirements at the time the deposit is reassigned or that the depositor no longer owns, maintains, operates or uses the vehicle; and

(a) At the time of the reassignment, the records of the department show the motor vehicle to which the deposit currently applies has not been involved in a motor vehicle accident; or

(b) If at the time of the reassignment, the records of the department show the motor vehicle to which the deposit currently applies has been involved in an accident, the depositor submits proof that:

(A) No lawsuit has been filed within three years of the date of the accident;

(B) All lawsuits for damages resulting from the accident have been resolved and all judgments against the depositor have been satisfied;

(C) A release of all claims for damages resulting from the accident has been executed by all claimants involved in the accident; or

(D) A nonjudicial settlement agreement(s) as described in subsection (9)(b) of this rule has been executed between the depositor and all claimants involved in the accident and any damages owed by the depositor pursuant to the agreement(s) have been satisfied.

(15) The following will result in the depositor being in noncompliance with the financial responsibility requirements:

(a) Assignment, liquidation or release of all or part of the deposit;

(b) Failure of the deposit to maintain a market value in the amount required under ORS 806.060. The depositor must notify DMV if the value of a general obligation, a certificate of deposit or other similar instrument deposited with DMV decreases below the amount required under ORS 806.060; or

(c) The depositor is convicted of driving under the influence of intoxicants under ORS 813.010. Upon conviction, the depositor must obtain a certificate of insurance in the amount required under ORS 806.075 and the certificate of insurance will be the only authorized proof of compliance with financial responsibility requirements.

(16) When DMV determines the depositor is noncompliant as set forth in section (15) of this rule, DMV will:

(a) Send a notice of noncompliance to the depositor requiring that within 10 days of the date the notice is sent, the depositor make a deposit to DMV, as described in section (1) of this rule, in the amount necessary to comply with the financial responsibility requirements or file other proof of compliance with the financial responsibility requirements;

(b) Immediately cancel the "Certificate Evidencing Compliance with Financial Responsibility Requirements Under ORS Chapter 806." Cancellation of the Certificate of Compliance will be noted on the deposi-

tor's driving record and the motor vehicle record of the motor vehicle to which the deposit applied; and

(c) Issue a new "Certificate Evidencing Compliance with Financial Responsibility Requirements Under ORS Chapter 806" if the depositor makes the deposit as required.

Stat. Auth.: ORS 184.616, ORS 184.619, ORS 806.115

Stat. Imp.: ORS 806.115

Hist.: DMV 22-2002, f. 11-18-02, cert. ef. 1-1-03

735-050-0120

Proof of Compliance With Financial Responsibility Requirements in Lieu of an Unexpired Insurance Card

The following list establishes what constitutes "other current proof of compliance with financial or future responsibility requirements" under ORS 806.011, and "proof of compliance with financial responsibility requirements" under ORS 806.012:

(1) An unexpired motor vehicle liability insurance policy for the particular vehicle which meets the standards set forth in ORS 806.080;

(2) An unexpired motor vehicle liability insurance binder issued by the insurance company or its authorized agent for the particular vehicle which meets the standards set forth in ORS 806.080;

(3) A letter signed by an authorized agent or company official, on agent or insurance company letterhead that verifies current insurance coverage;

(4) A certificate of self insurance issued by DMV under ORS 806.130 naming the owner of the particular vehicle;

(5) A safekeeping receipt for a \$60,000 security deposit that meets the requirements of ORS 806.115 and OAR 735-050-0115;

(6) A \$60,000 surety bond that meets the requirements of ORS 806.090; or

(7) A displayed Oregon dealer plate unless the dealership does not sell motorized vehicles and has completed a "Certificate of Exemption from Vehicle Liability Insurance for Vehicle Dealer," DMV Form 735-7024.

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

Stats. Implemented: ORS 806.011, ORS 806.012, ORS 806.090, ORS 806.115

Hist.: DMV 3-1994, f. & cert. ef. 7-21-94; DMV 22-2002, f. 11-18-02, cert. ef. 1-1-03

Adm. Order No.: DMV 23-2002

Filed with Sec. of State: 11-18-2002

Certified to be Effective: 11-18-02

Notice Publication Date: 9-1-02

Rules Amended: 735-150-0060

Subject: OAR 735-150-0060 currently authorizes DMV to establish by policy the number of days a temporary registration permit issued by a vehicle dealer is valid, not to exceed 120 days, and requires DMV to communicate any change in this policy to all vehicle dealers. DMV policy currently authorizes a vehicle dealer to issue a temporary registration permit for a period not to exceed 90 days. The amendment establishes the number of days for which a temporary permit is valid at 90 days by administrative rule. This eliminates the need to establish a policy, and therefore, to notify dealers of a change in policy, so subsection (5)(b) of the rule is being deleted. The amendments authorize a designated dealer to issue a temporary registration permit for a period not to exceed 90 days, including the effective date of the permit. Additional non-substantive amendments are made to clarify rule language.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-150-0060

Issuance of Temporary Registration Permits

(1) A designated dealer who collects all applicable fees and applications as provided in ORS 803.625 and OAR 735-150-0040(4)(c) and who will be submitting the combined title and registration application to DMV on behalf of an owner may issue a temporary registration permit as provided in ORS 803.625 for a vehicle or camper sold by a dealer. "Applicable fees" may include title, registration and plate transfer fees.

(2) A designated dealer shall not issue a temporary registration permit under section (1) of this rule to a person who is not a resident of or domiciled in Oregon.

(3) A temporary registration permit shall not be issued by a designated dealer until a Department of Environmental Quality (DEQ) Certificate of Compliance, if needed, has been obtained. A trip permit may be issued as provided in OAR 735-150-0070(1)(b) and (5)(b) if the vehicle must be taken to a DEQ inspection station.

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(4) Temporary registration permits shall be obtained in bulk from the Salem headquarters office of DMV at no charge. Designated dealers shall not charge a fee for the issuance of a temporary registration permit.

(5) Temporary registration permits shall be valid for a period not to exceed 90 consecutive days from the date they are issued or until plates and/or stickers are received from DMV and placed on the vehicle, whichever is the shorter period of time. The expiration date of a temporary permit shall not be extended by a designated dealer nor may the dealer issue a subsequent permit to extend the period of time provided by the initial permit.

(6) Designated dealers shall comply with the following requirements when issuing temporary registration permits:

(a) Legibly complete each temporary registration permit with the following information:

(A) The name and address of the person(s) or business registering as the owner(s) of the vehicle. The name and address must only be recorded on the issuer's copy and DMV's copy of the permit and shall not be recorded on the purchaser's (windshield) copy of the permit;

(B) The driver license number and the state of issuance for the person(s) registering as the owner(s) of the vehicle, unless the person does not have a driver license or the permit is issued to a business. The driver license number must only be recorded on the issuer's copy and DMV's copy of the permit and shall not be recorded on the purchaser's (windshield) copy of the permit;

(C) The vehicle description, including year, make, body style and identification number;

(D) A written signature of the employee who issued the permit. Initials are not acceptable;

(E) The effective date and expiration date of the permit. The permit shall be issued for a period not to exceed 90 consecutive days, including the effective date of the permit;

(F) Dealer certificate number; and

(G) The title fee and registration fee collected on behalf of DMV.

(b) Attach DMV's copy of the temporary registration permit to the application for title and registration and submit the two documents together to DMV in accordance with OAR 735-150-0050.

(c) At the time of issuance, notify an owner who pays a plate transfer fee under section (1) of this rule to not attach the registration plates from their old vehicle to the vehicle or camper sold by the dealer before receiving an updated registration card from DMV.

(7) To be valid, the owner's copy of a temporary registration permit shall be affixed to the vehicle for which it was issued as specified by DMV.

(8) The remaining copy of the temporary registration permit shall be left attached in the permit book. Books containing these copies shall be returned to DMV for auditing as soon as the last permit in a book is issued.

(9) Alteration of the date information, ownership information or vehicle description shall void a temporary registration permit.

(10) When a temporary registration permit is voided for any reason, the owner's copy and DMV's copy of the permit, together with a written explanation about why the permit was voided, shall be left in the book and shall be forwarded to DMV. If either copy of the permit is unavailable for submitting to DMV, the explanation shall state why the copy is unavailable.

(11) Except as permitted in section (12) of this rule, temporary registration permits (or books of permits) shall not be loaned to another dealer or person nor issued for vehicles sold by another dealer or individual.

(12) A dealer who delivers a vehicle to a purchaser and submits applications and fees for title and registration in the purchaser's name on behalf of another dealer located in another city or state who actually made the retail sale of the vehicle to the purchaser may issue a temporary registration permit for the vehicle as provided by this rule. The application and supporting documents shall accurately reflect the name and address of the dealer who sold the vehicle. The temporary registration permit must show the name and dealer number of the issuing dealer and the words "Delivery Only" must be clearly written on the DMV and issuer's copies of the permit.

Stat. Auth.: ORS 184.616, ORS 184.619, ORS 803.625, ORS 822.035 & OL 1997, Ch. 583, Sec. 10

Stats. Implemented: ORS 803.625

Hist.: MV 2-1983, f. 3-10-83, ef. 5-1-83; MV 4-1983, f. 10-5-83, ef. 10-15-83; MV 1-1984, f. & ef. 1-10-84; MV 20-1986, f. & ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-071-0011; MV 6-1989, f. & cert. ef. 1-27-89; DMV 9-1995, f. & cert. ef. 8-18-95; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 3-2000(Temp), f. & cert. ef. 4-24-00 thru 10-20-00; DMV 7-2000, f. & cert. ef. 8-10-00; DMV 23-2002, f. & cert. ef. 11-18-02

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Adm. Order No.: DMV 24-2002

Filed with Sec. of State: 12-13-2002

Certified to be Effective: 1-1-03

Notice Publication Date: 10-1-02

Rules Adopted: 735-074-0005

Rules Amended: 735-074-0010, 735-074-0020

Subject: Section 1, chapter 736 Oregon Laws 2001 (HB 3071) amends ORS 807.710 effective January 1, 2003. The amendment removes the current statutory requirement that certain doctors must report certain conditions to DMV. It also requires the department to work in conjunction with medical experts and experts on cognitive or functional impairments to adopt rules for reporting. These rules will designate physicians and health care providers required to report and designate the cognitive or functional impairments that are likely to affect a person's ability to safely operate a motor vehicle. DMV is currently working with medical experts to draft rules. However, the rules will not be completed in time to have them in place by January 1, 2003. Therefore, DMV is adopting OAR 735-074-0005 to adopt the current requirements of ORS 807.710 on reporting in a rule, with one modification. The new rule specifies that the medical information in the report (not the report itself) is confidential. This makes the language consistent with amended ORS 807.710. The amendments to OAR 735-074-0010 and 735-074-0020 add references to the medical reporting under OAR 735-074-0005 and correct other language to make it consistent with recently amended statutes.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-074-0005

Required Reporting of Disorders Causing Loss of Consciousness or Control

(1) Any physician or health care provider authorized by the State of Oregon to diagnose and treat disorders of the nervous system must immediately report to the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) each person over 14 years of age that they diagnose as having a disorder characterized by momentary or prolonged lapses of consciousness or control that is, or may become, chronic.

(2) A report required under section (1) of this rule must be submitted on a form prescribed or provided by DMV.

(3) The medical information in the report will be kept confidential and will only be used by DMV and the State Health Officer to determine whether a person is qualified to operate a motor vehicle.

Stat. Auth.: ORS 184.616, 184.619, 807.710

Stat. Imp.: ORS 807.710

Hist.: DMV 24-2002, f. 12-13-02 cert. ef. 1-1-03

735-074-0010

When a Certificate of Eligibility Is Required

(1) A person will be required to obtain a Certificate of Medical Eligibility under ORS 807.090(1)(b) if:

(a) DMV receives a report under OAR 735-074-0005 and DMV determines that the person's current medical condition may affect the person's ability to safely operate a motor vehicle;

(b) DMV receives a signed letter, memo or report that indicates a person has, or may have, a mental or physical condition that makes it unsafe for the person to drive a motor vehicle;

(c) The Health Division, Mental Health and Developmental Disability Services Division, a court or a licensed physician, nurse practitioner or physician assistant, who is not subject to the reporting requirements described in OAR 735-074-0005, recommends a medical examination to determine the person's ability to safely operate a motor vehicle; or

(d) A person reports on an application for a driver license, driver permit or endorsement that the person has a mental or physical condition that may make it unsafe for the person to drive a motor vehicle.

(2) All written documentation submitted under subsections (1)(b), (c) and (d) of this rule, including the name of the person submitting the documentation, will be kept confidential and not released to any person unless DMV determines the documentation, or any portion thereof, must be released pursuant to the Public Records Law, ORS 192.410 to 192.505, or the Attorney General orders disclosure in accordance with the Public Records Law.

(3) DMV will attempt to investigate any questionable letters, reports or memos in an attempt to determine their validity prior to requesting a person to complete a Certificate of Medical Eligibility.

Stat. Auth.: ORS 184.616, 184.619, 807.060, 807.090, 807.340 & ORS 809.410

Stats. Implemented: ORS 807.090

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Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0405; MV 37-1989, f. & cert. ef. 10-3-89; MV 14-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 14-2002, f. 8-14-02 cert. ef. 9-1-02; DMV 24-2002, f. 12-13-02 cert. ef. 1-1-03

735-074-0020

When a Suspension of Driving Privilege Occurs

(1) If DMV determines a medical clearance is required, DMV will send the person a Certificate of Medical Eligibility form and a letter explaining that the form must be completed and returned to DMV.

(2) DMV will suspend the person's driving privilege under ORS 809.410(14) for failure to obtain a medical clearance if the Certificate of Medical Eligibility form is not completed by the person and the person's physician, nurse practitioner, or physician assistant, submitted to and received by DMV within 30-days of the date on the letter sent from DMV. In applicable cases, an additional questionnaire regarding alcohol, drug and/or inhalant use must be completed and received by DMV for the Certificate of Medical Eligibility form to be considered complete. DMV may grant an extension if the person can show that an appointment with their physician, nurse practitioner or physician assistant was requested in a timely manner, but the earliest appointment available exceeded the 30 days. DMV may grant an extension (not to exceed four months) if the person is seriously ill or injured. The person's physician, nurse practitioner or physician assistant must recommend an extension in writing. DMV may grant a 30-day extension to a person who is out of state if a written request is received from the person.

(3) The State Health Officer may request additional information from the person and/or a physician, nurse practitioner, or physician assistant. In this case, DMV will send another letter to the person specifying the additional information that is required. DMV will suspend driving privileges if the required additional information is not mailed or faxed to DMV within 30 days from the date of this letter. DMV may grant an extension if the required additional information is from a physician, nurse practitioner, or physician assistant, and the person can show that an appointment was requested in a timely manner, but the earliest appointment available exceeded the 30 days.

(4) DMV will immediately suspend a person's driving privilege if:

(a) The State Health Officer recommends an immediate suspension;

(b) A licensed physician, nurse practitioner or physician assistant recommends an immediate suspension;

(c) Based upon information included in a police accident report or other law enforcement report, DMV has reason to believe that a person may endanger people or property due to the possibility of a sudden loss of consciousness or control; or

(d) DMV receives a report under OAR 735-074-0005 and DMV determines that the person's current medical condition affects the person's ability to safely operate a motor vehicle.

(5) After DMV has suspended a person under ORS 809.410(14) or (16)(a)(b), DMV will reinstate driving privileges upon receipt of a Certificate of Medical Eligibility that includes a favorable medical recommendation from the State Health Officer.

Stat. Auth.: ORS 184.616, 814.619, 807.060, 807.090, 807.340 & ORS 809.410
Stats. Implemented: ORS 807.090 & ORS 809.410

Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0410; MV 14-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 14-2002, f. 8-14-02 cert. ef. 9-1-02; DMV 24-2002, f. 12-13-02 cert. ef. 1-1-03

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

Adm. Order No.: TO 9-2002

Filed with Sec. of State: 12-13-2002

Certified to be Effective: 12-13-02

Notice Publication Date: 10-1-02

Rules Adopted: 734-070-0020

Rules Repealed: 734-070-0020(T)

Subject: This rule addresses the process used by the Department to determine if operations of motor vehicles that exceed maximum allowable statutory dimension should be allowed on specific roadways. This rule provides a uniform and consistent manner in which the Department responds to a proposal to alter limits for a specific roadway, including an exception process for proposals that do not meet test run procedure criteria. The exception process, used upon request when the test run results are negative, utilizes an analytical

assessment of factors to define an acceptable and prudent level of risk for the proposal.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-070-0020

Test Run and Exception

In order to determine whether or not a vehicle or combination of vehicles is approved to traverse a length-restricted highway, or section(s) thereof, the Department, upon request from an interested party, will conduct an evaluation of the proposed operation. The evaluation will include research of Department files to determine whether or not a previous test run for the proposed operation has been conducted. If Department records indicate that a previous test run has been conducted for the length of combination requested, and there have been no improvements to the highway since the previous test run, results of the previous test run will be used. If there have been no previous test runs for the proposed operation, the Department will coordinate with the requesting party and conduct a test run and evaluation as follows:

(1) The test run vehicle(s) will be provided by the requesting party and be equal to or greater in length than the vehicle(s) in the proposed operation.

(2) The Department will issue a single trip variance permit for the test run vehicle(s).

(3) During the test run, Department staff will precede and follow the test vehicle(s) to observe vehicle operability and gather data used by the Department to determine if:

(a) The vehicle(s) maintained its lane of travel;

(b) The vehicle's steering axle crossed the center line and the rear axle crossed the fog line at the same time. If so, how many times and at what locations; and

(c) The vehicle either maintained the appropriate highway speed, or there was adequate sight distance for trailing vehicles to pass the test vehicle(s), or there was enough room for the test vehicle(s) to pull off the roadway to allow trailing traffic to pass.

(4) In addition to a review of the information listed in section (3), the test run evaluation will also consider:

(a) The average daily traffic flow on the highway;

(b) The accident rate on the highway;

(c) Pavement and shoulder conditions; and

(d) Any information from the District Manager regarding proposed improvements or any peculiarities associated with the highway.

(5) All information gathered in sections (3) and (4) is analyzed collectively by the Department to reach an initial determination concerning whether the highway or highway segment can safely accommodate greater vehicle length. For example: Information that the test vehicle does not always maintain its lane of travel may not necessarily result in a recommendation to deny a request; whereas if considered with information that the highway in question is heavily traveled, has deteriorating shoulders and has a history of many accidents, a reasonable recommendation would be to deny the request.

(6) If the evaluation results in an initial determination that the highway can safely accommodate the greater length, Department staff provides the evaluation and makes a recommendation of approval to the Chief Engineer, or the Chief Engineer's designee, the Deputy Director of the Motor Carrier Transportation Division (MCTD). If the Chief Engineer or Deputy Director of MCTD agrees with the recommendation, the Chief Engineer or Deputy Director of MCTD will issue an authorization letter approving the proposal. A variance permit may be required for the approved operation.

(7) If the evaluation results in a recommendation to not allow the proposed operation, the requesting party or the Department may ask for further evaluation. The Chief Engineer will formulate a multi-discipline team to perform a detailed investigation of the proposed operation and provide further evaluation that may include:

(a) A more detailed analysis of average daily traffic, including traffic peak hours and volumes;

(b) Road and shoulder width;

(c) Review of the test run data, including any photographs or video tape;

(d) Truck volume compared to total traffic volume;

(e) Over-length truck volume compared to total traffic volume;

(f) Stopping sight distance for legal speed;

(g) Cost of spot improvements and facility improvements;

(h) Accident history for highway or other similar highways; and

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(i) Potential risk of two trucks, or a truck and automobile, meeting in a tight spot.

(8) If additional investigation as described in section (7) indicates that the determination and recommendation made after the initial test run procedure is mitigated or modified after consideration of one or more of the additional factors, and the expert opinion of the multi-disciplined team results in a conclusion that the highway can safely accommodate the longer vehicle(s) and that the proposed operation can be conducted safely, the approval process described in section (6) will follow. If additional investigation results in a conclusion that the highway cannot safely accommodate the longer vehicle(s), no further evaluation will be conducted unless improvements are made to the highway and a subsequent request is made.

Stat. Auth.: ORS 184.616, ORS 184.619, ORS 810.060 & ORS 818.200
Stats. Implemented: ORS 810.060 & ORS 818.220
Hist.: TO 7-2002(Temp), f. & cert. ef. 7-24-02 thru 1-19-03; TO 9-2002, f. & cert. ef. 12-13-02

Adm. Order No.: TO 10-2002

Filed with Sec. of State: 12-13-2002

Certified to be Effective: 12-13-02

Notice Publication Date: 10-1-02

Rules Amended: 734-071-0010

Subject: Section 3, chapter 574, Oregon Laws 2001 (HB 3662) amended ORS 818.080 regarding the maximum length allowed for combinations of vehicles. The amendment increased the maximum allowable overall length from 50 feet to 60 feet for combinations of vehicles and from 50 feet to 65 feet for a combination of vehicles that includes a stinger steered pole trailer. Table 1 of OAR 734-071-0010 establishes vehicle combination length limits on certain Oregon highways. The rule is amended to bring Table 1 into conformance with the statutory allowance. Amendments to definitions provide uniformity with other rules related to oversized vehicles and update a reference to a revision update.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-071-0010

Designated Highways and Definitions

(1) The types of vehicles, combinations of vehicles, or loads listed in Table 1 may operate without special permit upon Group 1, Group 2 and Group 3 highways as shown on Group Map 1 as published by the Department when the dimensions do not exceed those listed in Table 1 for the corresponding highway group. Group Map 1, revised November 2001 is adopted by reference and made a part of division 71 rules.

(2) Definitions for the purpose of Division 71 rules:

(a) "Auxiliary axle" is an axle that qualifies as a booster axle, flip axle or lift axle;

(b) "Booster axle" means a separate vehicle bolted or pinned to another vehicle that redistributes weight from one or more axles to other axles and pivots from side to side at the connection point or has wheels that steer during turning;

(c) "Dromedary truck-tractor" means a motor vehicle having more than 15,000 pounds GVWR designed to carry a load on a dromedary box, plate or deck, not exceeding 12'06" in length inclusive of load and designed to pull a semitrailer;

(d) "Fire Apparatus" means a vehicle or combination of vehicles designed and used exclusively for fire suppression or rescue operations. These emergency vehicles and associated loads or equipment are necessary to protect the public safety and are considered non-divisible loads;

(e) "Flip axle" means an axle that is bolted or pinned to a vehicle and flips from the closed position on the trailer to a deployed position on the ground extending the length and hauling capacity of the trailer;

(f) "Gross Vehicle Weight Rating" (GVWR) means the gross vehicle weight rating as defined in ORS 801.298;

(g) "Lift axle" means an axle that can be raised from or lowered to the surface of the ground;

(h) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation;

(i) "Motor truck" means a motor vehicle that is primarily designed or used for carrying loads other than passengers, and having more than 15,000 pounds GVWR;

(j) "Overall length" includes the vehicle or combination of vehicles and any load overhangs. Overall length does not include a:

(A) Small fork lift (commonly known as a "spyder") designed to be attached to a semitrailer, which is used exclusively for the loading and

unloading of the semitrailer. For purposes of this rule any attachment bracket used to secure the fork lift not in excess of 24 inches shall be excluded from the semitrailer length measurement provided it carries no load other than the fork lift. This fork lift may be attached to the rear of a semitrailer and not be included in determining overall length if:

(i) In a truck tractor and semitrailer combination the fork lift, including attachment brackets, does not extend beyond the rear of the semitrailer by more than seven feet, does not cause the overall length of the semitrailer including fork lift and attachment brackets to exceed 56 feet and does not cause rear overhang to exceed one-third of the wheelbase of the combination;

(ii) In a truck tractor, semitrailer and trailer combination, or truck-tractor, semitrailer and semitrailer combination (B train), the fork lift is attached to the rear of the lead semitrailer or to the rear of the second trailer providing the fork lift does not extend beyond the rear of the semitrailer or trailer by more than seven feet including attachment brackets. The semitrailer or trailer length, inclusive of the forklift, shall not exceed 40 feet. The distance between the front of the first semitrailer and the rear of the second semitrailer or trailer, inclusive of the fork lift, shall not exceed 68 feet. The longer of the two trailers, inclusive of the fork lift, shall be placed ahead of the shorter of the two trailers.

(B) Motor attached to the front of a concrete mixer truck manufactured prior to January 1, 2000, that is used to turn the mixer drum, including a protective bumper for the motor, that does not exceed four feet in length from the foremost point of the vehicle exclusive of the motor and protective bumper; or

(C) Pump attached to the front of a concrete pump truck manufactured prior to January 1, 2000, including a protective bumper for the pump, that does not exceed two feet in length from the foremost point of the vehicle exclusive of the pump and protective bumper.

(k) "Passenger vehicle" or "light vehicle" means a motor vehicle, regardless of design or intended use, having 15,000 pounds or less GVWR;

(l) "Pickup truck" means a motor vehicle designed to carry passengers and to carry a load, having 15,000 pounds or less GVWR and which shall not tow more than one vehicle, except as provided in OAR 734-071-0030(2);

(m) "Stinger-steered" is as defined in ORS 801.507; and

(n) "Truck-tractor" means a motor vehicle designed and used primarily for drawing (towing) other vehicles and constructed so as not to carry any load other than a part of the weight of the vehicle or load, or both, as drawn and having more than 15,000 pounds GVWR.

[ED. NOTE: Tables and Maps referenced are available from the agency.]

Stat. Auth.: ORS 184.616, ORS 184.619, ORS 810.050, ORS 810.060 & 818.200

Stats. Implemented: ORS 810.060, ORS 818.200 & ORS 818.220

Hist.: 1 OTC 5-1980, f. & ef. 3-27-80; 2HD 5-1982(Temp), f. & ef. 10-5-82; 2HD 8-1983, f. & ef. 3-30-83; HWY 3-1993(Temp), f. & cert. ef. 7-13-93, HWY 3-1994(Temp), f. 5-19-94, cert. ef. 5-20-94; HWY 2-1995, f. & cert. ef. 10-16-95; HWY 5-1997, f. & cert. ef. 5-9-97; TO 5-1998, f. & cert. ef. 4-16-98; TO 2-2001, f. & cert. ef. 6-14-01; TO 10-2002, f. & cert. ef. 12-13-02

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Adm. Order No.: MCTB 5-2002

Filed with Sec. of State: 11-18-2002

Certified to be Effective: 11-18-02

Notice Publication Date: 9-1-02

Rules Amended: 740-035-0200, 740-035-0250, 740-035-0260

Rules Repealed: 740-035-0210, 740-035-0220, 740-035-0230, 740-035-0240

Subject: Section 10, chapter 567, Oregon Laws 2001 (HB 3411) amended ORS 825.402 effective July 1, 2002. The amendment in part specifies that a motor carrier must participate in an educational program administered by the Department within 90 days of the date it receives a certificate or permit from the Department. The statute previously required a motor carrier to attend an education program within 180 days from the date it received a certificate or permit from the Department. The Motor Carrier Education Program is designed to educate motor carriers regarding various regulations and requirements they must comply with to operate in Oregon. Established in 1991, the program initially consisted of an educational seminar that was conducted in a classroom by Department staff and later by a third party contractor. In December 2000 the Department eliminated the previously required seminar. The seminar has been

ADMINISTRATIVE RULES

replaced with educational information that is now mailed directly to motor carriers and is made available on the Motor Carrier Transportation Division Web site. A required self-assessment exam is proposed as a way to verify that a motor carrier has participated in the program by reviewing information provided. Other changes repeal provisions that are redundant with statute, repeal a fee no longer needed to defray the cost of the seminar, revise the time period for compliance and revise applicable sanctions for failure to participate.
Rules Coordinator: Brenda Trump—(503) 945-5278

740-035-0200

Motor Carrier Education Program

The Motor Carrier Education Program provides motor carriers with basic information required to conduct motor carrier operations in Oregon. In addition to the provisions of ORS 825.402, the following apply to the Motor Carrier Education Program:

(1) As used in ORS 825.402, "Domiciled in Oregon" means a motor carrier has established its principal place of business, as indicated on the Application for Motor Carrier Permit (Form 735-9075, revised 5/00), in Oregon; and

(2) As used in ORS 825.402 and OAR 740-035-0200 to 740-035-0260, "Participate in the program" means that a person having a substantial interest or control, directly or indirectly, in the motor carrier operations has returned to the Department a completed self-assessment exam that is based on information made available by the Department. The completed self-assessment exam must be received by the Department no later than 90 days from the date the Department issues a permit or certificate to the motor carrier authorizing Oregon operations.

Stat. Auth.: ORS 823.011 & ORS 825.402

Stats. Implemented: ORS 825.400 & ORS 825.402

Hist.: PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-062-0090; MCT 5-1996, f. & cert. ef. 9-17-96; MCTB 5-2002, f. & cert. ef. 11-18-02

740-035-0250

Penalty for Failure to Participate

Failure to participate in the program as required by ORS 825.402 subjects a motor carrier to citation action as provided in ORS 810.530 and civil action as provided in ORS 825.950. For the purposes of ORS 810.530, "requirements for attendance" has the same meaning as "participate in the program" described in ORS 825.402 and OAR 740-035-0200.

Stat. Auth.: ORS 183, ORS 469, ORS 823, ORS 824 & ORS 825

Stats. Implemented: ORS 825.137

Hist.: PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 9-1994, f. & cert. ef. 4-21-94 (Order No. 94-637); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-062-0100; MCTB 5-2002, f. & cert. ef. 11-18-02

740-035-0260

Motor Carrier Education Curriculum

The Department will provide motor carriers with the information needed to meet the participation requirements. The Department will provide educational information including, but not limited to:

- (1) Driver Qualifications;
- (2) Vehicle Inspection and Maintenance Requirements;
- (3) Motor Carrier Safety Regulations;
- (4) Weight Mile Tax/Reporting Requirements;
- (5) Insurance Filings;
- (6) Authority Suspensions;
- (7) Permissible Size and Weight Limits;
- (8) Overdimensional Permits and How to Obtain Them; and
- (9) Appropriate Agency Contact for Assistance.

Stat. Auth.: ORS 183, ORS 469, ORS 823, ORS 824 & ORS 825

Stats. Implemented: ORS 825.400

Hist.: PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-062-0102; MCTB 5-2002, f. & cert. ef. 11-18-02

Adm. Order No.: MCTB 6-2002

Filed with Sec. of State: 11-18-2002

Certified to be Effective: 11-18-02

Notice Publication Date: 9-1-02

Rules Adopted: 740-200-0040

Rules Amended: 740-200-0010, 740-200-0020

Subject: Provisions of the International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. A new rule adopts the most recent version of IFTA

and associated material as the procedures and guidelines for Oregon-based IFTA participants to ensure Oregon remains current with national and international IFTA standards. The International Registration Plan (IRP) and 26 CFR Part 41 (Heavy Vehicle Use Tax — HVUT) relate to commercial motor vehicle registration and heavy vehicle taxation respectively. The amendments to OAR 740-0200-0010 and 740-200-0020 adopt IRP and HVUT and amendments thereto in effect as of April 1, 2002 to ensure Oregon remains current with national and international commercial motor vehicle registration standards. Oregon no longer belongs to the Western Uniform Compact, so that reference is deleted. Additions to IFTA and IRP regarding record keeping requirements, penalties related to delinquent reporting and the audit reassessment process reflect current practice and provide uniformity with other motor carrier tax/registration regulations.

Rules Coordinator: Brenda Trump—(503) 945-5278

740-200-0010

Prorate Registration

(1) The provisions contained in the "International Registration Plan" (IRP), the **IRP Audit Procedures Manual** and the **IRP Policies and Procedures Manual** and all amendments thereto in effect April 1, 2002, are hereby adopted and prescribed by the Oregon Department of Transportation and apply to the apportioned registration of vehicles.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IRP:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Audit assessments are subject to penalty, late payment charges and interest described in ORS 825.490;

(c) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(d) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

(3) The mileage reporting period for application and renewal purposes shall be the previous July through June twelve-month period.

[Publications: Publication referenced are available from the agency.]

Stat. Auth.: ORS 183.335, ORS 823.011 & ORS 825.232

Stats. Implemented: ORS 826.005 & ORS 826.007

Hist.: PUC 8-1990, f. & cert. ef. 5-25-90 (Order No. 90-834); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0005; MCTB 6-2002, fr. & cert. ef. 11-18-02

740-200-0020

Adoption of Federal Rules Governing Payment of Heavy Vehicle Use Tax

The Department hereby adopts the rules of the United States Internal Revenue Service contained in **26 CFR Part 41** (Heavy Vehicle Use Tax) and all amendments thereto in effect April 1, 2002. These rules apply to carriers conducting operations subject to ORS Chapter 826.

[Publications: Publication referenced are available from the agency.]

Stat. Auth.: ORS 823.011 & ORS 826.007

Stats. Implemented: ORS 803.370(5) & ORS 826.033

Hist.: PUC 19-1990, f. & cert. ef. 12-31-90 (Order No. 90-1919); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0015; MCTB 6-2002, fr. & cert. ef. 11-18-02

740-200-0040

Adoption of International Fuel Tax Agreement

(1) The provisions contained in the International Fuel Tax Agreement (IFTA) Articles of Agreement, the IFTA Audit Manual and the IFTA Procedures Manual, and all amendments thereto in effect April 1, 2002, are hereby adopted and prescribed by the Oregon Department of Transportation (ODOT) and apply to Oregon-based motor carriers who participate in IFTA.

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(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IFTA:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Records of monthly over the road and bulk fuel reconciliations must be maintained;

(c) The Department shall assess a penalty of \$50 or 10 percent of the amount of delinquent taxes due, whichever is greater, for failing to file a return, filing a late return, or underpaying taxes due on a return;

(d) Upon proposing an additional assessment as the result of an audit, the Department shall assess a penalty of 10 percent of the amount of delinquent taxes due;

(e) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(f) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

[Publications: Publication referenced are available from the agency.]

Stat. Auth.: ORS 823.011 & 825.555

Stat. Implemented: ORS 825.490 & 825.555

Hist.: MCTB 6-2002, fr. & cert. ef. 11-18-02

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Division of State Lands
Chapter 141

Adm. Order No.: DSL 6-2002

Filed with Sec. of State: 11-25-2002

Certified to be Effective: 1-15-03

Notice Publication Date: 2-1-02

Rules Adopted: 141-085-0006, 141-085-0018, 141-085-0022, 141-085-0024, 141-085-0027, 141-085-0028, 141-085-0029, 141-085-0031, 141-085-0034, 141-085-0036, 141-085-0064, 141-085-0066, 141-085-0079, 141-085-0095, 141-085-0096, 141-085-0121, 141-085-0126, 141-085-0131, 141-085-0136, 141-085-0141, 141-085-0146, 141-085-0151, 141-085-0156, 141-085-0161, 141-085-0166, 141-085-0171, 141-085-0176, 141-085-0257, 141-085-0263, 141-089-0100, 141-089-0105, 141-089-0110, 141-089-0115, 141-089-0120, 141-089-0125, 141-089-0130, 141-089-0135, 141-089-0140, 141-089-0145, 141-089-0150, 141-089-0155, 141-089-0160, 141-089-0165, 141-089-0170, 141-089-0175, 141-089-0180, 141-089-0185, 141-089-0190, 141-089-0195, 141-089-0200, 141-089-0205, 141-089-0210, 141-089-0215, 141-089-0220, 141-089-0225, 141-089-0230, 141-089-0235, 141-089-0240, 141-089-0245, 141-089-0250, 141-089-0255, 141-089-0260, 141-089-0265, 141-089-0270, 141-089-0275, 141-089-0280, 141-089-0285, 141-089-0290, 141-089-0295, 141-089-0300, 141-089-0305, 141-089-0310

Rules Amended: 141-085-0005, 141-085-0010, 141-085-0015, 141-085-0020, 141-085-0025, 141-085-0070, 141-085-0075, 141-085-0080, 141-085-0085, 141-085-0090, 141-085-0115, 141-085-0240, 141-085-0244, 141-085-0246, 141-085-0248, 141-085-0250, 141-085-0252, 141-085-0254, 141-085-0256, 141-085-0262, 141-085-0264, 141-085-0266, 141-085-0400, 141-085-0406, 141-085-0410, 141-085-0421, 141-085-0425, 141-085-0430, 141-085-0436, 141-085-0440, 141-085-0445, 141-085-0610, 141-085-0620, 141-085-0630, 141-085-0640, 141-085-0650, 141-085-0660

Rules Repealed: 141-085-0030, 141-085-0032, 141-085-0035, 141-085-0040, 141-085-0050, 141-085-0055, 141-085-0060, 141-085-0065, 141-085-0101, 141-085-0110, 141-085-0120, 141-085-0125, 141-085-0130, 141-085-0135, 141-085-0140, 141-085-0145, 141-085-0150, 141-085-0155, 141-085-0160, 141-085-0165, 141-085-0170, 141-085-0175, 141-085-0180, 141-085-0242, 141-085-0258, 141-085-0260, 141-085-0300, 141-085-0306, 141-085-0310, 141-

085-0315, 141-085-0320, 141-085-0325, 141-085-0330, 141-085-0335, 141-085-0340, 141-085-0345, 141-085-0350, 141-085-0355, 141-085-0360, 141-085-0365, 141-085-0415, 141-089-0005, 141-089-0010, 141-089-0015, 141-089-0020, 141-089-0030, 141-089-0040, 141-089-0050, 141-089-0060, 141-089-0065, 141-089-0070, 141-089-0075, 141-089-0081, 141-089-0086, 141-089-0091

Subject: These rules constitute a comprehensive revision of the entire body of rules for the Agency's removal-fill permitting program. The rules establish standards for a complete application; clarify Agency's jurisdiction; clarify certain exemptions; propose new definitions for existing terms; simplify civil penalty formulas; propose new criteria for permit extensions; revise criteria for issuance of Emergency Letters of Authorization; add to compensatory mitigation requirements; revise compensatory mitigation priorities; revise compensatory mitigation plan review and monitoring requirements; revise mitigation banking rules; address standing for requesting hearings on permit decisions; clarify security bonding and instrument requirements; include HB 3599 "converted wetlands" revisions; and other changes. The rules also revise the Agency's General Authorizations, including those governing fish habitat enhancement, streambank stabilization, certain transportation-related structures, wetland restoration and enhancement, recreational and small scale placer mining within essential indigenous anadromous salmonid habitat, and removing and disposing of sediment behind tidesgates for channel maintenance. A Technical Advisory Committee assisted in reviewing the draft rules and recommending changes.

In January, the Agency issued notice of a comprehensive revision of its rules for the removal-fill permitting program. The Agency held hearings, took public comment and presented a revised version of the rules to the State Land Board on June 11, 2002. The public comment period ended at the June 11, 2002 meeting. At that meeting, the Board directed the Agency to adopt the rules after readdressing those issues raised pertaining to certain areas of the proposed amendments. The Agency reopened and received additional public comment of the proposed rules through July 31, 2002. These rules are the result of said reconsideration and provide an inclusive reassessment of the Agency rules for the removal-fill permitting program.

Rules Coordinator: June LeTarte—(503) 378-3805, ext. 239

141-085-0005

Purpose/Applicability

These rules:

(1) Apply to removal, fill and/or alteration of material within the waters of this state as expressed in ORS 196.668 to 196.692, 196.800 to 196.990, and 390.835.

(2) Establish procedures for applying for an individual removal-fill permit, a general authorization or an emergency authorization (referred to in these rules as either "permits" or "authorizations") and the Agency's process for reviewing applications for any of these permits and authorizations.

(3) Establish standards and criteria that an applicant must meet to obtain a permit or an authorization.

(4) Establish general conditions and mitigation requirements to be applied to each approved authorization.

(5) Establish the procedures for enforcing ORS 196.800 to 196.990, 390.825 and 390.835.

(6) Define the "waters of the state" of Oregon that are subject to removal-fill permit requirements.

(7) Define the activities that are subject to (refer to OAR 141-085-0015) or exempt from (refer to OAR 141-085-0020) these rules. Generally, the following activities are subject to removal-fill authorization requirements if conducted in waters of the state. However, this is not an inclusive list and it does not address exemptions from permit requirements. Consult the rules to determine whether a particular activity is subject to authorization requirements. This list is solely for the purpose of giving general examples:

(a) Streambank stabilization;

(b) Wetland restoration;

(c) Road, bridge or transportation structure construction (including culverts, road fills);

ADMINISTRATIVE RULES

- (d) Utility line construction including pipelines and overhead lines;
- (e) Sand and gravel removal (commercial and non-commercial);
- (f) Water diversion works/structures (permanent and temporary) including water intakes, weirs and push-up dams;
- (g) Fish habitat enhancement (e.g. large rock placement; pool and pond construction; gravel placement; side channel construction; barrier removal; placement of large wood material; and streambank rehabilitation).
- (h) Temporary construction works (e.g., cofferdams);
- (i) Dredge material disposal;
- (j) Stream gauging station construction;
- (k) Waterfront structure construction (e.g. bulkheads, sheet piling, backfilling, filling);
- (l) Boat ramp construction and improvement;
- (m) Fill placement for the purpose of land development for institutional, public facilities, residential, commercial or industrial uses;
- (n) Piling, dolphins;
- (o) Access channel dredging including maintenance dredging;
- (p) Underwater blasting;
- (q) Streambank excavation (e.g., bank sloping, reshaping);
- (r) Stormwater, wastewater, or sewer outfall construction;
- (s) Channel or streambed relocation;
- (t) Tidegate or other water control structure (e.g. levees, dikes, canals or irrigation ditches or drainage ditches) construction;
- (u) Mining (e.g. placer mining); and
- (v) Water storage improvement construction (e.g. ponds, reservoirs)
- (8) Govern the basics of the removal-fill program. They must be used in conjunction with other Agency rules, which address specific subjects relating to removal and fill, including but not limited to:
 - (a) Wetland Delineation Report Requirements and Jurisdictional Determinations for the Purpose of Regulating Fill and Removal within Waters of the State (OAR 141-090-0005 to 141-090-0055).
 - (b) Wetland Conservation Plans (OAR 141-086-0005 to 141-086-0100 and 141-120-0000 to 141-120-0230).
 - (c) The 1992 Lower Willamette River Management Plan as promulgated by the State Land Board and the Division of State Lands and adopted by reference (OAR 141-080-0105).
 - (d) Essential Indigenous Anadromous Salmonid Habitat (OAR 141-102-0000 to 141-102-0045).
 - (e) Oregon Scenic Waterways (OAR 141-100-0000 to 141-100-0090).
 - (f) General Authorizations (OAR 141-089).

Stat. Auth.: ORS 196.600- 196.692; ORS 196.800- 196.990; ORS 390.805- 390.925
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990; ORS 390.805- 390.925
Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0103; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0006 Policy

- (1) No authorization to place fill or remove material from the waters of the state shall:
 - (a) Interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and public recreation uses or
 - (b) Be inconsistent with the protection, conservation and best use of the water resources of this state.
- (2) To the extent possible, the Agency shall administer these rules to ensure persons receive timely, fair, consistent and predictable treatment including timely communication and consistent application and interpretation of these rules and the removal-fill law.
- (3) The Agency shall actively and continually pursue improvements to the authorization process in order to reduce paperwork, eliminate duplication, increase certainty and timeliness and enhance protection of water resources.
- (4) The Agency shall recognize the interests of adjacent landowners, Tribal governments, public interest groups, watershed councils, state and federal agencies, and local government land use planning agencies, and shall provide notice to such interests prior to issuance of an individual removal-fill permit or adoption of a general authorization.
- (5) In regard to the regulation of wetlands, the Agency shall administer these rules to ensure that:
 - (a) The protection, conservation and best use of the state's wetland resources, including their functional attributes, are promoted through the integration and coordination of the local comprehensive land use plans and the Agency permitting process.
 - (b) A stable wetland resource base is maintained through impact avoidance and compensation for unavoidable wetland losses.

- (6) The restoration of wetlands and other waters through voluntary restoration and conservation programs is encouraged and facilitated.
- (7) The Agency shall administer the removal-fill program in a manner consistent with and in support of:
 - (a) The Oregon Plan as described in ORS 541.405;
 - (b) The applicable Oregon Wetlands Benchmarks; and
 - (c) The Oregon Coastal Zone Management Program.
- (8) The Agency shall carry out its responsibilities under these rules in compliance with the coordination procedures established in its State Agency Coordination Program (OAR 141-095-0000).
Stat. Auth.: ORS 196.600- 196.692; ORS 196.800- 196.990
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0010 Definitions

The following definitions will be used in addition to those in ORS 196.600, 196.800, 196.815, 196.830, 196.860 and 196.905

- (1) "Activities Customarily Associated with Agriculture" (ORS 196.810(1)(b)) applies only to fill or removal of less than 50 cubic yards in essential indigenous anadromous salmonid habitat (see OAR 141-102-0020(6)). "Activities customarily associated with agriculture" include maintenance of an existing irrigation structure at an existing point of diversion (as defined in OAR 690-015-0005) to maintain previously constructed agricultural drainage or irrigation channels, or to maintain or replace any associated and necessary pumps, tide gates, levees, groins and/or other drainage or irrigation-related devices. Exempt activities also include maintaining existing culverts under farm or ranch roads by removing debris. "Activities customarily associated with agricultural" does not include activities such as filling a slough to expand a farm field, constructing a new farm or ranch road, or constructing a new point of diversion.
- (2) "Activity" means the same as "project."
- (3) "Adverse Effect" means the same as "reasonably expected adverse impacts".
- (4) "Applicant" means a person seeking a permit or authorization to conduct a removal-fill activity under ORS 196.800 to 196.990 and who has authority to fully execute the terms and conditions of the authorization.
- (5) "Agency" means the Oregon Division of State Lands and the Director or designee.
- (6) "Aquatic Life and Habitats" means the aquatic environment including fish, wildlife and plant-species dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.
- (7) "Artificially Created" means constructed by artificial means.
- (8) "Artificial Means" means the purposeful movement or placement of material by humans and/or their machines.
- (9) "Authorization" means an individual permit, letter of authorization issued under a General Authorization, or emergency authorization as required by these rules and ORS 196.810 and 196.850.
- (10) "Authorization Holder" means the person holding a valid authorization from the Agency.
- (11) "Bank" means: (a) for perennial streams, that portion of a waterway that is exposed at low water and lies below the ordinary high water line or bankfull stage; and (b) for intermittent streams, the bank extends to the ordinary high waterline; the line between the bed and bank may be indistinguishable during dry months.
- (12) "Bankfull Stage" means the two-year recurrence interval flood elevation.
- (13) "Baseline Conditions" means the ecological conditions, wetland functional attributes, and the vegetative, soils, and hydrological characteristics present at a site before any change is made.
- (14) "Basin" means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department as shown on maps published by that agency.
- (15) "Beds" means: (a) for the purpose of OAR 141-089-0245 to 141-089-0275, the land within the wet perimeter and any adjacent nonvegetated dry gravel bar; (b) for all other purposes, "beds" means that portion of a waterway that is always covered by water; or, on intermittent streams, the area that carries water when water is present.
- (16) "Beds or Banks" means the physical container of the waters of this state, bounded on freshwater bodies by the line of ordinary high water or bankfull stage, and on bays and estuaries by the limits of the highest measured tide.

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(17) "Bio-Engineering" means construction methods which use live woody material or a combination of live vegetation material (usually woody) and rock to stabilize a stream bank.

(18) "Borrowed Material" means excavated earth or rock that is removed from one location (e.g. streambed) and used at another location.

(19) "Buffer" means an upland area immediately adjacent to or surrounding a wetland or other water that protects the functioning of that wetland or water.

(20) "Bulkhead" means a vertical or nearly vertical bank protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

(21) "Cease and Desist Order" means a legally binding order compelling a party to cease removal or fill activities in waters of the state.

(22) "Certified Credit" as used in compensatory wetland mitigation banking, results when the wetland mitigation bank has met or exceeded the performance standards established in its Mitigation Bank Instrument. Once credits are certified, they are available for sale or exchange.

(23) "Channel" means a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway of perceptible extent that periodically or continuously contains moving water and has a definite bed and banks that serve to confine the water.

(24) "Channel Relocation" means a type of removal in which a new channel is dug and the flow of the stream is diverted from the old channel into the new channel.

(25) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

(c) The Columbia river basin, where the coastal zone extends to the downstream end of Puget Island.

(26) "Coastal Zone Certification Statement" means a signed statement by the responsible local official that a proposed removal-fill project is consistent with the applicable enforceable policies of the Oregon Coastal Zone Management Plan.

(27) "Cofferdam" means a temporary enclosure used to keep water from a work area.

(28) "Commercial Aggregate Removal" means excavating sand, gravel or rock for the purposes of exchanging or reselling as a marketable commodity.

(29) "Commercial Operator" means any person undertaking a project having financial profit as a goal.

(30) "Compensatory Mitigation" means replacement of water resources that are damaged or destroyed by an authorized activity.

(31) "Compensatory Mitigation Goal" means a broad statement(s) that describes the intent or purpose of the compensatory mitigation proposal. An example of a mitigation goal is "to establish a 10-acre diverse wetland habitat with four Cowardin wetland classes."

(32) "Compensatory Mitigation Objective" means the specific direct actions necessary to achieve the compensatory mitigation goals. Mitigation objectives are performance based and measurable; they describe water regimes, vegetation structure, soil morphology, and/or habitat features that will be restored, enhanced, or created as a part of the compensatory mitigation plan. An example of an objective is "the vegetated areas will have 3 (three) acres each of emergent, scrub-shrub forested wetland."

(33) "Compensatory Wetland Mitigation (CWM) Plan" means a document that describes in detail a proposed compensatory wetland mitigation project.

(34) "Compensatory Wetland Mitigation (CWM) Project" means a project to replace authorized wetland losses by the creation, restoration, or enhancement of a wetland according to a compensatory mitigation plan.

(35) "Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs and as further defined under ORS 197.015(5).

(36) "Completed Application" means a signed application form that contains all necessary information as described in OAR 141-085-0025 and as determined to be complete under OAR 141-085-0027.

(37) "Concentrator" means a device used to physically or mechanically separate and enrich the valuable mineral content of aggregate. Pans, sluice boxes and mini-rocker boxes are examples of concentrators.

(38) "Consent Agreement" means an informal agreement between the Agency and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(39) "Consent Order" means a formal, legally binding agreement between the Agency and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(40) "Converted Wetland" means, for the purposes of OAR 141-085-0020(4),

(a) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose of enabling production of an agricultural commodity and are managed for that purpose; and

(b) Includes land that the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetland, so long as agricultural management of the land has not been abandoned for five or more years.

(41) "Cowardin Classification" means the comprehensive classification system of wetlands and deepwater habitats that was developed by the U.S. Fish and Wildlife Service (Cowardin et al. 1979).

(42) "Creation" means to convert an area that has never been a wetland to a jurisdictional wetland.

(43) "Creation of an Estuarine Area" means to convert an upland area into a shallow subtidal or an intertidal or tidal marsh area by land surface alteration. The area to be converted must be an upland area lying above the line of nonaquatic vegetation when alteration work begins.

(44) "Culvert" means a conduit designed and functioning to convey stream flows under an obstacle, such as, a corrugated metal pipe used to pass stream flow under a road.

(45) "Dam" means a structure or barrier constructed across a waterway to control the flow of the water.

(46) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the removal-fill law, these rules (OAR 141-085), any rule adopted pursuant to these rules (OAR 141-085), any order adopted in accordance with these rules (OAR 141-085) or any authorization issued in accordance with these rules (OAR 141-085).

(47) "Deep Ripping, Tiling and Moling" refer to certain specific mechanical methods used to promote subsurface drainage of agricultural wetlands.

(48) "Degraded" wetland refers to a wetland with diminished functional attributes resulting from hydrologic manipulation (such as diking, draining and filling) or other human caused actions or events that demonstrably interfere with the normal functioning of wetland processes.

(49) "Dewatering" is the removal of water from a defined area (e.g., from within a cofferdam) using gravity or mechanical means (e.g. pumping).

(50) "Dike" means any embankment, usually earthen, constructed to control or confine water.

(51) "Directly Connected" as used in connection with exempt forest management practices means conducted as part of a commercial activity relating to the establishment, management or harvest of forest tree species. These activities include reforestation; road construction and maintenance; harvesting of forest tree species; application of chemicals; disposal of slash; site preparation; pre-commercial thinning; pruning; development of rock pits for forest road use; collecting cones and seeds; tree protection such as bud capping; and harvesting of minor forest products. These activities also include riparian and aquatic habitat restoration done as part of a forest management practice. Directly connected does not include fill and removal activities conducted as part of a land use change, even though commercial harvesting of forest tree species may be part of the land use change process.

(52) "Direct Compensatory Wetland Mitigation" means compensatory wetland mitigation constructed by the applicant including restoration, creation and/or enhancement.

(53) "Drainage Ditch" means channels excavated from the surface of the ground designed to remove surface or shallow ground waters.

(54) "Dolphin" is a cluster of piles or piling which is bound together.

(55) "Drained" means a condition in which ground or surface water has been reduced or eliminated by artificial means.

(56) "Dredge Material Disposal Sites" or "DMD" means geographic locations identified as pre-approved by local government for the stockpiling or disposal of materials dredged from a waterway.

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(57) "Dredging" means removal of bed material using other than hand held tools.

(58) "Emergency" means natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

(59) "Emergency Authorization" is an expedited authorization that the Agency may issue for the removal of material from the beds or banks or filling of any waters of the state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property (ORS 196.810(4)).

(60) "Emergency Wetlands Resources Act of 1986" means the federal legislation adopted as Public Law 99-645.

(61) "Enhancement" refers to a human activity that increases the function of an existing degraded wetland.

(62) "Enhancement of an Estuarine Area" means a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

(63) "Environmentally Preferable" means having a higher likelihood of replacing wetland functional attributes or of improving water resources of the state.

(64) "Erosion-Flood Repair" means the placement of riprap or any other work necessary to preserve existing structures, facilities and land from flood and high stream flows.

(65) "Estuarine Resource Replacement" means the creation, the restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features, and water quality.

(66) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater. However, for the purposes of these rules, the Columbia River Estuary extends to the western edge of Puget Island.

(67) "Expiration Date" means the date the authorization to conduct the removal-fill activity specified in the authorization has ended. The authorization holder's obligation to comply with the Agency's rules and authorization conditions continues indefinitely. For example, compensatory wetland mitigation requirements, including monitoring, extend until such requirements are fully satisfied according to the general and specific conditions attached to the authorization.

(68) "Extreme Low Tide" means the lowest estimated tide that can occur. The elevation of Extreme Low Tide under these rules is established at -3.5 feet Mean Lower Low Water.

(69) "Farm or Stock Pond" means a confined water body located on a working farm or ranch, created by human activity and used predominately for agricultural purposes.

(70) "Farm Road" means a road on a working farm and that is used predominantly for agricultural purposes.

(71) "Farm Use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the production of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm Use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the Oregon Fish and Wildlife Commission. "Farm Use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm Use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees.

(72) "Farmed Wetland" means land that the Natural Resources Conservation Service of the United States Department of Agriculture certifies as farmed wetland.

(73) "Federal Endangered Species Act" or "ESA" means 16 U.S.C. 1531 et seq., administered by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

(74) "Fen" means a type of wetland that accumulates peat, receives some drainage from surrounding mineral soil and supports a wide range of vegetation types including sedge and moss-dominated communities and coniferous forests.

(75) "Fill" means the total of deposits of material, including pilings, by artificial means equal to or greater than 50 cubic yards at one location in any waters of this state. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102-0000 to 141-102-0045) and in designated Scenic Waterways (OAR 141-100-0000 to 141-100-0090) "fill" means any deposit by artificial means.

(76) "Financial Assurance(s)" means the money or other form of financial instrument (for example, surety bonds, trust funds, escrow accounts, proof of stable revenue sources for public agencies) required of the sponsor to ensure that the functions of the subject bank are achieved and maintained over the long-term pursuant to the terms and conditions of the Mitigation Bank Instrument.

(77) "Financial Security Instrument" means a Surety Bond, Certificate of Deposit, irrevocable letter of credit or other instrument to guarantee performance.

(78) "Fish Habitat Enhancement" means a project with the sole purpose of improving habitat conditions for fish.

(79) "Fish Passage/Fish Screening Structures" mean devices specifically designed to manage/direct the movement of fish.

(80) "Fishway" means any structure, facility or device that is designed to enable fish to effectively pass around or through an obstruction.

(81) "Floodplain" is that portion of a river valley, adjacent to the channel, which is built of sediments, deposited during the present regimen of the stream and is covered with water when the waterway overflows its banks at flood stage.

(82) "Food and Game Fish" means those species listed under either ORS 506.011 or 496.009.

(83) "Food-Producing Areas for Food and Game Fish" (as used in ORS 196.800 and these rules) include all stream reaches that flow during a portion of every year, up to one stream order above (i.e., upstream) any food and game fish bearing stream.

(84) "Forest Management Practices" means commercial activity conducted on forestlands connected with growing and harvesting forest tree species, including but not limited to:

- (a) Reforestation;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals; and
- (e) Disposal of slash.

(85) "Forestland" means the same as used in the Forest Practices Act and rules (ORS 527.610 to 527.992 and OAR 629-024-0101(26)) as land which is used for the commercial growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(86) "Free and Open Connection" as used in OAR 141-085-0015(2) means a connection by any means, including, but not limited to, culverts, to or between natural waterways and other bodies of water that allows the interchange of surface flow at bankful stage or ordinary high water, or at or below mean higher high tide between tidal waterways.

(87) "Functional Attributes" are those ecological characteristics or processes associated with a wetland and the societal benefits derived from those characteristics. These ecological characteristics are widely known as "functions," whereas the associated societal benefits are widely known as "values." For example, wetland functions include, but are not limited to the following: providing habitat areas for fish and wildlife; nutrient breakdown, retention and/or assimilation; stormwater retention and controlled release. Values associated with those functions, respectively, might include: protecting listed species; water quality improvement; and flood attenuation and floodwater storage.

(88) "General Authorization" means a rule adopted by the Agency authorizing, without an individual removal-fill permit, a category of activities involving removal or fill, or both, on a statewide or other geographic basis. (OAR 141-085-0070).

(89) "Geographic Region" for the purposes of the payment to provide option of a compensatory wetland mitigation plan, means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department (WRD) as shown on maps published by WRD.

(90) "Governmental Body" includes the federal government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.

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(91) "Gravel" is loose rounded rock, particle size between 2 and 64 mm in diameter.

(92) "Groins" is a general category of structures that are designed to directly influence stream hydraulics, and may include barbs and vanes. The primary function of a groin is to provide roughness, dissipate energy, and reduce velocities near the bank. They may be oriented downstream, perpendicular, or upstream to the flow.

(93) "Habitat Enhancement" means to improve habitat areas through habitat manipulation and management.

(94) "Harvesting" means, for the purposes of OAR 141-085-0020(4), physically removing farm or ranch crops.

(95) "Hatchery" means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish and shellfish.

(96) "Hearing Officer Panel" means the group established within the Employment Department, pursuant to the provisions of Sections 2 to 21, Chapter 849, Oregon Laws, 1999 (later codified within ORS 183.310 to 183.550), to provide hearing officers to conduct contested case proceedings.

(97) "Herbaceous Plants" are non-woody vegetation including forbs, grasses, rushes and sedges.

(98) "Highbanker" means a stationary concentrator capable of being operated outside the wetted perimeter of the water body from which water is removed, and which is used to separate gold and other minerals from aggregate with the use of water supplied by hand or pumping, and consisting of a sluice box, hopper, and water supply. Aggregate is supplied to the highbanker by means other than suction dredging. This definition excludes mini-rocker boxes.

(99) "Highbanking" means the use of a highbanker for the recovery of minerals.

(100) "Highest Measured Tide" means the highest tide projected from actual observations of a tide staff within an estuary or tidal bay.

(101) "Hydraulic" means the use of water spray or water under pressure to dislodge minerals and other material from placer deposits.

(102) "Hydric Soil" is a soil that is formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

(103) "Hydrophytic Vegetation" is the sum total of macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

(104) "Hydrogeomorphic Method" or "HGM" is a method of wetland classification and functional assessment based on a wetland's location in the landscape and the sources and duration of water flow. The HGM approach identifies the wetland classes present in each region, defines the functions that each class of wetlands performs, and establishes reference sites to define the range of functioning of each wetland class.

(105) "Impact" or "Effect" means the actual, expected or predictable results of an activity upon waters of the state including water resources, navigation, fishing and public recreation uses.

(106) "Impounded Waters," means waters behind dams, weirs or other structures as measured to the maximum pool or top of the spillway, whichever is lower.

(107) "Indirect Wetland Mitigation" means wetland mitigation not constructed by the permit holder (e.g., Payment-to-provide, mitigation banking and/or conservation in lieu).

(108) "Individual Removal-Fill Permit" is a permit issued to a person for a specific removal and/or fill activity that is not subject to a General Authorization or Emergency Authorization as defined in these rules.

(109) "Intergovernmental Agreement" means a memorandum of agreement (MOA), memorandum of understanding (MOU), intergovernmental agreement (IGA), or other forms of agreement between government entities.

(110) "Intermittent Stream" means any stream that flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(111) "Intertidal or Tidal Marsh Area of an Estuary" means those lands lying between extreme low tide and the line of nonaquatic vegetation (Figure 1, Estuarine Mitigation The Oregon Process, Division of State Lands, April 1984, p 8).

(112) "Invasive Plants" mean non-native plants that aggressively compete with native species. For example, invasive plants include English ivy, reed canary grass and Himalayan blackberry.

(113) "Irrigation Ditches" are channels excavated on the surface of the ground designed to convey water for the purpose of irrigating crops or pasture.

(114) "Jetty or Jetties" means a pier or other structure projecting into a body of water to influence the current or tide or protect a harbor or shoreline.

(115) "Land and Water Conservation Fund Act" means the federal legislation adopted as Public Law 88-578, as amended. (16 U.S.C. Section 460-L et seq.)

(116) "Large Woody Material" means trees or tree parts larger than ten inches in diameter at the smallest end and longer than six feet, including rootwads.

(117) "Legally Protected Interest" means a claim, right, share, or other entitlement that is protected under state or federal law. A legally protected interest includes, but is not limited to, an interest in property.

(118) "Letter of Authorization" is issued to a person confirming that the activity described in an application meets the requirements of a specific General Authorization adopted in accordance with these rules.

(119) "Levee" means a human-made feature that restricts movement of water into or through an area.

(120) "Line of Nonaquatic Vegetation" means the upper limit of wetland vegetation, or, the point at which characteristic upland species become established in the vegetation, or, if not discernible, the line of Highest Measured Tide which is a projection from the highest tide actually observed on a tide staff within the estuary.

(121) "Linear Project" means a corridor type project, such as a transportation or utility transmission project.

(122) "Listed Species" means any species listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or any species listed as endangered, threatened or sensitive under the Oregon Endangered Species Act (OESA).

(123) "Maintenance" means the periodic repair or upkeep of a structure in order to maintain its original function. Maintenance does not include any modification that changes the character or scope, or increases the adverse impact over the original fill or removal design, except as specifically stated in OAR 141-085-0020. Maintenance does not include reconstruction.

(124) "Maintenance Dredging" means dredging to maintain the serviceability of an existing dredged channel to the previously authorized depths and areas for a previously defined project.

(125) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of the state and any materials, organic or inorganic, used to fill waters of the state.

(126) "Maximum Pool Elevation" means the highest operating level of a reservoir.

(127) "Mining Access Road" means a road constructed for the sole purpose of serving a commercial gravel, placer or lode operation.

(128) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the impact by replacing or providing comparable substitute wetlands or other waters.

(129) "Mitigation Bank" or "Bank" means wetland(s) and any associated buffer(s) restored, enhanced, created, or protected, whose credits may be sold or exchanged to compensate for unavoidable future wetland losses due to removal, fill, or alteration activities. ORS 196.600(2) further defines this term.

(130) "Mitigation Bank Credit" or "Credit" is a unit of measure of the increase in wetland functional value achieved at a mitigation site. Wetland credits are the unit of exchange for compensatory wetland mitigation. ORS 196.600(1) further defines this term.

(131) "Mitigation Bank Instrument" or "Instrument" is the final document approved by the Agency that formally establishes the wetland mitigation bank and stipulates the terms and conditions of its construction, operation, and long-term management. The Instrument is usually in the form of a memorandum of agreement signed by members of the Mitigation Bank Review Team (MBRT), but an order from the Agency makes the Instrument legally binding and enforceable if a removal-fill permit is not required to construct the bank.

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(132) "Mitigation Bank Prospectus" or "Prospectus" is a preliminary document prepared by a mitigation bank sponsor describing a proposed bank in detail sufficient to enable initial review by the Agency. The Agency uses the Prospectus to initially determine whether the proposed bank would be technically feasible, whether the bank is likely to be needed, and whether the bank can meet the policies stated in these rules.

(133) "Mitigation Bank Review Team" or "MBRT" is an advisory committee to the Agency and the Corps on wetland mitigation bank projects.

(134) "Mitigation Bank Sponsor" or "Sponsor" is a person who is proposing, or has established and/or is maintaining a mitigation bank. The sponsor is the entity that assumes all legal responsibilities for carrying out the terms of the Instrument unless specified otherwise explicitly in the Instrument.

(135) "Movement by Artificial Means," means to excavate, alter or otherwise displace material such as, but not limited to: mechanically moving gravel within a streambed, suction dredging for recreational or placer mining, blasting, plowing, and land clearing activities such as grading, scraping and displacing of inorganic material associated with stump removal (except as otherwise allowed by OAR 141-085-0020 for normal farming and ranching activities and other exempted actions).

(136) "Native Vegetation" means plant species that occurred or are documented to have occurred within the State of Oregon prior to Euro-American settlement.

(137) "Natural Biological Productivity" means the sum of all biomass production in an estuary including biological production at all trophic levels under, on, and above the land surface.

(138) "Natural Resources In and Under the Waters of this State" means aquatic life and habitats and includes resources such as shellfish beds, spawning and rearing areas for anadromous fish, gravel and minerals, and other sites and avenues for public recreation, navigation and public commerce within the waters of this state.

(139) "Natural Waterways," as used in ORS 196.800(14), means waterways created naturally by geological and hydrological processes, waterways that would be natural but for human-caused disturbances (e.g., channelized or culverted streams, impounded waters, partially drained wetlands or ponds created in wetlands) and that otherwise meet the definition of waters of the state, and certain artificially created waterways as described in "Other Bodies of Water" (OAR 141-085-0015(2)(e)).

(140) "Navigational Servitude" means activities of the Federal Government that directly result in the construction or maintenance of Congressionally authorized navigation channels.

(141) "Normal Farming and Ranching Activities" for the purpose of the exemption on converted wetlands (OAR 141-085-0020), are activities that directly adapt or use the land for the growing of crops or the raising of livestock and are unique to agriculture.

(142) "Non-Motorized Methods" are those removal-fill activities within Essential Indigenous Anadromous Salmonid Habitat that are completed by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Hand-held tools such as wheelbarrows, shovels, rakes, hammers, pry bars and cable winches are examples of common non-motorized methods.

(143) "Non-Navigable" means a waterway that is not navigable for title purposes or where title navigability has not been determined by the State Land Board in accordance with ORS 274. Contact the Division of State Lands for the latest listing of navigable waterways.

(144) "Non-Water Dependent Uses" means uses which do not require location on or near a waterway to fulfill their basic purpose.

(145) "Non-Wetland" means an area that does not meet the wetland definition and criteria.

(146) "Ocean Shore" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800. The "Ocean shore" is regulated by the Oregon Department of Parks and Recreation.

(147) "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g. 100 year events). OHWL is indicated in the field by the following physical characteristics:

(a) Clear, natural line impressed on the shore;

(b) Change in vegetation (riparian (e.g. willows) to upland (e.g. oak, fir) dominated);

(c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble and gravel to upland soils);

(d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;

(e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or

(f) Other appropriate means that consider the characteristics of the surrounding areas.

(148) "Oregon Endangered Species Act" or "OESA" means ORS 496.171 to 496.192, administered by ODFW, and ORS 564.010 to 564.994 administered by the Oregon Department of Agriculture (ODA).

(149) "Oregon Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with ORS 390.805 to 390.925.

(150) "Oregon Wetlands Priority Plan" or "Plan" means a plan developed pursuant to these rules and approved by the State Land Board that establishes a procedure for setting priorities and creates a list of wetlands and interests therein for possible acquisition in accordance with the federal Emergency Wetlands Resources Act of 1986 (Public Law 99-645).

(151) "Other Waters" means waters of the state other than wetlands.

(152) "Passive Revegetation" means a strategy allowing the re-establishment of non-invasive vegetation without planting or seeding.

(153) "Payment to Provide Mitigation" means compensatory wetland mitigation performed using cash paid to the Agency or by agreement of the Agency to an approved third party.

(154) "Perennial Stream" means a stream with flow that lasts throughout the year.

(155) "Person" is an individual, a political subdivision or government agency, or any corporation, association, firm, partnership, joint stock company, limited liability company, limited liability partnership, or quasi-public corporation registered to do business in the State of Oregon.

(156) "Piles/Piling" is a wood, steel or concrete beam placed, driven or jetted into the beds or banks of a water of the state.

(157) "Placer" includes a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals, eroded hard rock vein material (residual placer) and clay.

(158) "Plan View" means a drawing of the project site drawn as if the viewer were seeing the area from overhead.

(159) "Plant Community" is an assemblage of plants that repeat across the landscape in a similar environment. Plant communities are named according to the dominant plant in each of the layers that are present, either shrub, tree or forb.

(160) "Plowing" means, for the purposes of OAR 141-085-0020(4), all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surface materials in a manner that changes any areas of the water of the state to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetlands areas is not plowing. Plowing, as described above, will never involve filling.

(161) "Pool" means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

(162) "Practicable" means available and capable of being done after taking into account cost, existing technology, and logistics in light of overall project purposes (this definition is the same as the one found in the U.S. Environmental Protection Agency Section 404 (b)(1) Guidelines, 40 CFR Part 230, Section 230.3(q), as amended).

(163) "Prior Converted Cropland" means land that the Natural Resource Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland.

(164) "Private Operator" means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(165) "Project" means any removal and/or fill in waters of this state.

(166) "Project Area" means the physical space in which the removal-fill activity takes place including any direct mitigation site. "Project Area" includes the entire area of ground disturbance, including all staging areas and access ways, both temporary and permanent.

(167) "Project Purpose" means the primary purpose of the proposed project, and not any ancillary activities that may be associated with it or any secondary purpose (e.g., if a retail shopping mall or planned unit residential development includes a habitat restoration component, then habitat restoration is a secondary and ancillary activity to the primary purpose of the project).

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(168) "Proposed Enforcement Order" means a notice of civil penalty, proposed restoration order or any other proposed order issued by the Division of State Lands to enforce the requirements of the Removal-Fill Law. The proposed order contains provisions allowing the alleged violator to request a contest case hearing. If the alleged violator does not elect this option, then a final order is issued.

(169) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods from among small quantities of aggregate.

(170) "Protection" means to prevent human activities from destroying or degrading functions of waters of state.

(171) "Public Body" means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services (ORS 196.815(3)(d)(B));

(172) "Public Use" means a publicly owned project or a privately owned project that is available for use by the public.

(173) "Push-up Dam" is a berm of streambed material that is excavated or bulldozed (i.e. pushed-up) from within the streambed itself and positioned in the stream in such a way as to hold or divert water in an active flowing stream (i.e. a 'removal'). The push-up dam may extend part way or all the way across the stream. Push-up dams are most frequently used to divert water for irrigation purposes associated with agricultural production including livestock watering. Push-up dams are re-constructed each water use season; high water usually flattens or breaches them or equipment is used to breach or flatten them at the close of the water use season.

(174) "Rare Plant Communities" means plant community types ranked by the Oregon Natural Heritage program as either S1 or S2. Rare plant communities are threatened by either natural or human-made causes.

(175) "Reasonably Expected Adverse Impacts" means the direct or indirect damaging or injurious impacts or effects of an activity that is likely to occur to waters of the state including water resources and navigation, fishing and public recreation uses.

(176) "Recreational and Small Scale Placer Mining" includes, but is not limited to, the use of non-motorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four (4) inches, and a muffler meeting or exceeding factory-installed noise reduction standards. This phrase does not include "prospecting" as defined by OAR 141-085-0010 above, which does not require a permit or letter authorization from the Agency.

(177) "Reconstruction" means to rebuild; to construct again.

(178) "Reference Site" means a site or sites that have similar characteristics as those proposed for direct compensatory wetland mitigation. A reference site represents the desired future successful condition of a particular direct compensatory wetland mitigation plan.

(179) "Removal" means extracting more than 50 cubic yards of material (or its equivalent weight in tons) in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(180) "Removal-Fill Law" means the Oregon Revised Statutes (ORS) 196.800 to 196.990 and 196.600 to 196.692 relating to the filling and/or the removal of material in the waters of this state including wetlands.

(181) "Restoration" means to reestablish wetland hydrology to a former wetland sufficient to support wetland characteristics.

(182) "Restoration of an Estuarine Area" means to revitalize or re-establish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work begins. **NOTE:** Mitigation credit may be given for enhancement of areas that are already a functioning part of the estuarine system.

(183) "Restoration Order" means a legally binding order requiring a violator to restore waters of the state and may require remittance of a civil penalty to the Common School Fund.

(184) "Revetment" is a blanket of hard material placed to form a structure designed to protect a bank from erosion. It is normally composed of rock riprap, but can be constructed of poured concrete or preformed concrete blocks.

(185) "Riparian" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, as defined in ORS 541.351(10).

(186) "Riprap" means facing a streambank with rock or similar substance to control erosion in accordance with these regulations.

(187) "Road Prism" means the excavation and embankment areas of roadbed.

(188) "Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with Oregon Scenic Waterway Law ORS 390.805 to 390.925.

(189) "Sediment" is material that originated from the weathering of rocks and decomposition of organic material that is transported by, suspended in, and eventually deposited by water, air or is accumulated in beds by other natural phenomena (e.g. sand, silt).

(190) "Seeding" means, for the purpose of OAR 141-085-0020(4), the sowing of seed and placement of seedlings to produce farm or ranch crops.

(191) "Serviceable" means capable of being used for its intended purpose. For example, a serviceable road is one upon which vehicles can be safely driven.

(192) "Service Area" is that area in which credits from a mitigation bank can be used to compensate for unavoidable wetland losses due to removal, fill, or alteration activities.

(193) "Shellfish" are saltwater and freshwater invertebrates with a shell, including but not limited to clams, crabs, mussels, oysters, piddocks, scallops and shrimp.

(194) "Showing Before the Agency" means to prove, make apparent, or make clear by presenting evidence to the Director of the Division of State Lands or designee.

(195) "Siltation/Deposition" means the settlement or accumulation of material out of the water column and onto the streambed of the waterway. It occurs when the energy of flowing water is unable to support the load of the suspended sediment.

(196) "Sluice Box" means a trough equipped with riffles across its bottom, used to recover gold and other minerals with the use of water.

(197) "Sluicing" means the use of a sluice box for the recovery of gold and other minerals.

(198) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C.460-L et seq.) ORS 196.635.

(199) "Streambank Stabilization" means those projects which prevent or limit erosion, slippage, and mass wasting; including, but not limited to bank re-sloping, planting of woody vegetation, bank protection (physical armoring of banks using rock or woody material, or placement of jetties or groins), or erosion control.

(200) "Structure" means an object, device (e.g., piling, culvert), excavation or alteration (e.g., irrigation ditch or push-up dam) that is constructed, installed or erected, and is designed to accomplish a specific purpose. Structures require a location in waters of the state (e.g., push-up dams), or are attached to and/or interconnected with waters of the state (e.g., irrigation or drainage ditch).

(201) "Subbasin" is a drainage area described by the United States Geologic Survey fifth field hydrologic unit.

(202) "Substrate" means the mineral and/or organic material that forms the bed of a waterway.

(203) "Success Criteria" means the measurable threshold that establishes when compensatory mitigation objectives have been met (e.g. The cover of native emergent species will be at least 80% as measured by belt transects).

(204) "Suction Dredge" means a machine equipped with an internal combustion engine or electric motor powering a water pump that is used to move submerged bed materials by means of hydraulic suction. These bed materials are processed through an attached sluice box for the recovery of gold and other minerals.

(205) "Suction Dredging" means the use of a suction dredge for the recovery of gold and other minerals.

(206) "Surety Bond" means an indemnity agreement in a sum certain executed by the permittee as principal that is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Oregon.

(207) "Temporary Impacts" means those impacts that do not result in the permanent loss of function and/or area and are rectified within the same calendar year of project completion.

(208) "Tidal Bay" means estuaries, ocean coves, inlets and similar semi-enclosed bodies containing water influenced by the tide.

(209) "Tidegate" means a structure placed in an estuarine channel designed to regulate water levels.

(210) "Tile Drain System" means a subsurface conveyance system used to drain soils for agricultural production or other purposes.

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(211) "Toe of the Bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure, where it meets the streambed or marine beach or bed.

(212) "Uplands" are any land form that does not qualify as a wetland or waters of the state.

(213) "Unique Features" means those physical, biological, chemical, and esthetic characteristics and attributes of an estuary that are uncommon, extraordinary, rare, threatened, or endangered.

(214) "U.S. Army Corps of Engineers" or "Corps" means the United States Army Corps of Engineers or, when the Food Security Act is applicable, the Natural Resources Conservation Service (NRCS) acting in place of the Corps.

(215) "Vernal Pools" are types of wet meadow habitat areas with specific, diagnostic plant assemblages that are intermittently flooded with shallow water for extended periods during the cool season, but dry for most of the summer.

(216) "Violation" means removing material from or placing fill in any waters of this state without a permit (authorization) or in a manner contrary to the conditions set out in a permit issued under the Removal-Fill law or these rules.

(217) "Water Quality" means the measure of physical, chemical, and biological characteristics of water as compared to Oregon's water quality standards and criteria set out in rules of the Oregon Department of Environmental Quality and applicable state law.

(218) "Water Resources" includes not only water itself but also aquatic life and habitats and all other natural resources in and under the waters of this state.

(219) "Waters of this State" means natural waterways including all tidal and nontidal bays, intermittent and perennial streams (i.e., streams), lakes, wetlands and other bodies of water in this state, navigable and non-navigable, including that portion of the Pacific Ocean, which is in the boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS 390.605.

(220) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

(221) "Weir" means a levee, dam or embankment or other barrier placed across or bordering a waterway to:

- (a) Measure or regulate the flow of water;
- (b) Divert fish into a trap; or
- (c) Raise the level of the waterway or divert stream flow into a water distribution system.

(222) "Wet Perimeter", as used in OAR 141-089-0245 thru 0275, means the area of the stream that is under water, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(223) "Wetland Hydrology" means the permanent or periodic inundation or prolonged saturation sufficient to create anaerobic conditions in the soil and support hydrophytic vegetation.

(224) "Wetland Maintenance" means the process of supporting or preserving the condition or functions of a wetland as a management component of a compensatory wetland mitigation plan.

(225) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(226) "Woody Plants" means trees and shrubs.

Stat. Auth.: ORS 196.600- 196.692; ORS 196.800- 196.990
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990
Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 1-1978(Temp), f. & ef. 1-27-78; LB 3-1978, f. & ef. 5-19-78; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0100; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0015

Removal-Fill Jurisdiction by Volume of Material and Location of Activity

(1) The Agency's determination as to whether a removal-fill authorization is required depends primarily upon a project's location and the volume of the fill and/or removal and the activity type and purpose. Uplands are generally not subject to these rules except when they are used for compensatory wetland mitigation or compensatory mitigation sites.

(2) To be subject to the requirements of the removal-fill law, a project must be located within "waters of the state." The types of waters of the state and the physical limits of removal-fill jurisdiction are as follows:

(a) Estuaries and tidal bays, to the elevation of highest measured tide;

(b) The Pacific Ocean, from the line of extreme low tide seaward to the limits of the territorial sea,

(c) Rivers, intermittent and perennial streams, lakes, ponds and all other bodies of water (except wetlands) subject to these rules, to the ordinary high water line, or absent readily identifiable field indicators, the bankfull stage;

(d) Wetlands (defined in OAR 141-085-0010), within the wetland boundary delineated in accordance with OAR 141-090-0005 to 0055.

(e) "Other Bodies of Water," as used in ORS 196.800(14) are the following artificially created waters which are considered "waters of the state":

(A) Wetlands and ponds artificially created from uplands, unless specified in OAR 141-085-0015(4)(5) that are:

- (i) Equal to or greater than (1) one acre in size; or
- (ii) Identified in a removal-fill authorization as a compensatory mitigation site.

(B) Channels or ditches that are artificially created from upland that:

- (i) Contain food and/or game fish; and
 - (ii) Have free and open connection to waters of the state.
- (3) "Other Bodies of Water" do not include existing irrigation canals and ditches that meet the following requirements:

(a) Are operated and maintained for the primary purpose of conveying water for irrigation; and

(b) Are dewatered during the non-irrigation season except for water incidentally retained in isolated low areas of the canal/ditch or for stock water runs, provision of water for fire services or storm water runoff.

(4) "Other Bodies of Water" do not include wetlands artificially created from uplands of up to one acre in size for the purpose of controlling, storing or maintaining stormwater (ORS 196.687).

(5) "Other Bodies of Water" do not include channels, wetlands or ponds of any size artificially created from uplands for the purpose of:

- (a) Wastewater treatment;
- (b) Farm or stock watering;
- (c) Settling of sediment;
- (d) Fire suppression;
- (e) Cooling water;
- (f) Surface mining, where the site is managed for interim wetlands use or not protected as a significant wetland in the comprehensive plan (pursuant to ORS 196.672(10));
- (g) Log storage; or
- (h) Aesthetic purposes, including golf course features.

(6) "Other bodies of water" do not include drainage ditches alongside roads and railroads where the ditch is ten (10) feet wide or less at the ordinary high water line, artificially created from upland or from wetlands (e.g. in mapped hydric soils), not contiguous with other wetlands and does not contain food or game fish.

(7) Even if located within an area described in OAR 141-085-0015(2), to be subject to the removal-fill law and these rules the project must also be of a volume that meets one of the following thresholds:

(a) Oregon Scenic Waterways, the threshold volume is any amount greater than (0) zero, except for recreational prospecting, as defined in ORS 390.835(18)(c) and OAR 141-0100, and any non-motorized activities;

(b) Streams designated as Essential Indigenous Salmonid Habitat (ESH) (see OAR 141-102, the threshold volume is one cubic yard at any one site (for prospecting and non-motorized activities), and cumulatively no more than five cubic yards (for prospecting and non-motorized activities), or an authorization is required (unless exempted under OAR 141-085-0020);

(c) All other waters of the state subject to these rules, the threshold amount is no more than 50 cubic yards of material removed and/or filled (or the equivalent weight in tons), or an authorization is required (unless exempted under OAR 141-085-0020).

(8) Fill volume is measured to the elevation of jurisdiction for all waters of the state; removal volume for all waters includes the full extent of the excavation. For wetlands, fill volume is measured to the height of the fill excluding buildings.

(9) When calculating the volume for channel relocation the threshold is met if more than 50 cubic yards of material is removed in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.

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(10) Removal-fill activities that are exempt under state law may nonetheless be regulated under applicable federal laws, including the federal Endangered Species Act (16 U.S.C. 1531 et seq.), section 404 of the federal Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), as amended.

Stat. Auth.: ORS 196.800; ORS 196.810; ORS 390.835
Stats. Implemented: ORS 196.800- 196.990; ORS 390.805- 390.925
Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0105; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0018

Required Authorizations; Permits and Authorizations Generally

(1) Unless exempt as provided in OAR 141-085-0020, no person may conduct any removal-fill activity in waters of the state and within the thresholds (OAR 141-085-0015) without first being authorized by the Agency by one of the following authorization types as appropriate:

- (a) An individual removal-fill permit; or
- (b) A letter of authorization issued under a General Authorization as defined in OAR 141-085-0070; or
- (c) An emergency letter of authorization issued in accordance with OAR 141-085-0066.

(2) The Agency shall prescribe the type of authorization to be issued.

(3) Each type of authorization, when issued, shall include, but not be limited to, the following:

- (a) Project description.
- (b) Expiration date. The date of expiration shall be no more than five years from the date of issue, unless authorized by the Agency in accordance with OAR 141-085-0031 or 141-089.
- (c) Permit or authorization holder information. Name, address and telephone number of the authorization holder and the person responsible for complying with the permit conditions;

(d) Authorization conditions. A comprehensive, specific listing of all performance requirements to be met by the authorization holder in order to complete the removal-fill activity in a manner that complies with these rules or any general authorization; and

(e) Compensatory mitigation plan. Compensatory freshwater or estuarine mitigation plans for all wetlands and compensatory mitigation plans for other waters as applicable.

Stat. Auth.: ORS 196.800; ORS 196.810; ORS 196.825; ORS 196.850
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0020

Activities Exempt From Removal-Fill Authorization Requirements

The following activities, uses or structures are exempt and not subject to the removal-fill law or these rules. These exemptions do not apply to removal-fill activities in Oregon Scenic Waterways. The Agency shall determine if a project is exempt from the requirements of OAR 141-085-0018 by applying the standards described in this section.

(1) Exempt forest management practices. These rules do not apply to removal-fill activities directly connected (as defined in OAR 141-085-0010) with a forest management practice when conducted within the beds and banks of non-navigable waterways on forestlands and in accordance with the Oregon Forest Practices Act (ORS Chapter 527). Contact the Division of State Lands for the latest list of state-owned navigable waterways.

(2) Exempt fills for certain dams and water diversion structures. These rules do not apply to fills within waters of the state for the construction, operation and maintenance of dams or other water diversions for which authorizations or certificates have been or shall be issued by the Oregon Water Resources Department (WRD) under ORS Chapters 537 or 539 (water appropriation) and for which preliminary authorizations or licenses have been or shall be issued under ORS 543 or 543A (hydropower). These rules also do not apply to annual work required to activate, operate and maintain flashboard type dams within waters of the state as specifically permitted by WRD. These exemptions apply only when the dam or diversion is referenced in the water permit or certificate. A removal-fill authorization is required for construction of certain structures associated with a dam or water diversion facility (such as but not limited to: fishways, streambank enhancement, fish habitat enhancement, access roads and erosion protection) and for removal activities for projects authorized by ORS 537, 539, or 543.010 to 543.620.

(3) Navigational Servitude. These rules do not apply to activities within waters of the state conducted by any agency of the Federal Government acting in the capacity of navigational servitude in connection with a federally authorized navigation channel (i.e., channel dredging).

(4) These rules do not apply to "normal farming and ranching activities" on converted wetlands, as defined in OAR 141-085-010. Such activities include the following:

- (a) Plowing,
- (b) Grazing,
- (c) Seeding,
- (d) Cultivating,
- (e) Conventional crop rotation,
- (f) Harvesting for the production of food and fiber; and
- (g) Upland soil and water conservation practices or reestablishment of crops under federal conservation reserve program provisions.

(5) These rules do not apply to the following activities conducted on exclusive farm use zoned land as designated in the city or county comprehensive plan and zoning ordinance.

- (a) Drainage or maintenance of farm or stock ponds;
- (b) Maintenance of farm roads where such roads are maintained in accordance with construction practices that avoid significant adverse affect to wetlands. Up to fifty (50) cubic yards of borrowed material for exempt road maintenance annually may come from waters of the state; except within State Scenic Waterways, where up to one (1) cubic yard may be removed by non-motorized methods. Maintenance activities shall be confined to the same limits of the originally approved structure(s).
- (c) Subsurface drainage, by deep ripping, tiling or moling on converted wetlands;

(d) Any activity described as a farm use in OAR 141-085-0010, including farm road construction and maintenance, that is conducted on prior converted cropland as defined in OAR 141-085-0010, so long as agricultural management of the land has not been abandoned for five or more years.

(6) Exemptions do not apply to non-farm uses. The exemptions in subsections (4) and (5) of this section (OAR 141-085-0020) shall not apply to any fill or removal which involves changing any wetlands to a non-farm use.

(7) Exempt "activities customarily associated with agriculture". Fill or removal activities involving less than 50 cubic yards of material as defined in OAR 141-102 and 141-085-0010 for activities customarily associated with agriculture within Essential Indigenous Anadromous Salmonid Habitat streams (as designated under OAR 141-102-0030) are exempt from these rules.

(8) Exempt maintenance or reconstruction of water-containing structures. Maintenance, or reconstruction of water-containing structures within waters of the state such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches, irrigation structures and tile drain systems are exempt from the requirements of these rules, provided that:

- (a) The structure was serviceable within the past five (5) years; and
- (b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(9) Exempt maintenance, repair and replacement of culverts. These rules do not apply to removal-fill activities within waters of the state for the maintenance or reconstruction of culverts as defined in OAR 141-085-0010. This exemption includes culvert replacement (without regard to the size of the replacement culvert) when all of the following apply:

- (a) The activity is limited to the extent of the existing road prism (as defined in OAR 141-085-0010);
- (b) The culvert was serviceable within the past five (5) years; and
- (c) The activity does not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction and placement of the culvert.

(d) The culvert is replaced in a manner that assures fish passage and complies with the design guidelines of the Oregon Department of Fish and Wildlife (e.g. counter sinking the new culvert to accommodate the natural bank full width and replicating the stream's natural streambed configuration).

(10) Exempt push-up dams. A push-up dam, as defined in OAR 141-085-0010, within waters of the state, that was first built prior to the effective date of the Removal-Fill Law in 1967 (September 13, 1967) is exempt from the authorization requirements under these rules if:

- (a) It has been reconstructed and used within the past five (5) years; and
- (b) It has the same impact as when it was first constructed (i.e., size, extent and location); and

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(c) It is operated in a manner consistent with the water right certificate and ORS 540.510(5).

(11) On-going maintenance of push-up dams allowed. Once authorized by the Agency, a post-1967 push-up dam within waters of the state may be maintained during the irrigation season and reconstructed each successive season provided the work is done in compliance with all original permit conditions and the push-up dam's impact to the stream is no more than when it was first authorized (i.e., it still has to allow for fish passage). A push-up dam involving less than fifty (50) cubic yards, located within a stream designated as Essential Indigenous Anadromous Salmonid Habitat (see OAR 141-102) and used for "activities customarily associated with agriculture" as defined in OAR 141-102 and 141-085 is exempt from authorization requirements.

(12) Exempt maintenance including emergency reconstruction of roads and transportation structures. These rules do not apply to removal-fill activities for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches. Volumes and area of impact should be limited to the minimum necessary to restore the serviceability and function of the structure.

(13) Exempt small-scale prospecting and non-motorized activities within Essential Indigenous Anadromous Salmonid Habitat. Prospecting or other non-motorized activities within waters of the state resulting in the removal, fill or alteration of less than one (1) cubic yard of material at any one site and, cumulatively not more than five (5) cubic yards of material, from within an Essential Indigenous Anadromous Salmonid Habitat stream segment (as designated in OAR 141-102) in a single calendar year do not require authorization under these rules. Such exempt prospecting or non-motorized activity must remain within the bed or wet perimeter of the waterway. This exemption does not allow removal or fill within waters of the state at any site where fish eggs are present.

(14) Exempt fish passage and fish screening in Essential Indigenous Anadromous Salmonid Habitat only. The construction and maintenance, involving less than fifty (50) cubic yards of fill or removal, of fish passage and fish screening structures built, operated and maintained in Essential Indigenous Anadromous Salmonid Habitat under ORS 498.311, 498.316, 498.326, or 509.580 to 509.645 do not require authorization under these rules. This exemption includes removal of material or gravel bars that inhibit passage or prevent screens from functioning properly.

(15) Any removal-fill activity not exempt under this section (OAR 141-085-0020) is subject to authorization requirements.

Stat. Auth.: ORS 196.810; ORS 196.805

Stats. Implemented: ORS 196.800-196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0022

Removal-Fill Permits Authorized in Site Selection or Site Certificate Proceedings

(1) Upon submission by the applicant of proper applications and payment of the proper fees, the Agency shall issue the permits authorized by the authorized siting entity, subject to the conditions set forth by the siting entity (including conditions applied to the siting authority by the Agency). The Agency will continue to exercise enforcement authority over a permit issued pursuant to this section. This section applies to:

(a) The decisions of the Corrections Facility Siting Authority, pursuant to ORS 421.628, relating to siting corrections facilities;

(b) The decisions of the Environmental Quality Commission, pursuant to ORS 459.047, relating to siting solid waste land fills; and

(c) The decisions of the Energy Facility Siting Council, pursuant to ORS 469.300 et seq. related to siting energy facilities.

(2) The standards contained in these removal-fill program rules do not govern complete applications received by any of the agencies listed above before the effective date of these removal-fill program rules. For all such applications, the standards in effect as of the date of receipt apply to consideration of whether the applicable agency shall approve or deny the application.

Stat. Auth.: ORS 421.628; ORS 459.047; ORS 469.300

Stats. Implemented: ORS 421.628; ORS 459.047; ORS 469.300

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0024

Pre-Application Conference

(1) A person contemplating conducting an activity subject to removal-fill permit requirements may request a pre-application conference with the Agency.

(2) At a pre-application conference, the Agency will address pertinent factors based upon the information presented by the applicant, including:

(a) Whether the proposed activity will require an authorization;

(b) The application requirements and type of authorization needed;

(c) Ways to avoid and minimize adverse impacts to the water resources and navigation, fishing and public recreation uses;

(d) The authorization review standards that will be applied to the proposed activity;

(e) The proposed compensatory mitigation plan;

(f) The need to provide additional information with the application;

and/or

(g) The need to coordinate with certain agencies or public interests.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0025

Application for Individual Removal-Fill Permits

(1) Any person planning an activity subject to the Removal-Fill Law or these rules must obtain an individual permit or other authorization from the Agency before conducting the activity. Persons may submit an application in order for the Agency to determine if an activity is subject to these rules and requires an authorization.

(2) To obtain an individual permit, a complete application is required in order for the Agency to process the application and issue the permit. The applicant is responsible for providing sufficient detail in the application to enable the Agency to render the determinations and decisions required by these rules. The same level of documentation and analysis will not be required for all types of projects. The intensity of the analysis and therefore the amount and quality of information needed, will vary depending upon the size of the project and related severity of the expected adverse impacts. For example, projects with minimal impacts on small areas of waters of the state and not involving any listed species will require less documentation than will projects with major impacts on large areas of waters of the state that involve listed species.

(3) A completed and signed application on forms provided by the Agency along with any maps, photos and drawings, as required, that includes the following information:

(a) Applicant and property owner information including name, address and phone number;

(b) Project site location information including Township, Range, Quarter/Quarter Section and Tax Lot(s); latitude and longitude, street location if any; and location map with site location indicated;

(c) Location of any off-site disposal or borrow sites if these sites contain waters of the state;

(d) Project information including proposed activity, specific project description, project plan and section views, fill and/or removal volumes expressed in cubic yards (total in waters of the state), and, for wetlands, also the size in acres (to the nearest 0.01 acre);

(e) Description of the purpose and need for the project;

(f) Identification of the limits (area) of the waters of the state (e.g. wetland delineation or determination) and the proposed impact to waters of the state associated with the project;

(g) A written description of any changes that the project may make to the hydraulic and hydrologic characteristics (e.g., general direction of stream and surface water flow, estimated winter and summer stream flow volumes.) of the waters of the state, and an explanation of measures taken to avoid or minimize any adverse effects of those changes;

(A) Adverse effects to be considered include but are not limited to:

(i) Impeding or restricting the passage of normal or expected high flows (unless the project purpose is for fill to impound water);

(ii) Increasing water flows from the project;

(iii) Relocating water or redirecting water flow;

(iv) Causing flooding or erosion downstream of the project.

(h) A description of the existing biological and physical characteristics and condition of the water resource and identification of the adverse effects of project development;

(i) A description of the navigation, fishing and public recreation uses, if any, at the project site;

(j) A written analysis of alternatives that were evaluated to determine the practicable alternative to avoid and minimize impacts to waters of this state, including water resources and navigation, fishing and public recreation uses. A practicable alternative is one that is capable of being done (i.e., feasible) and proposed on a site that is available to the applicant for the project purpose. Sites that are not presently owned or controlled by the applicant, but could be reasonably obtained, utilized, expanded, or man-

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aged to fulfill the basic purpose may be considered if otherwise feasible. The analysis must explain why the applicant chose the option identified in the application. Unless specified otherwise by the Agency, an alternatives analysis is not required for projects in non-essential salmon habitat areas (as designated in OAR 141-102) involving wetland impacts equal to or less than 0.2 (two-tenths) acre or for projects within other waters involving up to 250 (two hundred fifty) cubic yards. Circumstances when an alternatives analysis may be required in the application include but are not limited to projects involving conversion to upland of rare wetland types (such as forested bogs and vernal pools). An application for a removal-fill activity that meets the following criteria need not include an elaborate explanation of the applicant's process to determine the practicable alternative:

(A) Those located in waters of the state with limited aquatic life and habitats and limited navigation, fishing and public recreation uses.

(B) Small in size; in relationship to the affected waters of the state.

(C) Those that cause only temporary impacts.

(k) Names and addresses of adjoining property owners;

(l) Local government land use information (as shown on the application form);

(m) Coastal zone certification statement, if project is in the coastal zone (as shown on the application form);

(n) Any information, known by the applicant, concerning the presence of any listed species. Information may include but is not limited to:

(A) A site survey;

(B) A database query completed by the Oregon Natural Heritage Program; or

(C) A project-specific or programmatic Biological Assessment and/or approved Biological Opinion and/or a letter from the pertinent state or federal agency;

(o) Any information, known by the applicant, concerning historical, cultural and/or archeological resources. Information may include but is not limited to a statement on the results of consultation with affected Tribal governments and/or the Oregon State Historic Preservation Office.

(4) If reasonably expected adverse impacts to the water resources cannot be avoided or minimized, a complete application must also include a compensatory wetland mitigation plan as defined in OAR 141-085-0010 that will meet the requirements in OAR 141-085-0121 thru 0176, or a compensatory mitigation plan, as required in 141-085-0115, or a rehabilitation plan for temporary impacts to waters of the state, as required in OAR 141-085-0171.

(5) If the proposed activity involves a wetland, a wetland determination or delineation report that meets the requirements in OAR 141-090-005 thru 0055 shall be submitted by the applicant or required by the Agency:

(a) A wetland delineation is generally needed to determine precise wetland boundaries and to accurately identify proposed impacts (fill and/or excavation) and determine Compensatory Wetland Mitigation ratio requirements. In some circumstances, the Agency may conclude that a wetland determination is sufficient to identify wetland impacts or to establish the extent, if any, of wetland impacts.

(b) Whenever possible, wetland determination or delineation reports should be submitted to the Agency for a jurisdictional determination well in advance of a permit application to ensure that the project design is based upon approved wetland boundaries and to ensure that the application will not need to be revised and resubmitted if, during the evaluation process, the wetland delineation report is found to be inaccurate.

(6) If the proposed activity involves a wetland, the application shall include a functional attribute assessment of the wetland as described in OAR 141-085-0121.

(7) If the proposed activity will directly affect an estuary as defined in OAR 141-085-0010, a complete application must include:

(a) An estuarine resource replacement plan that meets the requirements in OAR 141-085-0240 to 0266 (rather than the compensatory mitigation plan requirements cited in (4); and

(b) For any project involving the placement of fill for a non-water dependent use as defined in OAR 141-085-0010, a written statement that analyzes the following criteria:

(A) The public use of the proposed project;

(B) The public need for the proposed project;

(C) The availability of alternative, non-estuarine sites for the proposed use; and

(D) The proposed project's identified adverse effects on public navigation, fishery and recreation.

(8) A single application may be required by the Agency when integrally-related activities are proposed at more than one location within a single waterway, wetland or subbasin, by the same person.

(9) The Agency may require additional information necessary to make an informed decision on whether or not the application and project complies with these rules and ORS 196.800 to 196.990.

(10) The application may include the fee as described in OAR 141-085-0064.

Stat. Auth.: ORS 196.815; ORS 196.825; ORS 196.830

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 1-1978(Temp), f. & ef. 1-27-78; LB 3-1978, f. & ef. 5-19-78; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0205; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0027

Determination of Complete Application for Individual Removal-Fill Permit

(1) Upon receipt of an individual removal-fill permit application, the Agency shall review the application materials to determine whether all the forms, plans, maps and other information required in OAR 141-085-0025 are present.

(2) The Agency shall determine no later than forty (40) calendar days from the date the Agency receives the application whether the application is complete (except for the payment of fees). If the Agency fails to make such a determination within the forty (40) calendar day time period and fails to so notify the applicant, the application shall be deemed a complete application.

(3) The Agency will determine if the project, as described in the application, is an exempt activity or is otherwise not within the jurisdiction of these rules as described in OAR 141-085-0015 or 141-085-0020. If the Agency determines that the application is for a project that is not subject to these rules, it shall notify the applicant in writing and state the reasons for the determination.

(4) The Agency will determine if the project, as described in the application, may be eligible for approval under a general authorization as described in OAR 141-089. The Agency will notify the applicant of this determination and offer the opportunity for the application to be processed under the applicable general authorization.

(5) The Agency will accept a wetland delineation or wetland determination report along with the application in accordance with OAR 141-085-0025(5). A jurisdictional determination in accordance with OAR 141-090 will be completed prior to or at the time of the permit decision.

(6) Once the Agency deems the application complete, the Agency shall so notify the applicant and request the fee due, based on the fee schedule and fee payment procedure established in OAR 141-085-0064.

(7) Upon receipt of the fee, the Agency shall commence, without unnecessary delay, to process the application in accordance with OAR 141-085-0028(4).

(8) If the Agency determines that the application does not meet the requirements of OAR 141-085-0025 and is therefore deficient and incomplete, the Agency shall, within a reasonable time, but no later than forty (40) days after the initial receipt of the application, notify the applicant in writing and list the missing information. The applicant must resubmit the entire amended package for reconsideration, unless instructed by the Agency to do otherwise. Examples of information that may be cause for rejection of the application include, but are not limited to, the following:

(a) Major errors, omissions or inconsistencies in the application;

(b) Major errors, omissions or inconsistencies in the wetland delineation or determination report, if one is required.

(c) Lack of a wetland delineation or wetland determination where wetlands are affected by the project.

(d) Unclear, illegible maps and drawings;

(e) Lack of a compensatory wetland mitigation plan; or

(f) Lack of an analysis of the adverse effects of the project on the water resources or the navigation, fishing and public recreation uses.

(9) Minor errors, omissions or inconsistencies, as determined by the Agency, will not be cause for rejection.

(10) Submission of a new application package commences a new 40-day review period.

Stat. Auth.: ORS 196.815; ORS 196.825; ORS 196.845

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0028

Individual Removal-Fill Permit Review Process including the Public Review and Notice Process

(1) General Description. The Agency shall make a permit decision within ninety (90) calendar days after determining that the application is complete and the fee has been received. Within the ninety (90) day time period, the Agency will do one of the following:

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(a) Approve the application and issue an individual removal-fill permit with special conditions; or

(b) Approve the application with modifications and issue an individual removal-fill permit; or

(c) Request of the applicant an extension of the permit decision deadline to a time certain. No extension shall be made without the applicant's written approval; or

(d) If the project is inconsistent with these rules (e.g. OAR 141-085-0029), deny the application; or

(e) Determine the project is an exempt activity or is otherwise not within the jurisdiction of these rules as described in OAR 141-085-0015 or 141-085-0020; or

(f) Determine that the project is eligible for approval under a general authorization as described in OAR 141-089 and process the application in accordance with the applicable general authorization, if requested to do so by the applicant.

(2) If the Agency determines that the project is not subject to these rules, it shall notify the applicant, in writing, and state the reasons for the determination.

(3) In the event that the applicant and the Agency agree to postpone and extend the removal-fill permit issuance decision, the applicant and the Agency shall agree on a new permit decision deadline. The new schedule must be in writing and agreed upon before the expiration of the ninety (90) day period described in OAR 141-085-0028(1). If no agreement is reached, the Agency shall take any action described in OAR 141-085-0028(1)(a), (b) or (d) deemed appropriate.

(4) Modifications to permit applications may be accepted by the Agency at any time prior to the permit decision. If the modification is determined by the Agency to be substantially different in the nature or effect from the original application, (e.g. large increase in area of development, or large increase of volume of fill/removal) the Agency shall treat the modified application as a new application and process it in accordance with these rules. The Agency shall make a decision on the treatment of the modified application based on the information provided by the applicant, within the ninety (90) day time requirement established in OAR 141-085-0028(1). It is a normal and acceptable practice to modify an application in order to address concerns and comments offered during the public review process or at the applicant's own initiative. The Agency will give consideration to this fact as it determines whether or not to treat the modified application as a new application.

(5) An applicant may withdraw an application at any time prior to the permit decision. The notice of withdrawal must be in writing to the Agency.

(6) Public Review Notice Process. Once the application has been deemed complete in accordance with OAR 141-085-0027 and the fee has been received, the Agency shall provide notification of the availability of the application for review to:

(a) Adjacent property owners;

(b) Watershed Councils and public interest groups who have indicated a desire to receive such notices;

(c) Affected local government land use planning and zoning departments;

(d) Local and State agencies, including but not limited to: irrigation, diking and drainage districts, Soil and Water Conservation Districts, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Department of Agriculture, Oregon Water Resources Department, Oregon Department of Economic Development, Oregon State Parks and Recreation Department, Oregon State Historic Preservation Office, Oregon Natural Heritage Program and the Oregon Department of Geology and Mineral Industries;

(e) Federal agencies, including but not limited to: U.S. Army Corps of Engineers (Portland District), Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, NOAA-Fisheries, any affected unit of the U.S. Forest Service or Bureau of Land Management; and

(f) Affected Tribal governments.

(7) The notification of the availability of the application for review may be provided by U.S. mail or electronically (e.g. facsimile, e-mail, posting on the Internet).

(8) The Agency shall furnish to any member of the public (persons not listed in OAR 141-085-0028(8)) upon written request and at the expense of the member of the public a printed copy of any application. The application will also be available for review at the Agency office nearest the project location.

(9) The Agency will review and consider substantive comments of local, state, and federal agencies, adjacent property owners, public interest groups, Tribal governments and individuals as well as conduct any necessary investigations to develop a factual basis for a permit decision. The Agency may schedule a permit review coordination meeting with interested agencies/groups and the applicant to: clarify the review standards and process requirements; provide the applicant an opportunity to explain the project; and to identify issues. At the Agency's discretion, the Agency may hold a public hearing when necessary to gather information necessary to make a decision.

(10) All recommendations and comments regarding the application shall be submitted in writing to the Agency within the period established by the Agency, but not more than forty-five (45) calendar days from the date of the notice. However, consistent with ORS 196.825(9)(b), the Department of Environmental Quality shall comment within seventy-five (75) calendar days from the date of notice to comment unless the Agency, based on a written request from the Director of the Department of Environmental Quality, grants an extension of time or as otherwise agreed to in an intergovernmental agreement between Department of Environmental Quality and Division of State Lands. In no case shall the extension granted be in excess of one year. If an agency or unit of government fails to comment on the application within the comment period, the Agency shall assume the agency or other unit of government has no objection to the project.

(11) Applicant Response to Comments.

(a) Comments resulting from the public review process shall be forwarded to the applicant within seven (7) calendar days of the conclusion of the comment period.

(b) The applicant may, at his or her discretion, respond to public and agency comments. The response may be in the form of:

(A) Additional information to support the application; and/or

(B) Revisions to the project that address the comments and become part of the application.

(c) If no response is received from the applicant, the Agency will presume that the applicant intends to provide no additional supporting information or revisions to the application.

(d) The applicant may make a written request for additional time to respond to comments, and the Agency shall agree to any extension of the time allowed to make a permit decision as described in OAR 141-085-0028(1).

(12) Supplemental Information. The Agency may, as a result of the public review process and/or the Agency's investigations, request that the applicant voluntarily submit supplemental information prior to the Agency making the permit decision. The Agency shall state the reason for requesting the additional information and why it is relevant to the permit decision.

(13) All documents in the applicant's permit file kept by the Agency, unless otherwise restricted by law, shall be available for review by the applicant upon request and at reasonable times and location.

Stat. Auth.: ORS 196.815; ORS 196.825; ORS 196.845

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0029

Review Standards and Permit Conditions for Individual Removal-Fill Authorizations

(1) In order to meet the requirements of OAR 141-085-0006(1), ORS 196.805 and 196.825 the Agency shall evaluate the information provided in the application; conduct its own investigation; and review and consider the comments submitted during the public review process in order to apply the following standards to determine whether or not to issue an individual removal-fill authorization.

(2) Effective Date of Review Standards. The Agency may consider only standards and criteria in effect on the date the Agency receives the completed application or renewal request (OAR 141-085-0036).

(3) Considerations for Approval. To issue an individual a removal-fill permit the Agency must determine that the proposed removal-fill activity will not be inconsistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the paramount public policy of this state to preserve the use of its waters for navigation, fishing and public recreation, by:

(a) Considering the public need for the project including the social, economic or other public benefits likely to result from the project. If the applicant is a public body, the Agency may rely on the public body's findings as to local public need and benefit;

(b) Considering the economic cost to the public if the project is not accomplished;

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(c) Considering whether the project would interfere with public health and safety;

(d) Considering whether the project is compatible with the local comprehensive land use plan. The Agency will not issue an individual removal-fill permit for an activity at a location that is not consistent or compatible with the local comprehensive land use plan and/or zoning ordinance. The Agency may issue an individual removal-fill permit requiring the applicant to obtain local land use approval prior to beginning the authorized activity;

(e) Determining the degree to which, if at all, the project, will unreasonably interfere with navigation, fishing and public recreation uses of the waters of the state;

(f) Considering the degree to which, if at all, the project will increase erosion or flooding upstream and downstream of the project or redirect water from the project site onto adjacent nearby lands.

(g) Considering the practicable alternatives for the project in accordance with (4) as presented in the application; and

(h) Considering mitigation (including compensatory mitigation) for all reasonably expected adverse impacts of project development, as required by subsection (5).

(4) Alternatives Analysis. The Agency will issue an individual removal-fill permit only upon the Agency's determination that a fill or removal project represents the practicable alternative that would have the least adverse effects on the water resources and navigation, fishing and public recreation uses. Unless otherwise specified by the Agency, and except in essential salmon habitat, no alternative analysis will be required for projects involving less than 250 (two hundred fifty) cubic yards of fill or removal and/or converting to upland less than 0.2 (two-tenths) acre of wetland. In determining whether or not an alternative might be the practicable alternative with the least adverse effects, the Agency will consider the type, size and relative cost of the project, the condition of the water resources, and navigation, fishing and public recreation uses as depicted in the application. The financial capabilities of the applicant are not the primary consideration. The basic project purpose, logistics, use of available technology and what constitutes a reasonable project expense are the most relevant factors in determining the most practicable alternative. The applicant bears the burden of providing the Agency with all information necessary to make this determination. No authorizations may be issued for a substantial fill in an estuary for a non-water dependent use unless the following apply:

(a) The fill is for a public use;

(b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fishery and recreation; and

(c) The project meets all other review standards of these rules.

(5) Mitigation. The Agency will only issue an individual removal-fill permit for the practicable alternative with the least adverse effects to the water resources upon the Agency's determination that the project includes appropriate and practicable steps to reduce (mitigate) reasonably expected adverse impacts of the project to the water resources and navigation, fishing and public recreation uses. Mitigation shall be considered in the following sequence:

(a) Avoidance. The Agency shall first consider whether the project can be accomplished by avoiding removing material or placing fill material in or on waters of the state altogether (e.g., by moving the location of a proposed structure, either on-site or off-site, to avoid filling wetlands);

(b) Minimization. If the Agency determines that the project cannot be accomplished without adverse impacts to water resources and/or navigation, fishing and public recreation uses, the Agency shall then consider whether limiting the degree or magnitude of the activity and its implementation can minimize adverse impacts (e.g., bio-engineered and non-structural streambank stabilization techniques, such as bank sloping and revegetation, shall be installed instead of solutions relying primarily on concrete and riprap, whenever technical feasible, suitable and environmentally preferable);

(c) Rectification. If the Agency determines that impacts cannot be further minimized, the Agency shall then consider whether repairing, rehabilitating or restoring (e.g., restoring site conditions along a pipeline corridor after installation is complete) the project area can rectify the impact;

(d) Reduction or elimination. When project impacts have been minimized and rectified to the maximum extent practicable, the Agency will consider whether the impacts can be further reduced or eliminated over time by monitoring and taking appropriate corrective measures (e.g., assure that site restoration methods have effectively revegetated the site); and

(e) Compensation. The Agency shall then consider how the applicant's proposal would compensate for reasonably expected adverse impacts by replacing or providing comparable substitute wetland or water resources

and/or navigation, fishing and public recreation uses. Compensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of practicable alternatives.

(6) Direct and Indirect Effects. The Agency shall impose conditions that mitigate the direct effects of project development and conditions that mitigate the indirect effects that reach beyond the immediate project area (e.g., a condition requiring that equipment must be washed down away from any wetland) when necessary to mitigate the reasonably expected adverse impacts of project development.

(7) Permit Conditions. If the project meets the requirements of this section, the Agency shall impose applicable general conditions in order to reduce or eliminate the reasonably expected adverse impacts of project development. The Agency may also require additional, site-specific and/or project-specific conditions, or may modify these general conditions, as listed below, as appropriate:

(a) Conditions to assure compliance with state water quality and toxic effluent standards may be required in order to mitigate for the reasonably expected adverse impacts of project development. Such conditions will be based on standards and/or comments of the Department of Environmental Quality.

(b) The project shall be carried out in compliance with ORS 509.580 to 509.645 and related rules of the Oregon Department of Fish and Wildlife, concerning upstream and downstream passage at all artificial obstructions in which migratory native fish are currently or have historically been present.

(c) All in-water work, (i.e. project work conducted within the beds and banks of a water of the state) including temporary fills or structures, shall be conducted to avoid or minimize impacts to fish and wildlife resources. Such work will be authorized to occur within the Oregon Department of Fish and Wildlife recommended periods for in-water work as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife. Exceptions to recommended in-water work periods may be authorized by the Agency based on the applicant's request and documentation of consultation with the Oregon Department of Fish and Wildlife that the reasonably expected adverse impacts to fish and wildlife resources will be avoided or minimized.

(d) When previously unknown occurrences of listed species are discovered during construction, the permit holder shall immediately cease work and contact the Agency.

(e) The project shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the permit holder shall immediately cease work at the discovery site and contact the Agency and the State Historic Preservation Office.

(f) Equipment shall be fitted with fish screens if water is pumped from a fish-bearing stream during project work. Contact ODFW Screening and Passage staff for screen specifications. The Agency, based on ODFW advice, may require gravity flow bypasses to provide fish passage if active migration is occurring. Sediment control shall be provided during dewatering, and culverts shall be installed only at dewatered sites. If endangered fish are likely to be present, fish salvage operation shall be conducted by qualified personnel prior to construction. The Agency may require an ODFW District biologist or designee to be present during salvage operations.

(g) The project shall not use as fill material any substances defined as solid waste in ORS 459.005(24) unless the Department of Environmental Quality has authorized prior approval to do so. This includes tires, concrete rubble, and asphalt.

(h) The project shall not use as fill material any chassis, body or shell of a motor vehicle as defined by ORS 801.590.

(i) Vegetated buffers may be required at compensatory mitigation sites in order to protect the mitigation from loss.

(j) The restoration or replacement of destroyed or damaged riparian or wetland vegetation may be required at compensatory mitigation and/or project sites in order to mitigate for the reasonably expected adverse impacts of project development. Priority will be given to the replacement of damaged or destroyed vegetation with native plants that will form a wetland or riparian community dominated by native plants within the project area. Conditions may include planting survival success standards (e.g. eighty percent (80%) of each plant species planted, after five (5) years). Protection (e.g. fencing) for replanted areas and control of invasive plants may also be required. Grass seed mixes or exotics certified weed seed free that will hold soil and not persist will be allowed.

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(k) The project shall minimize: erosion upstream and downstream of the site; redirecting or relocating water flow beyond pre-project conditions; impoundment of water upstream of the project (unless approved by affected property owners); or additional water flow from the project site beyond pre-project conditions (unless part of the project purpose).

(8) Long Term Protection of Mitigation Sites.

(a) The individual removal-fill permit along with site access control (e.g. fencing, signing) is usually sufficient legal means to achieve maintenance and long-term protection of mitigation sites. However, in some instances compensatory mitigation sites and indirect compensatory wetland mitigation sites will need to be permanently protected from destruction with appropriate real estate instruments or agreements (e.g. conservation easements, deed restrictions, long-term management agreements with land trusts or public ownership). Situations where such protection will be required include but are not limited to:

(A) When the permit holder is likely to sell the mitigation site within five (5) years of project completion;

(B) When the permit holder is an absentee owner of the mitigation site;

(C) When the permit holder is not likely to actively participate in managing and maintaining the mitigation site; or

(D) When the permit holder is not the owner of the mitigation site.

(b) The applicant shall offer a preferred method and justification.

(c) The Agency will make the final determination for the need and type of long-term protection based upon the risk of loss of the compensatory mitigation site taking into account 8(a)(A), (B), (C) and (D) above.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0031

Documentation of Individual Removal-Fill Permit Decision; Term of Certain Individual Removal-Fill Permits

(1) The Agency shall prepare written findings documenting and supporting any decision to deny an individual removal-fill permit. In addition, the Agency shall prepare written findings to support any decision to issue an individual removal-fill permit for the following:

(a) Projects involving fill of two acres or more in freshwater wetlands.

(b) Projects involving fill in estuaries (except cable crossings, pipelines, or bridge construction).

(c) Projects involving the removal from estuaries of more than 10,000 cubic yards of material (except for maintenance dredging).

(d) Projects involving placement of greater than 2,500 cubic yards riprap in coastal streams and estuaries.

(e) Projects in the Oregon territorial sea in accordance with Statewide Planning Goal 19-Ocean Resources.

(2) The Agency shall prepare written findings documenting and supporting a permit decision that is contrary to the recommendation of a state agency.

(3) Terms of Permits:

(a) The Agency may issue an individual removal-fill authorization for up to five (5) years for activities that occur on a continuing basis or will take more than one year to complete as follows:

(A) For commercial aggregate removal including dredging and bar scalping when the Agency determines that:

(i) There is sufficient aggregate resource or annual recharge to allow the proposed volumes to be removed; and

(ii) The applicant has conducted removal activities in compliance with any individual removal-fill authorization conditions for the same site/location for at least one year preceding the pending application.

(B) For projects associated with flood event recovery (e.g. stream-bank stabilization) when the Agency determines that the project(s) are part of a comprehensive multidisciplinary flood recovery plan that specifically addresses and supports the type of treatment that is proposed in the removal-fill authorization application.

(C) For projects that are for the purpose of watershed restoration that are developed from a watershed assessment and identified as a priority in a watershed action plan.

(D) For other types of projects, when the Agency determines that:

(i) The project is expected to require more than one year to complete; or

(ii) The project purpose requires annual activity or reconstruction (e.g. irrigation diversions); and

(iii) The project purpose, location or methods of construction or operation described in the application are not expected to change during the course of the project.

(E) A fee for the entire multi-year period, in accordance with ORS 141-085-0064, shall accompany each multi-year removal-fill project application.

(F) The Agency may modify conditions of a multi-year authorization based upon new information or project monitoring that indicate a need for different operating conditions.

(G) Before modifying any condition that significantly affects the scope and extent of the activity (e.g. amount of material to be filled/removed) of any individual removal-fill authorization authorized for more than one year, the Agency shall give notice as described in OAR 141-085-0028(4) and treat the proposed notification in the same manner as described in OAR 141-085-0028(6) thru (12).

(H) If a person fails to comply with reporting requirements or any other condition of a multi-year authorization the Agency may revoke the multi-year status and require annual renewal, suspend the permit pending correction, or take any other enforcement action available to the Agency under the Removal-Fill Law and these rules.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0034

Transfer of Authorization/Waiver or Modification of Authorization Conditions

(1) The person or party listed on the authorization is responsible for complying with the conditions of the authorization, unless the authorization is transferred in writing by the Agency to a different person or party through the following process:

(a) A transfer form shall be submitted by the authorization holder.

(b) If the original authorization has not expired, the authorization may be transferred by issuing a modification to the original authorization.

(c) If the authorized activity has been completed and/or the authorization expired, but mitigation monitoring is still required as a condition of the original authorization, that obligation shall be transferred to the new authorization holder.

(d) If a bond was required for the mitigation, a new bond must be provided prior to the transfer.

(2) Upon the written request of the authorization holder, the Agency may grant a waiver or modification of any condition. The authorization holder shall have the burden to prove, to the satisfaction of the Agency, that the waiver or modification will not result in adverse impacts on the water resources or otherwise be contrary to the policies in OAR 141-085-0006. Significant modifications of individual removal-fill permit conditions may require public review as specified in OAR 141-085-0028(6) thru (12).

(3) Exceptions to a permit condition regarding the in-water work period shall be authorized by the Agency as described in OAR 141-085-0029(7)(C).

(4) The Agency shall make a reasonable effort to notify all parties that commented on the original application, of any condition waiver or modification granted pursuant to OAR 141-085-0034(3), above.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0036

Renewal and Extension of Individual Removal-Fill Permits

Permits may be renewed or extended by the Agency under the following conditions:

(1) At least ninety (90) calendar days prior to the expiration of a valid removal or fill permit, the Agency shall notify the permit holder of the expiration date and request that the applicant report to the Agency in writing the status of project completion and the permit holder's desire to renew the permit.

(2) If the applicant submits a request in writing for renewal with the appropriate fee at least forty-five (45) calendar days prior to the permit expiration date, the Agency may:

(a) Renew the permit, with or without modified conditions (consistent with OAR 141-085-0029); or

(b) Extend the permit for up to an additional one-hundred and twenty (120) calendar days, one time only, without modified conditions; or

(c) Extend the term of the permit with new or modified conditions for up to an additional one-hundred and twenty (120) calendar days, one time only; or

(d) Deny the request for permit renewal.

(3) In the event a permit holder does not respond forty-five (45) days prior to the date of permit expiration, the Agency may extend the expiration date of the permit for not more than 120 days, one time only, if:

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(a) The permit holder makes a written request to the Agency prior to the expiration date of the permit;

(b) There is a reasonable likelihood that the project can be completed prior to the new expiration date; and

(c) All other conditions of the original permit are met or can be fulfilled.

(4) A new permit application or additional information shall be required if:

(a) There is a proposed change in the project that may increase the reasonably expected adverse impacts of the project on the water resources;

(b) There is a change in the method of operation of the project that may increase the reasonably expected adverse impacts of the activity on the water resources of the state;

(c) There is a change in natural conditions at the project site that may increase the reasonably expected adverse impacts than previously identified in the application review process;

(d) New information becomes available indicating that additional adverse impacts may accrue as a result of the project; or

(e) Substantial adverse comments or comments requesting a change in substantive conditions are received.

(5) Requests for renewals shall be reviewed pursuant to the standards contained in the applicable rules in effect at the time of the request.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.825

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0064

Removal-Fill Authorization Fees; Disposition of Fees

(1) Any application for an individual removal-fill authorization submitted as described in OAR 141-085-0025 of these rules must be accompanied by a base fee in accordance with the following schedule:

(a) For a removal by a private operator, or a person contracting to perform services for a private operator, \$50.

(b) For a removal by a public body: \$150.

(c) For a removal by a commercial operator: \$150.

(d) For a fill by a private operator, or a person contracting to perform services for a private operator: \$150.

(e) For a fill by a public body: \$375.

(f) For a fill by a commercial operator: \$375.

(g) For erosion-flood repair, including riprap, by a private landowner or public body, or a person contracting to perform services for such persons: no fee.

(2) In addition to the base fee for removal established under OAR 141-085-0064 (1)(a) of these rules each applicant shall also pay as part of the application fee the following fee based on the volume of removal material:

(a) For activities involving less than 500 cubic yards: no volume fee.

(b) For activities involving 500 to 4,999 cubic yards: \$75 for private operator; \$75 for public body; and \$75 for commercial operator.

(c) For activities involving 5,000 to 50,000 cubic yards: \$150 for private operator; \$150 for public body; and \$150 for commercial operator.

(d) For activities over 50,000 cubic yards: \$225 for private operator; \$225 for public body; and \$225 for commercial operator.

(3) In addition to the base fee for fill established under OAR 141-085-0064(1)(a) of these rules each applicant shall also pay as part of the application fee the following fee based on the volume of fill material:

(a) For activities involving less than 500 cubic yards: no volume fee.

(b) For activities of 500 to 2,999 cubic yards: \$75 for private operator; \$75 for public body; and \$75 for commercial operator.

(c) For activities involving 3,000 to 10,000 cubic yards: \$150 for private operator; \$150 for public body; and \$150 for commercial operator.

(d) For activities of over 10,000 cubic yards: \$225 for private operator; \$225 for public body; and \$225 for commercial operator.

(4) For each application that involves both removal and filling, the application fee assessed shall be either for removal or filling, whichever activity involves the greater volume, according to the fee schedule described in section (1) to (3) of this rule.

(5) The annual fee for an individual removal-fill authorization is equivalent to the base fee according to the schedule set forth in section (1) of this rule. Annual fees for multi-year permits are due prior to initial permit issuance for the entire permit period. Any authorization may be suspended during any period of delinquency of payment and shall be treated as though no authorization had been issued.

(6) Fees received under this section shall be credited to the Common School Fund for use by the Agency in administration of these rules and ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law.

Stat. Auth.: ORS 196.815

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0066

Emergency Authorization for Removal-Fill Activity

(1) In the event an emergency exists, as described in OAR 141-085-0010, the Agency may issue an emergency authorization. Activities covered by OAR 141-085-0020 are exempt from this section.

(2) Any person requesting an emergency authorization may apply orally or in writing. Written applications may be submitted in the same manner as described in OAR 141-085-0025 and sent via facsimile, e-mail or via U.S. mail. Any request submitted orally must be documented, in writing, by the Agency and provided to the applicant.

(3) The application and review requirements described in OAR 141-085-0025, 0027, and 0028 do not apply to emergency authorizations. An application for an emergency authorization shall be reviewed pursuant to the standards in the applicable rules in effect at the time of the request.

(4) Applications for an emergency authorization shall contain enough information for the Agency to determine:

(a) The applicant and responsible party planning and carrying out the activity;

(b) The location of the project;

(c) The nature of the emergency (specifically, the nature of the threat to public health, public safety or property and the immediacy of the threat and need to act promptly);

(d) The approximate volume of material to be removed and/or filled;

(e) The schedule for doing the work;

(f) The date and approximate time when the event that caused the emergency took place;

(g) The area of impact of the emergency and the proposed emergency action;

(h) A statement as to whether the emergency action is intended as a temporary or permanent response measure; and

(i) A description of how the work will be accomplished.

(5) In order to make a timely and legally defensible determination, the Agency may request additional information from the applicant. The Agency may authorize an Agency employee or other person to act as a representative of the Agency to conduct an on-site evaluation of the planned activity and make recommendations as to whether or not the application should be approved as requested, approved with conditions, denied or processed as an individual removal-fill authorization application.

(6) In determining whether or not to approve the application, the Agency shall determine, as quickly as is reasonable and feasible, whether:

(a) An emergency, as defined in OAR 141-085-0010 exists, and the factual circumstances indicate:

(A) The emergency poses a direct threat to substantial property, including but not limited to a dwelling, farm or cropland;

(B) Some prompt removal-fill activity is required to reduce or eliminate the threat; and

(C) The nature of the threat does not allow the time necessary to obtain some other form of authorization as described in these rules.

(b) The removal-fill activity is planned for waters of the state, including wetlands and is an activity subject to these rules; and

(c) The planned activity minimizes, to the extent practicable, adverse impacts to aquatic life, water quality and navigation, fishing and public recreation uses of the waters of the state; and

(7) Based upon the review of the application as described in OAR 141-085-0066(6) the Agency may:

(a) Approve the emergency authorization as requested;

(b) Approve the emergency authorization with conditions;

(c) Request additional information from the applicant and make a decision to reject, approve with conditions or approve the application without conditions; or

(d) Deny issuance of the emergency application.

(8) An emergency authorization shall contain conditions designed to minimize the reasonably expected adverse impacts of the activity to aquatic life, water quality and navigation, fishing and public recreation uses of the waters of the state while taking into account the impact of the emergency on persons and property. The Agency may also require compensatory mitigation in some cases where significant loss of water resources and/or navigation, fishing and public recreation uses has resulted directly from the authorized activity.

(9) If a request for an emergency authorization is denied, the applicant may resubmit the application as an individual removal-fill authorization or general authorization in accordance with the procedures set out in these rules.

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(10) If an emergency authorization is issued orally, the written form of the emergency authorization shall be sent to the applicant within five (5) calendar days confirming the issuance and setting forth the conditions of operation.

(11) The term of the emergency authorization shall be limited to the time necessary to complete the planned removal-fill activity and be specifically stated in the authorization. In no case shall the term exceed 60 days. A permit holder may request issuance of a new emergency authorization for the same activity upon expiration of the original emergency authorization.

Stat. Auth.: ORS 196.810
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0070

General Authorizations

Standards and Criteria; Process for Establishing General Authorizations (see OAR 141-089)

(1) A person may be exempt from the requirement to obtain an individual removal-fill permit through the use of an applicable general authorization. Any person proposing to conduct a removal-fill activity under a general authorization shall first notify the Agency in writing in accordance with the requirements of the specific general authorizations being sought.

(2) General authorizations, are adopted, amended and repealed as administrative rules in accordance with the Administrative Procedure Act (ORS 183.310 to 183.550).

(3) The Agency may propose to adopt a general authorization upon a finding that the category of removal-fill activities, as described in the proposed general authorization (including the applicable conditions):

(a) Are substantially similar in nature;

(b) Would cause only minimal individual and cumulative environmental impact;

(c) Will not result in long-term harm to the water resources of the state; and

(d) Are consistent with the policies of these rules as described in OAR 141-085-0006.

(4) The Agency may amend or rescind any general authorization, through rulemaking, upon a determination that the removal-fill activity conducted under the general authorization has resulted in or would result in more than minimal environmental impact or long-term harm to the water resources of this state. Any person may request the Agency invoke this provision. Such a request must include the specific general authorization to be rescinded or amended and clearly and convincingly state the reasons for the request. The Agency may process the request in the same manner as described in OAR 141-085-0070(2).

(5) No general authorization is valid where the removal-fill activity is prohibited by the local comprehensive land use plan or implementing regulations or other applicable ordinance.

(6) The rule promulgating the general authorization shall be effective for a five-year term and shall be reviewed, every five years. Upon review, the general authorization shall be reissued in a similar or amended form or repealed.

(7) Failure of a person to adhere to the terms of any general authorization adopted under this section will be considered a violation of the removal-fill law and subject to appropriate enforcement in accordance with these rules.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800- 196.990
Hist.: LB 6-1984, f. & ef. 12-17-84; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0075

Appeals/Contested Case Hearings Regarding Issuance or Denial of an Individual Removal-Fill Permit

(1) Alternative Dispute Resolution Process. An applicant or any other person aggrieved or adversely affected by an individual removal-fill permit decision by the Agency may request the Agency enter into an alternative dispute resolution process. The Agency and all involved parties shall select a trained facilitator/mediator from a list of pre-qualified individuals and share the costs of the facilitator/mediator. The appellant may retain the right of formal appeal as described in these rules.

(2) Appeal by Applicant. Any applicant whose application for an individual removal-fill permit has been denied, or who objects to any of the conditions imposed by the Agency under OAR 141-085-0029(6), may, within ten (10) calendar days of the denial of the permit or the imposition of any condition, request a hearing from the Agency.

(3) Appeals by Others. Any person who is aggrieved or adversely affected by the grant of an individual removal-fill permit by the Agency

may file a written request for a hearing with the Agency within sixty (60) calendar days after the date the authorization was granted.

(4) Standing in Contested Case Hearings. For a person, other than the applicant/ permit holder to have standing to request a contested case as described in OAR 141-085-0075(2), the person must be either "adversely affected" or "aggrieved" as described as follows:

(a) To be "adversely affected" by the individual removal-fill permit the person must have a legally protected interest as defined in OAR 141-085-0010 that would be harmed, degraded or destroyed by the authorized removal-fill activity. This may include, but is not limited to, adjacent property owners.

(b) To be "aggrieved" by the individual removal-fill permit the person must have participated in the Agency's review of the removal-fill activity application by submitting written or oral comments stating a position on the merits of the proposed removal-fill activity to the Agency.

(5) Setting a Contested Case Hearing.

(a) If the written request for hearing is timely (in accordance with OAR 141-085-0075(2) or (3)), and made by a person who has a legally protected interest which

is adversely affected by the grant of the permit, the matter shall be referred to the Hearing Officer Panel for hearing within thirty (30) calendar days after receipt of the request.

(b) The hearing shall be conducted as a contested case.

(c) The permit holder and any persons that have filed a written request and have a legally protected interest that may be adversely affected shall be parties to the proceeding.

(d) Persons that do not have legally protected interests that are adversely affected, but are aggrieved, may nevertheless petition to be included in the contested case hearing as a party under OAR 137-003-0535.

(6) Referral to the Hearing Officer Panel (Panel).

(a) The referral of a request for hearing to the Hearing Officer Panel by the Agency shall include the individual removal-fill permit, or denial, and the request for hearing. The Hearing Officer Panel shall conduct a contested case hearing only on the issues raised in the request for hearing and the referral from the Agency.

(b) Jurisdictional determinations of the existence, or boundaries, of the waters of the state on a parcel of property, as defined in OAR 141-090-0020, issued more than sixty (60) calendar days before a request for hearing are final.

(c) Jurisdictional determinations are judicially cognizable facts of which the Agency may take official notice under ORS 183.450(3) in removal-fill contested cases. Challenges to judicial determinations are only permitted under the process set out in OAR 141-090-0050.

(7) Discovery in Contested Cases. In contested cases conducted on matters relating to these rules, the Agency delegates to the hearing officer the authority to rule on any issues relating to discovery (i.e. production of information), except that depositions will not be awarded unless it is likely that a witness will not be available at a hearing.

(8) The Proposed Order. The hearing officer who conducts the hearing shall issue a proposed order containing findings of fact and conclusions of law within twenty (20) calendar days of the hearing, and as required by ORS 183.460, provide an opportunity to file written exceptions with the Agency.

(9) The Final Order. Within forty-five (45) calendar days after the hearing the Agency shall consider the record, any exceptions, and enter an order containing findings of fact and conclusions of law. The final order shall rescind, affirm or modify the permit or proposed order.

(10) Pre-Hearing Suspension of Permits. A permit to fill granted by the Agency may be suspended by the Agency during the pendency of the contested case proceeding. Petitions for suspension shall be made to the Agency and will be either granted or denied by the Agency. The permit shall not be suspended unless the person aggrieved or adversely affected by grant of permit makes a showing before the Agency by clear and convincing evidence that commencement or continuation of the fill would cause irreparable damage and would be inconsistent with ORS 196.000 to 196.905.

(11) Issuance or Denial of a Permit. Interested persons who request notification in writing of the Agency's decision on a permit will be notified at the time of issuance or denial. The Agency's failure to notify an interested person will not extend the statutory sixty (60) calendar days timeframe for hearing requests. Contested case hearings concerning the issuance or denial of a permit will normally be held at the Agency offices in Salem,

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Oregon, unless extraordinary circumstances require the hearing to be held in the vicinity of the project.

Stat. Auth.: ORS 196.835

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0505; LB 3-1986, f. & ef. 3-31-86; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0079

Revoking or Suspending an Authorization; Allowing Corrective Action

(1) The Agency may revoke or suspend an authorization if an alleged violator is not in compliance with any conditions of an authorization.

(2) The Agency shall give notice of suspension to the permit holder and advise them as to the reasons and terms of the suspension.

(3) The Agency may initiate the following proceedings to revoke an authorization:

(a) The Agency shall issue a preliminary order to the alleged violator indicating the intent to revoke the authorization;

(b) The preliminary order shall include, but not be limited to, the following information:

(A) A statement of the alleged violator's right to a contested case hearing, as provided in ORS 196.865 before a hearings officer before the authorization may be revoked, and the time period in which such a request may be made;

(B) A statement of the authority and jurisdiction under which the contested case hearing is to be held;

(C) A reference to the particular portions of the removal-fill law and these rules involved; and

(D) A short and plain statement of the matters asserted or charged as constituting the violation(s).

(c) The preliminary order may include a statement of the action, if any, that may be taken by the alleged violator to correct or offset the effects of the violation including, but not limited to, removal of filled material:

(A) If such action is specified in the preliminary order, the order shall include a reasonable time period of not less than twenty (20) calendar days in which to complete the corrective action;

(B) If the alleged violator completes such action within the specified time period, the revocation procedure shall be terminated.

(d) If the authorization holder fails to request a contested case hearing as allowed under ORS 196.865, the Agency may issue a final order revoking the authorization after presenting a prima facie case demonstrating that a violation has occurred.

Stat. Auth.: ORS 196.865

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0080

Violations and Investigations

(1) In its discretion, the Agency shall conduct appropriate investigations of reported violations and make compliance inspections to determine whether violations of the removal-fill law, these rules (OAR 141-085) or the terms and conditions of any authorization have occurred.

(2) The Agency shall make a reasonable effort to obtain permission from the landowner or agent, or a duly authorized representative of the landowner or agent, for the Agency or its authorized representative to conduct a site visit. The Agency shall document its efforts to obtain permission to conduct a site visit.

(3) As described in OAR 141-085-0080(1) a violation includes, but is not limited to:

(a) Fill, removal, or channel relocation without a valid authorization;

(b) Non-compliance with any condition of an authorization;

(c) Obtaining an authorization or reporting on conditions of an authorization by misrepresentation or by failure to fully disclose known material facts;

(d) Failing to comply with any terms of an enforcement order; or

(e) Violation of any condition of an approved wetlands conservation plan.

(4) Alleged or suspected violations may be reported to the Agency by e-mail, facsimile, telephone or in writing.

(5) When reports of alleged or suspected violations are submitted to the Agency in confidence and the information is not otherwise required by law to be submitted, the Agency may keep the name of the person making the report confidential if the criteria set forth in ORS 192.501 or 192.502 are met.

Stat. Auth.: ORS 196.860

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0405 and 141-085-0420; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0085

Enforcement Actions and Procedures

(1) The Agency is authorized to take such civil, criminal or administrative actions as are necessary to enforce the removal-fill law and these rules (OAR 141-085) including, but not limited to the following (ORS 196.870, 196.870 and 196.890):

(a) Consent orders;

(b) Consent agreements;

(c) Cease and desist orders;

(d) Restoration orders;

(e) Civil penalties; and

(f) Liens;

(2) The Agency shall give notice of any proposed order relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or governmental body affected. Any person aggrieved by a proposed order of the Agency may request a hearing within 20 days of the date of personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS 183.310 to 183.550 applicable to contested cases, and judicial review of final orders shall be conducted in the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall be issued upon a prima facie case on the record of the agency.

(3) Any notice of violation shall describe the nature and extent of the violation.

(4) The Agency may take appropriate action for the enforcement of any rule or final orders. Any violation of ORS 196.600 to 196.905 or of any rule or final order of the Agency under ORS 196.600 to 196.905 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the Agency may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Proceedings thus brought by the Agency shall set forth if applicable the dates of notice and hearing and the specific rule or order of the Agency, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

(5) In addition to the actions described in OAR 141-085-0085(4) and 141-085-0090 the Agency may enter an order requiring any person to cease and desist from any violation if the Agency determines that such violation presents an imminent and substantial risk of injury, loss or damage to water resources.

(a) An order under this subsection:

(A) May be entered without prior notice or hearing.

(B) Shall be served upon the person by personal service or by registered or certified mail.

(C) Shall state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 days after receipt of the order.

(D) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this subsection.

(b) If a person subject to an order under this subsection files a timely demand for hearing, the Agency shall hold a contested case hearing before a hearings officer according to the applicable provisions of ORS 183.310 to 183.550. If the person fails to request a hearing, the order shall be entered as a final order upon prima facie case made on the record of the agency.

(c) Neither the Agency nor any duly authorized representative of the Agency shall be liable for any damages a person may sustain as a result of a cease and desist order issued under this subsection.

(d) The state and local police shall cooperate in the enforcement of any order issued under this subsection and shall require no further authority or warrant in executing or enforcing such order. If any person fails to comply with an order issued under this subsection, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the Agency's order in the same manner as with an order of that court.

(6) Proposed Order to Restore, Cease and Desist Order and/or Civil Penalties. Any written request for a hearing concerning a proposed enforcement order shall admit or deny all factual matters stated in the proposed enforcement order and shall state any and all claims or defenses regarding the alleged violation. Any factual matters not denied shall be presumed admitted, and failure to raise a claim or defense shall be presumed

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to be a waiver of such claim or defense. Evidence shall not be taken at the hearing on any issue not raised in the written request for hearing.

Stat. Auth.: ORS 196.860; ORS 196.870; ORS 196.875
Stats. Implemented: ORS 196.800- 196.990
Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0435; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0090

Civil Penalties

(1) In addition to any other remedy allowed by law or these rules (OAR 141-085), the Agency may assess a civil penalty for any violation of the removal-fill law or these rules (OAR 141-085).

(2) More than one civil penalty may be assessed for an unauthorized removal or fill activity. Example: A civil penalty assessed on an initial violation may be followed by a separate civil penalty for failure to comply with a restoration order issued on the same violation.

(3) Required notice; contents of notice. The Agency shall give written notice of Intent to Assess a civil penalty by personal service or by registered or certified mail to the permitholder or person (hereinafter referred to as 'party') incurring the civil penalty. The notice shall include, but not be limited to, the following:

(a) The particular section of the statute, rule, order or authorization involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within twenty (20) calendar days of receiving the notice; and

(d) A statement of the amount of civil penalty assessed and terms and conditions of payment.

(e) The party may request a contested case hearing in accordance with procedures described in OAR 141-085-0075.

(4) Calculating the civil penalty.

(a) The amount of civil penalty (F), as expressed in U.S. currency dollars, shall be determined by the Agency using the following formula: $F = BPCI$.

(A) B is the base fine factor of \$600;

(B) "P" is the prior knowledge factor to be determined as follows:

(i) A value of 1 shall be applied if the alleged violator was unaware of the removal-fill law at the time of the alleged violation; or

(ii) A value of 2 shall be applied if the alleged violator was aware of the removal-fill law at the time of the alleged violation (e.g., permit non-compliance, prior penalties or other exposure to the Removal-Fill Law);

(iii) A value of 5 shall be applied if the alleged violator had a previous violation. A previous violation exists, for example, if there was an adjudication (either in court or administrative hearing), or the violator failed to appeal an enforcement order (and a final order was issued), or the violator signed a consent order or consent agreement. This value shall not be imposed if the previous violation occurred more than (5) five years prior to the current incident.

(C) The cooperation value (C) shall be determined by the Agency after reviewing the past history of the person in taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value shall be assessed as follows:

(i) A value of 1 shall be applied where the person complies with restoration as requested by the Agency without the need for an enforcement order or court action by the Agency, or where the Agency determines that restoration efforts would be unlikely to benefit the resource;

(ii) A value of 3 shall be applied where the person is not cooperative in complying with restoration as requested by the Agency and the Agency must issue an enforcement order or obtain a court order to restore.

(D) "I" is water resource impact factor to be determined as follows:

(i) A value of 1 shall be applied if the damaged resource is expected to naturally self-restore within one year; or

(ii) A value of 3 shall be applied if the adverse affects are not expected to naturally self-restore within one year.

(b) In cases where the prior knowledge (P) factor is greater than one (1) and the cooperation (C) factor is greater than one (1), the total amount of the civil penalty (F), in dollars U.S. currency, as determined by applying the calculation methods described in OAR 141-085-0090(4) shall be doubled, not to exceed \$10,000 per day.

(5) Failure to pay civil penalty. Once the final adjudication of any civil penalty calculated in the manner described in OAR 141-085-0090(4) has been completed in accordance with OAR 141-085-0090(3), the amount of the civil penalty shall increase by the amount of the original civil penalty for every twenty (20) calendar days that pass without the alleged violator remitting payment to the Agency for the full amount of the civil penalty and the Agency taking receipt of the payment. In no case shall the

amount of the civil penalty be increased by more than ten times the original civil penalty amount. If a civil penalty or any portion of the civil penalty is not paid as required by OAR 141-085-0090(5), interest shall accrue at the rate of nine percent per annum pursuant to ORS 82.010 on the unpaid balance.

(6) Civil penalty relief. The Agency may, upon written request of the alleged violator assess a civil penalty as described in OAR 141-085-0090 and including evidence of financial hardship, remit or mitigate the amount of any civil penalty. The request shall be received within twenty (20) calendar days from the date of personal service or mailing of the notice of civil penalty as described in OAR 141-085-0090(3). Evidence provided as to the alleged violator's economic and financial condition may be presented without prejudice to any claim by the person that no violation has occurred or that the person is not responsible for the violation.

Stat. Auth.: ORS 196.890

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 4-1986, f. & ef. 4-8-86; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0095

Request to Close Specified Waters of the State to the Issuance of Removal-Fill Authorizations

(1) The Agency may request the Oregon Water Resources Commission (OWRC) to close, by administrative rule, specified waters of the state to the issuance of removal-fill authorizations (ORS 196.840).

(2) Any state resource agency listed in ORS 196.825 may make such a request of the Agency. In determining whether or not to submit a request to the OWRC the Agency shall consider:

(a) The reasons for requesting a closure;

(b) The specific waters of the state to be affected;

(c) The effect, including economic effects, of the proposed closure on potential future applicants;

(d) The effect, including benefits, of the proposed closure on aquatic life, water quality and public use of the waters; and

(e) The time period the closure should be recommended to be in effect.

(3) Prior to submitting a closure request to the OWRC, the Agency shall hold at least one public hearing within the affected watershed. Interested and affected parties, including local government and watershed councils are to be notified at least thirty (30) calendar days prior to the hearing date. Public comment on the proposal shall be accepted at least fourteen (14) calendar days following the last hearing. The Agency shall issue a report explaining the proposal and outlining the reasons for considering a closure. Notice of the Agency's final decision shall be provided all participating parties and parties of interest as identified by the Agency.

Stat. Auth.: ORS 196.840

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0096

Monitoring; Annual Report; Public Information and Education

(1) Program Monitoring. Pursuant to ORS 196.910, the Agency will monitor removal and fill activities authorized under these rules to determine:

(a) Compliance with permit conditions;

(b) The effectiveness of permit conditions in achieving the policies of these rules; and

(c) The adverse impacts of authorized activities on salmonid spawning and rearing habitat and wetland functional attributes.

(2) Annual Reporting. Pursuant to ORS 196.885, commencing with fiscal year 2002-2003 and continuing each fiscal year thereafter, the Division of State Lands shall submit an annual report to the State Land Board on the activities conducted under these rules. The report shall be delivered to the State Land Board and posted on the Agency's website no later than 120 days after the end of the fiscal year. The report shall also be provided to the appropriate legislative committee(s). The annual report shall include the following:

(a) The number of removal-fill authorizations applied for, denied and authorized. For all authorizations granted or outstanding during the prior year, a separate summary shall be included for fills and removals, organized by river or other water body that shows:

(A) The total number of authorizations, the number of new authorizations and the number of renewal authorizations.

(B) The volume and/or wetland acreage of removals and fills authorized during the past year, and to the extent possible, the volume and/or wetland acreage of fills and removals completed during the past year.

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(C) The areal extent of wetlands lost, by habitat type, and the areal extent of wetlands gained, by habitat type, through compensatory wetland mitigation.

(b) A summary of compensatory mitigation measures, including a description of each compensatory mitigation project approved during the past year including the location and size of each compensatory mitigation project, whether creation, enhancement or restoration, and a report on the status of all compensatory mitigation projects pending or completed during the past year.

(c) A summary of enforcement activities, including:

- (A) The number of complaints reported.
- (B) The number of compliance investigations conducted.
- (C) The results of compliance actions, including:

(i) The number of cases resolved by either voluntary compliance, administrative hearings or judicial enforcement proceedings;

(ii) The penalties assessed; and

(iii) The penalties recovered.

(d) A description of staffing, including the number of full-time equivalent positions devoted to the permit program and, for each position, the qualifications and job description.

(e) The report on the Oregon Wetlands Mitigation Bank Revolving Fund Account as required under ORS 196.655.

(f) The number of and average time for responding to notices received by local governments and the number of responses that took more than thirty (30) calendar days.

(g) The number of wetland conservation plans approved by the Agency and a description of each, including the issues raised during the approval process.

(3) Public Information. The Agency shall develop and maintain a public information program to educate permit applicants and the general public about:

(a) Wetland functions and values;

(b) The status and trends of Oregon's wetlands;

(c) The Statewide Wetlands Inventory; and

(d) Wetland identification, regulations and permit requirements.

(4) Technical Assistance and Cooperation. Upon request, within the limits of staffing ability and available resources, the Agency shall provide technical assistance to other state agencies, local governments and the public in identifying wetlands.

Stat. Auth.: ORS 196.885; ORS 196.910; ORS 196.688

Stats. Implemented: ORS 196.800- 196.990; ORS 196.600- 196.692

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0115

Compensatory Mitigation

(1) The Agency may require compensatory mitigation (usually "like for like" or "in kind") as a condition of an authorization to compensate for reasonably expected adverse impacts to water resources of the state and navigation, fishing and public recreation uses on waters of the state other than freshwater wetlands or estuarine areas.

(2) Such compensatory mitigation may include, but is not limited to:

(a) Off-project site or on-project site enhancement (e.g., planting or seeding riparian vegetation or exposing enclosed culverted systems) of water resources of the state;

(b) Off-project site or on-project site improvements to enhance navigation, fishing or public recreation uses of waters of the state; or

(c) Compensation to a third party, as approved by the Agency, for the purpose of watershed health or to improve the navigation, fishing or public recreation uses of waters of the state. A permit holder, with the approval of the Agency may contract with a third party to construct, monitor or maintain the compensatory mitigation site. The permit holder cannot delegate responsibility for compliance with the compensatory mitigation requirements.

(3) The Agency may approve of compensatory mitigation for impacts to waters of the state other than freshwater wetlands or estuarine areas, when the applicant demonstrates in writing that the compensatory mitigation plan will replace or provide comparable substitute for water resources of the state and/or navigation, fishing and public recreation uses lost by project development.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0121

Freshwater Compensatory Wetland Mitigation (CWM) Applicability, General Requirements; Functional Assessments

(1) The following rule sections, OAR 141-085-0121 to 141-085-0151, apply to removal-fill activities that occur within freshwater wetlands and do not apply to removal-fill activities:

(a) Within estuarine wetlands covered by ORS 196.830 and OAR 141-085-0240 thru 141-085-0266, except as specifically noted in the estuarine mitigation rules or where estuarine wetland restoration or enhancement is proposed to compensate for impacts to freshwater wetlands; or

(b) Within areas covered by an approved Wetland Conservation Plan (WCP) authorized under ORS 196.668 to 196.692.

(2) For projects where reasonably expected adverse impacts to the water resources including wetland functions cannot otherwise be avoided, or minimized, a CWM plan will be required to compensate for the reasonably expected adverse impacts of the project by replacing the functional attributes of the wetland converted to upland by project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland.

(3) For projects described in (2) requiring CWM and involving project development on 0.2 (two-tenths) of an acre or less of wetlands, the applicant may propose to fulfill CWM requirements through indirect CWM methods without first considering direct CWM methods.

(4) For projects described in (2) requiring CWM involving project development impacts greater than 0.2 (two-tenths) of an acre, the applicant shall first consider direct CWM prior to relying on indirect CWM to provide the replacement of the functional attributes of the lost wetland. The applicant shall adhere to the following in developing a CWM plan:

(a) The applicant shall provide for direct CWM within 1 (one) mile of the project development site and within the same subbasin or demonstrate, in writing, that there is no suitable CWM site available that would meet the requirements of OAR 141-085-0126(1) within the one-mile limit.

(b) If the direct CWM siting requirements of (a) cannot be met, the applicant shall provide for direct CWM outside the one-mile area but within the same sub-basin.

(c) If the direct CWM siting requirements of (a) and (b) cannot be met as demonstrated in writing, the applicant shall provide for indirect CWM as described in OAR 141-085-0131.

(A) If the project development occurs within the service area of an established wetland mitigation bank, the bank may be used by the applicant to fulfill the CWM requirements if the functions can be replaced and certified credits are available.

(5) The Agency will review the CWM plan for sufficiency and compliance with these rules. The Agency may make recommendations for improvements to CWM plans, at any time prior to the permit decision, based on the demonstrated success of existing CWM projects. The Agency will approve the final CWM plan as a part of the individual removal-fill permit. In approving the final CWM plan, the Agency may, after consulting with the applicant, require conditions necessary to ensure success of the CWM plan and to ensure the requirements in these rules are met.

(6) To the extent possible, the Agency shall develop and make available to the public a listing of known compensatory wetland mitigation sites (e.g., wetland mitigation banks).

(7) The applicant shall complete and include in the application an assessment of wetland functional attributes; the assessment shall assess:

(a) Existing functional attributes at the proposed project impact site;

(b) Functional attributes reasonably expected to be adversely impacted, including those functional attributes decreased or lost due to the proposed project;

(c) Existing functional attributes at the proposed direct CWM site, if the site is currently wetland; and

(d) The net gain or loss of specific functional attributes at the direct CWM site as a result of the proposed direct CWM project.

(8) Wetland functional attributes to be assessed include, but are not limited to:

(a) Water quality and quantity functions;

(b) Fish and wildlife habitat functions;

(c) Native plant communities and species diversity functions; and

(d) Recreational and educational values.

(9) The Oregon Freshwater Wetland Assessment Method shall not be used to satisfy the requirements of OAR 141-085-0121(7).

(10) HGM is the preferred, but not required, functional assessment method. When HGM is used, the Willamette Valley HGM guidebook should be used for appropriate HGM classes in the Willamette Valley; until additional guidebooks are developed by the Agency, the "Judgmental Method" in

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the Willamette Valley Guidebook may be used to assess wetland functions in other regions. The judgmental method provides a consistent framework to consider the basic functional attributes of wetlands as described in OAR 141-085-0121(8)(a) thru (c). It also offers a list of observable field indicators of the conditions and processes that contribute to these functional attributes and guidance on making qualitative rating of these functional attributes without reference to the data set or numeric scoring models.

(11) If best professional judgment is used to evaluate any or all wetland functional attributes, a discussion of the basis of the conclusions is required. For example, if the water quality function is determined to be "low," a detailed rationale based upon direct measurement or observation of indicators of water quality function must be discussed.

(12) Additional assessments or data may be required by the Agency if the functional assessment results, public/agency review comments, or the Agency's review indicate that there may be reasonably expected adverse impacts to rare or listed plant or animal species, adjoining property owners, or if the project's effects are not readily apparent.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0126

Requirements for All CWM using Direct Mitigation Methods

(1) Direct CWM projects shall replace:

(a) Wetland habitat type(s) impacted by the project, as classified per Cowardin system (e.g., palustrine forested); and

(b) HGM class/subclass(es) impacted by the project (e.g., riverine impounding), using the Oregon HGM Statewide Classification (Oregon Division of State Lands 2001); and

(c) The functional attributes of the lost wetland (impact wetland).

(2) The Agency may approve exceptions to the requirements of OAR 141-085-0126(1) if the applicant demonstrates, in writing, that the alternative CWM:

(a) Is environmentally preferable;

(b) Replaces wetland functions that address problems (such as flooding) that are identified in a watershed management plan or water quality management plan approved by a watershed council or public agency;

(c) Replaces wetland types (Cowardin/HGM) and functions historically lost in the region; or

(d) Replaces rare or uncommon plant communities appropriate to the region, as identified in the most recent ONHP plant community classification.

(3) A permit holder, with the approval of the Agency may at any time contract with a third party to construct, monitor or maintain the direct CWM site. The permit holder cannot delegate responsibility for compliance with the CWM requirements unless the authorization has been transferred in accordance with OAR 141-085-0034.

(4) For linear projects (e.g., roads or utility lines with wetland impacts in several watersheds), the applicant may compensate for all wetland impacts at a single CWM site.

(5) Direct CWM projects:

(a) Shall be completed prior to or concurrent with the authorized removal-fill project. The Agency may approve non-concurrent CWM if the applicant clearly demonstrates, in writing, the reason for the delay or that there is benefit to the water resources in doing so. The ratio of CWM required for delayed projects may be increased according to the provisions of OAR-141-085-0136.

(b) Shall include native vegetation plantings aimed at re-establishment of a dominance of native plants.

(c) Shall not rely on features or facilities that require frequent and regular long-term maintenance and management. For example, permanent water control structures may be acceptable, whereas pumping from a groundwater well to provide hydrology is not.

(6) Direct CWM sites may fulfill multiple purposes including stormwater retention or detention provided:

(a) The requirements of OAR 141-085-0126(1) and (2) are met;

(b) No alteration is required to maintain the stormwater functions that would degrade the functional attributes; and

(c) The runoff water entering the CWM site has been pretreated to the level necessary to assure that state water quality standards and criteria are met in the mitigation area.

(7) Direct CWM using wetland enhancement must conform to the following additional requirements. The CWM project shall:

(a) Be conducted only on degraded wetlands as defined in OAR 141-085-0010.

(b) Result in a demonstrable net gain in wetland functions at the CWM site as compared to those functions lost or diminished at the wetland conversion site and those functional attributes previously existing at the CWM site.

(c) Not replace existing wetland functional attributes with different wetland functional attributes unless the applicant justifies, in writing, that it is environmentally preferable to do so.

(d) Not convert one HGM or Cowardin class of wetland to another unless the applicant can demonstrate that it is environmentally preferable to do so.

(e) Identify the causes of wetland degradation at the CWM site and the means by which the CWM plan will reverse, minimize or control those causes of degradation in order to ensure self-sustaining success.

(f) Not consist solely of removal of non-native, invasive vegetation and replanting or seeding of native plant species.

(8) A conservation easement, deed restriction or similar legally binding instrument shall be part of a direct CWM plan, as specified in OAR 141-085-0029(8).

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0131

Requirements for Indirect CWM

(1) The requirements in this section are in addition to the general requirements in OAR 141-084-0121.

(2) Mitigation Bank Credits. Purchase of mitigation bank credits from an appropriate and approved mitigation bank is preferable to payment to provide mitigation. The Agency will approve the bank option only after on-project site mitigation has been examined and found to be impracticable or use of off-project site mitigation is environmentally preferable as described in OAR 141-085-0121(3) and (4).

(3) Payment to provide mitigation:

(a) The removal-fill permit for an authorized activity shall not be issued until payment has been made in the amount identified in the CWM plan as approved by the Agency. Once an approved removal-fill permit activity has begun as proposed, the payment to provide mitigation payment shall be considered as non-refundable.

(b) The amount to pay to the Agency to provide CWM shall be determined by the Agency by considering land values and the cost of mitigation construction as follows:

(A) Land value estimates can be based on actual fair market value appraisals conducted by qualified appraisers or by using 'real market value' (available from the County Assessor or the Oregon Department of Revenue) of the land only (not improvements) of the tax lot and then prorated to obtain a square foot value to be multiplied by the square footage of the impacted wetland area resulting in a prorated 'real market value' of the wetland impact area;

(B) The design, construction, maintenance and monitoring costs associated with restoring, enhancing or creating, wetlands with the same functions and size as the wetland proposed for impact.

(4) Conservation in lieu:

(a) Conservation of wetlands may be used for meeting the CWM requirement when the wetland proposed for conservation:

(A) Supports a significant population of rare plant or animal species; and/or

(B) Is a rare wetland type (S1 or S2 according to the Oregon Natural Heritage Program); or

(C) Is a vernal pool, fen or bog.

(b) Conservation in lieu should be encouraged as the preferred CWM option when the impact site is a wetland type that is exceptionally difficult to replace, such as vernal pools, fens and bogs.

(c) There is no established ratio for indirect CWM using conservation in lieu. The acreage needed under conservation in lieu will be determined on a case-by-case basis through negotiation between the applicant and the Agency.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0136

Ratio Requirements for CWM

(1) The purpose of CWM ratios is to:

(a) Ensure that the state's wetland resource base is maintained as required in ORS 196.672;

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(b) Offset the temporal loss of wetland functions as compensatory mitigation sites mature (i.e., become fully functional replacement of the lost, impacted wetland);

(c) Replace wetland functions that may be size dependent; and

(d) Compensate for the likelihood of success in the different CWM methods (creation, restoration, enhancement). The methods are techniques used to achieve the replacement of functional attributes lost from the impacted wetland.

(2) Except as provided in Sections (3) through (6) of this section, the following minimum ratios shall be used in the development of CWM plans:

(a) Restoration: One (1) acre of restored wetland for one (1) acre of impacted wetland.

(b) Creation and Enhancement: One and one-half (1.5) acres of created wetland for one (1) acre of impacted wetland.

(c) Enhancement: Three (3) acres of enhanced wetland for one (1) acre of impacted wetland.

(d) Enhancement of cropped wetland: Two (2) acres of enhanced wetland for one (1) acre of impacted wetland.

(e) Conservation in Lieu: Variable: See OAR 141-085-0131(4).

(3) The Agency shall double the minimum ratio requirements for project development impacting existing CWM sites; for example, using enhancement to compensate for impacts to an existing CWM site will require a ratio of six (6) acres enhanced for every one (1) acre impacted.

(4) The Agency may increase the ratios when:

(a) Mitigation is proposed to compensate for an unauthorized removal or fill activity; and/or

(b) Mitigation is not proposed for implementation concurrently with the authorized impact.

(5) At the option of the applicant, CWM may consist of any one or a combination of the following CWM ratios for commercial aggregate mining operations where both the mining operation and the CWM are conducted on converted wetlands (not including pasture):

(a) One (1) acre of wetland and open water habitat, with depths less than thirty-five (35) feet, for one (1) acre of wetland impacted;

(b) Three (3) acres of wetland and open water habitat, with depths greater than thirty-five (35) feet, for one (1) acre of wetland impacted;

(c) One (1) acre of a combination of restored, created or enhanced wetland and upland, comprising at least fifty percent (50%) wetland, for one (1) acre of wetland impacted.

(6) The Agency may also apply the following CWM measures for commercial aggregate mining operations on converted wetland (not including pasture):

(a) Allow for staged CWM or mined land reclamation required under ORS 517.700; or

(b) Based on the value the Agency determines under OAR 141-085-0131(3), allow the applicant, upon approval by the Agency, to pay the entire cost of CWM:

(A) On an annual basis for a period not to exceed twenty (20) years over the life expectancy of the operation, whichever is less; or

(B) On an annual basis over time at a monetary rate per cubic yard or ton of aggregate material removed annually from the site.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0141

Requirements for All CWM Plans/Application Requirements

(1) Direct Mitigation. A CWM plan for direct methods shall, at a minimum, include:

(a) CWM site information including:

(A) Area (size) of the CWM wetland proposed for impact relative to the total area of the wetland.

(B) CWM site ownership information (name, address, phone). If this is different from the applicant, copies of legal agreements granting permission to conduct the CWM and willingness of the property owner to provide long-term protection are required;

(C) Location (Township, Range, Quarter Quarter Section and tax lot(s)) and a USGS or similar map showing the CWM site location relative to the impact site.

(b) Existing physical and biological baseline information of CWM site including:

(A) A wetland determination/delineation report (OAR 141-090).

(B) A functional assessment of any existing wetlands at the CWM site, proposed for enhancement or other alteration, including a description of the factors leading to the degraded condition of the site (OAR 141-085-0121).

(C) A description of the major plant communities and their relative distribution, including the abundance of exotic species.

(D) A general description of water source, duration, frequency of inundation or saturation, depth of surface or subsurface water and approximate location of all water features (wetlands, streams, lakes) within 500 feet of the CWM site.

(E) HGM and Cowardin classification of any wetlands present within the CWM site.

(F) Area of the wetland proposed for CWM relative to the total area of wetlands on the site.

(c) CWM plan description including:

(A) CWM plan goals, objectives and success criteria.

(B) The CWM concept in general terms including a description of how the plan, when implemented, will restore, reverse, minimize or control the causes of wetland degradation and ensure that the wetland functions of the impacted wetland are replaced.

(C) A description of the rationale for the CWM site selection.

(D) Proposed water source, duration, frequency of inundation or saturation of the CWM project.

(E) Any known CWM site constraints or limitations.

(F) Proposed HGM and Cowardin classification.

(G) Proposed net losses and gains of wetland functions.

(H) A description of how the applicant will maintain and protect the direct CWM site beyond the monitoring period.

(I) CWM construction plans including:

(i) Scaled site plan showing CWM project boundaries, existing wetlands, restoration, creation and enhancement areas.

(ii) Scaled grading plan with existing and proposed contours and cross section locations.

(iii) Description of construction methods (access, equipment).

(iv) Schematic of any proposed hydrological structures.

(v) Scaled cross sections showing elevations, distance.

(vi) Plant communities schematic.

(vii) Planting plan (with species, size, number, spacing and installation methods).

(viii) Monitoring plan (schedule, timetable, methods).

(ix) Contingency plan for CWM failures.

(x) Implementation schedule and construction sequence.

(J) A reference site, combination of reference sites, or reference data of the same HGM class or subclass (e.g. from the Willamette Valley HGM Guidebook) and representing a less functionally-altered condition than the CWM site. Compare and relate the sites and/or data to the CWM goal.

(K) Provisions for a financial security instrument (OAR-141-085-0176), if the direct CWM site is greater than .2 (two-tenths) of an acre. The financial security instrument is not required for the application but will be required prior to permit issuance.

(L) Plans for restoration projects shall include data substantiating that the site was formerly, but is not currently, a wetland (e.g. a wetland delineation report).

(2) Indirect mitigation. A CWM plan using conservation in lieu must include:

(a) Written documentation that the requirements in OAR141-085-0131(4) are met.

(b) A conservation plan that shall include:

(A) Maps showing the wetland conservation area including all delineated wetlands to be conserved;

(B) The surrounding land uses and an analysis of the probable effects of those land uses and activities on the conserved wetlands;

(C) Measures that may be necessary to minimize the effects of surrounding land uses and activities on the conserved wetlands;

(D) Identification of the party(ies) responsible for long term protection of the conserved wetlands;

(E) A draft legally binding long term protection instrument (e.g. conservation easement);

(F) A draft long-term management plan that addresses the specific requirements of the wetlands to be conserved.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0146

Removal-Fill Authorization Conditions for CWM Plans

(1) For permits involving direct CWM methods:

(a) The approved CWM plan shall become part of the removal fill authorization and, by reference, all portions of the CWM plan shall become conditions of the authorization.

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(b) Additional compensatory mitigation conditions may be included in the authorization.

(c) All compensatory mitigation conditions shall be enforceable until the CWM is deemed successful by the Agency in accordance with OAR 141-085-0151, regardless of the authorization expiration date.

(2) Conditions for authorizations that include indirect CWM methods shall state:

(a) If applicable, the amount of the payment made by the applicant and how it was calculated; and

(b) If applicable, the mitigation bank utilized; and

(c) The loss of wetland by area, Cowardin and HGM class(es), and function(s) of wetland(s) expected to be lost or impaired; and

(d) The applicant's remaining responsibility after payment was made, if any; and

(e) The type of indirect CWM utilized to satisfy the requirements of these rules.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0151

Monitoring Requirements for Direct CWM Plans

(1) The purpose of the direct CWM monitoring requirement is to provide information for the Agency to:

(a) Determine if the direct CWM project complies with the conditions of the authorization;

(b) Evaluate whether the CWM project meets the goals, objectives and success criteria of the CWM plan; and

(c) Provide information for removal-fill program monitoring.

(2) The permit holder shall monitor the direct CWM site and provide to the Agency:

(a) A post construction report demonstrating "as-built" conditions including grading and discussing any variation from the approved plan. Unless waived by the Agency, the post construction report shall be submitted within ninety (90) calendar days of completing grading;

(b) An annual written monitoring report that includes all data necessary to document compliance with CWM conditions and success in meeting the CWM goals. These data may include photographs, topographic surveys, plant survival data, hydrologic data and other information as required to demonstrate compliance. The report shall include the following sections:

(A) Introduction

(B) Goals, objectives and success criteria

(C) Methods

(D) Results,

(E) Summary and recommendations

(F) Figures

(G) Appendices with data and photographs

(3) Monitoring shall be conducted for 5 years unless otherwise specified by the Agency.

(4) The Agency may require modifications to the CWM plan as well as require additional monitoring any time the CWM project is failing to meet the CWM goals.

(5) At the end of the five (5) year monitoring period, the Agency shall determine if the mitigation project meets the CWM success criteria. If it fails to meet the success criteria, the Agency may require modifications to the CWM site as well as additional site monitoring.

(6) When the CWM project complies with the compensatory mitigation success criteria, as described in the approved removal-fill authorization, the Agency shall notify the permit holder in writing of compliance with the authorization's conditions and that additional monitoring is not required. If the Agency fails to notify the permit holder within ninety (90) calendar days of the Agency's receipt of the final monitoring report, the permit shall be deemed in compliance and no further monitoring required.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0156

Payments; Expenditure of Funds for Compensatory Wetland Mitigation Payment to Provide; Agency Accounting of Payment to Provide Funds and Expenditures

(1) The Agency shall utilize the Oregon Wetlands Mitigation Bank Revolving Fund Account authorized pursuant to ORS 196.640 et seq. to hold and disperse money collected from the program.

(a) The Agency shall expend funds collected under the payment to provide option of compensatory wetland mitigation only to:

(A) Restore, enhance, or create wetlands (including acquisition of land or easements as necessary to conduct restoration, enhancement or creation projects) as compensatory mitigation to compensate or replace wetland functional attributes lost or diminished as result of an approved removal-fill authorization activity;

(B) Monitor the compensatory wetland mitigation project; or

(C) Conduct site management for the compensatory mitigation project as necessary to assure that the mitigation is successful.

(2) The Agency shall expend funds collected under the payment to provide option of compensatory wetland mitigation only within the geographic region, as defined by OAR-141-085-0011 of these rules, in which the wetland functional attributes occur, unless the Agency determines, in writing that expending the funds is not feasible or appropriate within a respective region.

(3) The Agency shall expend funds collected from specific approved removal-fill activities within two (2) years from the authorization issuance date unless the Agency determines, in writing, that meeting the two year time limit is not feasible.

(4) Third party recipients of funds collected under the payment to provide option of a compensatory wetland mitigation plan shall sign a written agreement provided by the Agency that requires the recipient(s) to utilize the funds for specific wetland compensatory mitigation project that has been reviewed and approved by the Agency. Such review and approval will also be contingent on the submission of a specific monitoring program that is acceptable to the Agency.

(5) All payment to provide monies collected and expended, as well as the success of the compensatory wetland mitigation projects, authorized by the Agency in accordance with these rules, shall be recorded by the Agency and shall include:

(a) A description of the compensatory wetland mitigation projects funded and including an evaluation of the success of these projects in meeting project goals.

(b) A description of the wetland functional attributes lost or diminished from approved removal-fill activities summarized individually and cumulatively by basin;

(c) A summary of the amount of payments collected and expended on individual compensatory wetland mitigation projects as well as cumulatively by basin.

(d) A description of the wetland functions expected to accrue as a result of compensatory wetland mitigation projects funded in accordance with these rules and summarized by basin and statewide.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0161

Agency Responsibilities Under Payment to Provide Option (Indirect CWM)

(1) The Agency, by eliminating the applicant's responsibility for compensatory wetland mitigation by approving a removal-fill authorization including a payment to provide option, assumes the following responsibilities to:

(a) Defend the sufficiency of the compensatory wetland mitigation plan to compensate or replace the wetland functional attributes lost or diminished; and

(b) Monitor, manage, and otherwise assure the success of the compensatory wetland mitigation project performed by the Agency or designated third party(ies) under these rules.

(2) The Agency, as part of an intergovernmental agreement, may transfer or extend the Agency's responsibility for the compensatory wetland mitigation plan to another person or governmental agency.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0166

Advance Mitigation

(1) As part of an existing, active individual removal-fill permit application process, an applicant may request that the Agency consider the possibility that the applicant's proposed CWM project, if successful, could result in producing potential mitigation credits in excess of those needed to satisfy the requirements of OAR 141-085-0029(5).

(2) If the applicant desires to preserve the option of possibly receiving additional mitigation credit for future projects from the excess credits identified under subsection (1) above, then the following additional information shall be submitted as a part of the applicant's Compensatory Wetland Mitigation Plan:

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(a) Identify the specific area(s) of the CWM site that compensates for the specific permitted impact, and identify the specific areas of the CWM site that are proposed for credit in future projects;

(b) Include separate protection instruments for each area of the CWM site (existing and proposed);

(c) Provide a separate monitoring program for each section of the CWM site (existing and proposed);

(d) Provide a table showing how much credit, in acres under suitable mitigation ratios, is being claimed for each wetland function and value that will be enhanced or replaced by the CWM site.

(3) If the applicant elects to pursue this option, he/she does so completely at his/her own risk. CWM in advance does not create the presumption that the proposed future wetland impact is a permissible action, or that the CWM will be authorized as suitable CWM for any application. A separate alternatives analysis conducted under OAR 141-085-0029(4) shall be required for each and every separate individual removal-fill permit application.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0171

Mitigation for Temporary Impacts

Projects that do not result in the permanent loss of wetland functions and values, must, as part of the application, provide a rehabilitation plan for temporary impacts, including:

(1) Plans and specifications for rehabilitating the area of temporary impacts, including grading plans and planting plans, timeline and location of fill disposal areas; and

(2) Planting plans shall specify species, number and spacing. If mature trees are lost as a result of the temporary impact, such trees shall be replaced at a ratio of 1.5:1.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0176

Security Bonding and Instruments

(1) Financial Security Instruments are required for direct CWM projects for CWM sites greater than (two-tenths) of an acre. To ensure compliance with CWM requirements, the Agency may allow for any of the following types of financial security instruments:

- (a) Surety bond; or
- (b) Certificate of Deposit; or
- (c) Irrevocable letter of Credit

(2) No financial security instrument is required for projects conducted by government agencies.

(3) Financial Security Form: The applicant shall file the financial security instrument (s) on a form prescribed and furnished by the Agency. The financial security instrument(s) shall be made payable to the Oregon Division of State Lands.

(4) Commencement of the liability period. The period of liability shall begin at the time of authorization issuance. The liability period shall be established by the Agency and be clearly stated in the removal-fill authorization.

(5) Determining the financial security instrument amount. The Agency shall set the amount of the financial security instrument based on the estimated cost of implementing, maintaining and monitoring the CWM if the Agency were to carry out the CWM plan as authorized by the removal-fill authorization. The applicant may submit cost estimates for the construction, maintenance and monitoring of the proposed CWM for consideration by the Agency.

(6) General terms and conditions of financial security instruments.

(a) The shall be in an amount determined by the Agency as provided in OAR 141-085-0176(5) of these rules and be made payable to the "Oregon Division of State Lands".

(b) The financial security instrument shall be conditioned upon faithful performance of all of the requirements of these rules as well as the conditions of the removal-fill authorization.

(c) Liability period. The permit holder's liability under the financial security instrument shall be for the duration of responsibility for the CWM as set out in the approved removal-fill authorization and these rules. Except as approved by the Agency, a financial security instrument shall be posted to guarantee specific phases of the required CWM provided the sum of the bonds authorized for the phases equals or exceeds the total amount required to complete the CWM. The scope of work to be guaranteed and the liability

assumed under each phase of the instrument shall be specified in detail in the authorization and financial security instrument form.

(7) Surety bonds: Surety bonds shall be executed by the permit holder and a corporate surety licensed to do business in Oregon. Such surety bonds shall be not be cancelable during their term.

(8) Certificates of Deposit; certificates of deposit shall be assigned to the Agency, in writing, and upon the books of the bank issuing such certificates.

(9) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the state of Oregon.

(b) The letter must be irrevocable prior to release by the Agency.

(c) The letter must be payable to the "Division of State Lands" in part or in full upon demand by and receipt from the Agency of a notice of forfeiture issued in accordance with OAR 141-085-0176 of this rule.

(10) Financial Security Instrument Replacement. The Agency may allow a permit holder to replace an existing financial security instrument with another if the total liability is transferred to the replacement. The Agency shall not release an existing financial security instrument until the permit holder has submitted and the Agency has approved the replacement. Replacement of a financial security instrument shall not constitute a release under OAR 141-085-0176 of these rules.

(11) Financial Security Instrument Release. The Agency shall authorize release of the financial security instrument when the CWM meets the requirements of the CWM plan and conditions of the removal-fill authorization. The permit holder shall file a request with the Agency for the release of all or part of a financial security instrument. The request shall include:

(a) The precise location of the CWM area.

(b) The permit holder's name.

(c) The removal-fill authorization number and the date it was approved.

(d) The amount of the financial security instrument filed and the portion sought to be released.

(e) The type and appropriate dates of CWM work performed.

(f) A description of the results achieved relative to the permit holder's approved CWM plan.

(12) Forfeiture of financial security instruments. The Agency shall declare forfeiture of all or part of a financial security instrument for any removal-fill authorization project area or an increment of a project area if CWM activities are not conducted in accordance with the approved CWM plan or the permit holder defaults on the conditions under which the financial security instrument was posted. The Agency shall identify, in writing, the reasons for the declaration.

(13) Determination of Forfeiture Amount and Utilization of Funds. The permit holder shall forfeit the amount of the financial security instrument for which liability is outstanding and either utilize funds collected from bond forfeiture to complete the CWM on which bond coverage applies or deposit the proceeds thereof in the Oregon Wetlands Mitigation Revolving Fund Account for use in the payment of costs associated with wetland mitigation activities.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0240

Purpose

(1) The purpose of these rules is to set out the policy of the Division of State Lands relating to estuarine mitigation. Mitigation is required as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

(2) The purpose of mitigation is to maintain the functional characteristics and processes of an estuary — such as its natural biological productivity, habitats and diversity of native species, unique features and water quality — when intertidal or tidal marsh resources are destroyed by removal or fill activities.

Stat. Auth.: ORS 196.825; ORS 196.830
Stats. Implemented: ORS 196.800- 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0244

Application and Review Procedure

(1) Whenever any person submits an application for permit for filling or removal of material from an intertidal or tidal marsh area, the Agency shall advise the applicant that mitigation will be required as a condition of any permit for such activity as may be issued.

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(2) The Agency shall notify the applicant that the application for permit is not complete until a written proposal for mitigation has been received.

(3) The Agency shall review any application for intertidal removal or fill permit in conjunction with a written mitigation proposal. The Agency's review shall consider the statutory criteria set out in ORS 196.830 to determine whether a permit shall be issued. When a permit is to be issued, the Agency shall consider the mitigation proposal and determine its adequacy in accordance with these rules.

(4) The Agency shall review and process the application in the same manner as described in OAR 141-085-0026, 0027, 0028, and 0029.

(5) Each application for a removal or fill permit involving mitigation shall provide the following information relating to mitigation in addition to such other information as may be required:

(a) A location map and site plan of the area that will be affected by intertidal removal and fill. The development site plan must show water depths and land surface elevations relative to Mean Lower Low Water datum. The development site plan shall also show the boundaries and area of each estuarine habitat type present at the site. (OAR 141-085-0246 thru 141-085-0254 for a description of estuarine habitats found in Oregon estuaries);

(b) A written mitigation proposal for the intertidal removal or fill activity described in the application. The mitigation proposal shall comply with and supply information as required under OAR 141-085-0136, 0141 and 0146. The mitigation site plan must show water depths and land surface elevations relative to Mean Lower Low Water datum. The mitigation site plan shall also show the boundaries and area of each estuarine habitat type present at the site;

(c) Any provisions of the comprehensive land use plan for the area as those provisions relate to the proposed intertidal removal-fill site and the proposed mitigation site.

(6) In reviewing an application for a removal-fill permit involving mitigation, the Agency shall determine:

(a) The adverse affects of the proposed activity, i.e., the type and areas extent of habitats destroyed or adversely affected; the nature and magnitude of associated water quality degradation; unique features destroyed or adversely affected;

(b) The extent of compensating activity inherent in the proposed activity, e.g., uplands converted to intertidal or shallow subtidal areas; water quality enhancement caused by improved circulation or flushing. Creation of a subtidal area by removing material from an intertidal area is not a compensating activity under these rules;

(c) The availability of areas in which mitigation activities could be performed. The Agency may rely on local comprehensive land use plans and local, state, and federal planning and resource agency staff to develop this information;

(d) How and to what extent an estuarine area will be created, restored or enhanced;

(e) How the proposed mitigation will maintain the functional characteristics and processes of an estuary such as its natural biological productivity, habitats and diversity of native species, unique features and water quality.

Stat. Auth.: ORS 196.825; ORS 196.830
Stats. Implemented: ORS 196.800- 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0246

Estuarine Systems Described

(1) Oregon estuaries have three general aquatic subsystems — marine, brackish, and fresh — which are generally described in terms of the salinity range produced by the interaction between sea water and fresh water runoff. OAR 141-085-0264 shows each major Oregon estuary and the location of various salinity subsystems.

(2) The marine subsystem is frequently a high-energy zone located near the estuary mouth. Strong currents influence the bottom, and the substrate is primarily coarse marine sand, cobble and rock. Salinities are generally high (15 o/oo - 35 o/oo) due to the dominance of ocean water, but may be greatly reduced during high river flows in winter. Kelp and other algal species often cover the rock substrates and form microhabitats for many species. Benthic invertebrates in this zone may include marine and estuarine species. Most fish utilizing this subsystem are marine species.

(3) The brackish subsystem is a relatively protected environment, often characterized by a broad embayment between the estuary mouth and narrow, upriver reaches of tidewater. Normally the bay subsystem has a large percentage of intertidal land. Because it is a transition zone between marine and fresh-water environments, sediments of the subsystem are pri-

marily a mixture of coarse marine sand and fine river-borne silts and clays. Salinities (0.5 o/oo - 15 o/oo) during summer are moderate to high depending on the size of the drainage, but may vary considerably with tidal state and fresh-water flow. Most bays have a wide diversity of habitats with extensive intertidal flats, eelgrass beds, algal beds, and marshes.

(4) Sloughs are narrow, isolated arms of an estuary. Fresh-water drainage into the slough subsystem is usually low and may be from a number of small creeks. The current flowing through a slough channel is usually slow. The salinity is frequently in the brackish range and is influenced by the proximity of the slough to the estuary mouth. Sloughs usually have fine organic sediments and high percentages of intertidal land, consisting of extensive flats, eelgrass beds and marshes.

(5) The fresh-water subsystem includes the upper tidewater portions of the larger tributaries that enter the estuary. A large percentage of the subsystem is narrow, subtidal river channel. Current velocities exhibit dramatic seasonal changes, which influence benthic communities. Salinities are low most of the year (0.0 o/oo - 0.5 o/oo) and portions of the subsystems may be entirely fresh water. Sediments range from fine silts and clays to cobble and gravel. Small fringing marshes occur on the narrow, intertidal portions of the riverbank.

Stat. Auth.: ORS 196.825; ORS 196.830
Stats. Implemented: ORS 196.800- 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0248

Estuarine Land Described

(1) Intertidal and tidal marsh areas of an estuary can be described in terms of substrate material, vegetative cover and salinity regime.

(2) Lower elevation intertidal landforms having a gradual slope and normally occurring in areas sheltered from strong currents are called Beds and Flats. Figure 1 (*Estuarine Mitigation The Oregon Process*, Division of State Lands, April 1984, p 8). Beds and flats may be vegetated or unvegetated depending on current and wave conditions. Locations of beds and flats vary, but most occur in the bay and slough subsystems. Beds and flats are broader, more gradual in slope, and subject to slower current than adjacent shores.

(3) Community structure is influenced by sediment characteristics, currents, wave action, temperature, and salinity. Regularly flooded beds and flats support diverse populations of tube-dwelling and burrowing invertebrates including worms, clams, and crustaceans.

(4) These invertebrates are primarily detritus feeders. Macroalgae, diatoms, and seagrasses also commonly colonize beds and flats. Animals and plants have adapted to the wide ranges of temperature and salinity characteristics of flats. A flat may be relatively stable, or may increase in total area, elevation, or percentage of vegetative cover. Beds and flats seldom decrease in elevation or size under normal conditions.

(5) Higher intertidal landforms that are more than 30 percent covered by erect, rooted herbaceous hydrophytes are called *Tidal Marshes*. The tidal marsh generally occurs from slightly below mean high water (MHW) inland to the line of nonaquatic vegetation. Community composition varies primarily with tidal elevation but is also influenced by sediment type and salinity.

(6) Plant producers in salt marshes include not only marsh grasses but also macroalgae entwined among the vascular plant stems, microalgae on the mud surface, and phytoplankton in the water column. Organic material and nutrients stored by marsh producers are consumed directly or transported to other portions of the estuary as detritus. Marshes provide habitat for fish, invertebrates, waterfowl, and small terrestrial mammals. A diversity of insects lives among and grazes on marsh plants.

[ED. NOTE: Figures referenced in this rule are available from the agency.]
Stat. Auth.: ORS 196.825; ORS 196.830
Stats. Implemented: ORS 196.800- 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84 ; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0250

Substrate Types Described

Substrate material, i.e., grain size, organic content, are very important descriptors for flats because they reflect current and wave conditions as well as the nature of plant and animal productivity in the area:

(1) Rocky-bedrock subclass. The rocky-boulder substrate consists primarily of rock fragments larger than 256 mm in diameter (about one foot). Often finer material is mixed with the larger fragments. The bedrock substrate consists primarily of bedrock surfaces. Unconsolidated sediments may seasonally cover portions of the rock surfaces.

(2) Cobble/gravel subclass. This substrate consists primarily of cobble or gravel (fragments less than 256 mm but greater than 1 mm in diameter), often with shell fragments or finer sediments intermixed.

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(3) Sand subclass. The substrate is composed primarily of sand (75 percent or more of the sediment is 0.0625 mm to 1 mm in diameter) often with particles of other sizes intermixed.

(4) Sand-mud mixed subclass. The substrate is a mixture of sand and mud. Sand-mud flats are typically higher in organic content than sand flats and are firmer and more aerated than mud flats.

(5) Mud subclass. This substrate is primarily silt and clay (75 percent or more of the sediment is less than 0.625 mm in diameter) and is often anaerobic below the surface. Organic content is generally higher than in the other subclasses of flats (except wood debris/organic).

Stat. Auth.: ORS 196.825; ORS 196.835
Stats. Implemented: ORS 196.800- 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0252

Vegetative Covers Described

Estuarine lands typically have different types of vegetative cover depending on substrate, salinity, elevation, and exposure to currents and waves:

(1) Unvegetated. These areas are typically found in high energy zones where heavy wave and current action prevent growth of significant vegetation.

(2) Algal. Intertidal algal beds consist of macroalgae attached to rock and unconsolidated substrates. Genera common in Oregon estuaries include *Enteromorpha*, *Ulva*, and *Fucus* spp.

(3) Seagrass subclass. Intertidal seagrass beds are composed primarily of aquatic vascular plants and algae, such as eelgrass (*Zostera marina*, *Z. nana*), growing on lower intertidal habitats with at least a 30 percent vegetative cover during the majority of the growing season.

(4) Low salt marsh subclass. Low salt marshes are entirely flooded by most high tides, and, therefore, contribute to the estuarine food supply on a daily basis. Tidal runoff is generally diffuse rather than contained by deep ditches. The marsh surface is generally flat but slopes slightly upward toward land. Depending on the substrate a colonizing marsh community near mean high water is comprised of pickleweed (*Salicornia virginica*), seaside arrow grass (*Triglochin maritima*), Seacoast bullrush (*Scirpus maritimus*), or Lyngbyei's sedge (*Carex lyngbyei*) (Frenkel and Eilers 1976). This lower intertidal marsh frequently shows high species dominance and low diversity (Eilers 1975).

(5) Low fresh marsh subclass. Fresh marshes occur inland of salt marshes where soil salinity is low or in the upstream portion of the estuary where fresh water under tidal influence periodically inundates the marsh. Vegetation is herbaceous with sedge (*Carex* sp.), Bullrush (*Scirpus* sp.), and cattails (*Typha* sp.) usually dominant (Akins and Jefferson 1973).

(6) High salt marsh subclass. High salt marshes usually rise abruptly 0.3 to 1.0 m above the adjacent flat, shore, or low marsh (Jefferson 1975). The marsh surface is irregular with generally continuous plant cover interspersed with pot holes, salt pans, and channels. The marsh surface is covered by most higher high tides and tidal runoff follows well-defined channels with natural levees. Diversity is usually greater in high marsh and transition zone species are described by Frenkel, et al (1978).

(7) Scrub/shrub subclass. Shrub wetlands may occur at the inland boundary of the estuary. In Oregon, willow (*Salix* sp.) is the primary semi-aquatic woody plant that is likely to occur. Willow, however, has a low salinity tolerance, and, therefore, is more often found in fresh-water subsystems and the Columbia River Estuary.

(8) Forested wetland subclass. Forested wetlands define the inland boundary of the estuarine zone. In Oregon, Sitka spruce and red alder are typical plants that are likely to occur. This subclass is essentially a fresh water community. Forested wetlands are not a part of the estuarine system for mitigation unless the land surface is inundated at the Highest Measured Tide.

Stat. Auth.: ORS 196.825; ORS 196.835
Stats. Implemented: ORS 196.800- 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0254

Habitat Classification

(1) The ODFW under contract to the Department of Land Conservation and Development (DLCD) has developed an estuarine habitat classification system (Bottom et al., 1979, *Habitat Classification and Inventory Methods Management of Oregon Estuaries*) based on an existing U. S. Fish and Wildlife Service habitat classification system (Cowardin et al., 1979, *Classification of Wetlands and Deep Water Habitats of the United States*, Fish and Wildlife Service, U. S. Department of the Interior).

(2) In addition, ODFW has mapped habitat types in all major Oregon estuaries except the Columbia River and prepared resource inventories for selected inventories for selected estuaries. These reports provide the information base for implementation of mitigation policy. Figure 2 (*Estuarine Mitigation The Oregon Process*, Division of State Lands, April 1984, p 12) shows the Estuarine Mitigation Intertidal Habitat Classification System.

[ED. NOTE: Figures referenced in this rule are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 196.825; ORS 196.835
Stats. Implemented: ORS 196.800- 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0256

Mitigation Policy Generally

Mitigation means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features, and water quality:

(1) No mitigation proposal may be inconsistent with an acknowledged comprehensive land use plan and implementing ordinances for the area where the removal-fill activity will occur or where the mitigative action is located.

(2) Mitigation must occur in the same estuary as the intertidal removal or fill activity except when the alternative is a partial waiver of mitigation under ORS 541.626(4)(a).

(3) Mitigation shall restore or enhance estuarine lands and resources in an area proportionate to the *area affected* by the intertidal removal or fill activity. The *area affected* shall include the actual area where material is removed or filled and any surrounding intertidal or tidal marsh area adversely affected by the activity. At minimum, the mitigation action shall offset the adverse affects of the intertidal or tidal marsh removal-fill activity.

(4) Mitigation shall "maintain" (replace) the natural biological productivity and diversity of native species of the intertidal removal-fill site by creation, restoration or enhancement of an appropriate area of another estuarine habitat. Any shallow subtidal or intertidal or tidal marsh estuarine habitat may be used to "replace" the habitat lost to intertidal removal-fill, but the area will be proportionate to the Relative Value of the habitats involved. The surface area of a mitigation site may not be smaller than the surface area of the development site.

NOTE: The purpose of this policy statement is to ensure conservation of estuarine surface area. However, a mitigation proposal shall not fail because the mitigation surface area is slightly less than the intertidal removal-fill area and no other mitigation area is available or the next alternative would be far more expensive.

(5) Habitat types found in Oregon estuaries have been evaluated and compared in terms of natural biological productivity and diversity of native species by trained scientists and natural resource managers knowledgeable and familiar with the physical, biological, and chemical processes of estuaries. The result of this evaluation is a set of Relative Values that can be used to determine how much area of one habitat is needed to mitigate each acre of another habitat lost to intertidal removal-fill. Figures 3 and 3A (*Estuarine Mitigation The Oregon Process*, Division of State Lands, April 1984, p 16) are a matrix of habitat characteristics and Relative Values for habitats found in Oregon estuaries:

(a) The base Relative Values for estuarine habitats shall range from 1.0 to 6.0;

(b) The Agency may adjust the Relative Value of any habitat type (except for relative values already established in a mitigation bank agreement) if site conditions and characteristics such as very low or exceptionally high resource values warrant such adjustment to carry out the provisions of the Removal-Fill Law. Such adjustment may not exceed 25 percent of base Relative Value in either direction.

(6) The equation for determining how much intertidal or tidal marsh area is required for mitigation shall be:

AM = (RVd/RVm) (AD) where
AM = Area of mitigation site
RVd = Adjusted Relative Value of the development site
RVm = Adjusted Relative Value of the mitigation site
AD = Area of development site

(7) The equation for determining how much shallow subtidal area is required for mitigation shall be:

AM = 2.0(RVd/RVm) (AD)

(8) Note that if shallow subtidal habitats are offered as mitigation, the required surface area is twice the size of the surface area required if an intertidal or tidal marsh area of equal Relative Value is offered. The surface area of the mitigation site (AM) may not be smaller than the surface area of the development site (AD).

(9) Figure 4 (*Estuarine Mitigation The Oregon Process*, Division of State Lands, April 1984, p 17) shows the relationship between the adjusted

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Relative Values of the development and mitigation sites and the ratio of the Mitigation Area to the Development Area (AM/AD) when the habitat replacement occurs under OAR 141-085-0256(4) of this rule.

(10) The Mitigation Credits attributable to any created or restored habitat may be obtained by multiplying the adjusted Relative Value of the created or restored habitat by the number of acres affected.

(11) The Mitigation Credits attributable to any enhanced habitat may be obtained as follows:

(a) Obtain the base Relative Value of the existing habitat from Figures 3 or 3A (Estuarine Mitigation The Oregon Process, Division of State Lands, April 1984, p 16) and adjust appropriately;

(b) Estimate or otherwise determine what the adjusted Relative Value of the affected habitat will be after mitigation occurs;

(c) Subtract (a) from (b) to obtain enhancement Relative Value;

(d) Multiply the enhancement Relative Value (c) times the number of acres enhanced.

(12) Mitigation shall "maintain" the unique features of estuaries that may be affected by intertidal removal-fill projects. The term "unique features" is defined in OAR 141-085-0010;

(a) The Agency intends to rely upon acknowledged comprehensive land use plans for guidance in identifying "unique features" for mitigation purposes. Proposed intertidal removal-fill activities involving unique features shall be scrutinized carefully to determine whether or not a permit should be issued. If a permit is issued, mitigation shall be in-kind to the maximum extent possible and shall include the habitat replacement required under OAR 141-085-0256(4) of this rule;

(b) The objective of mitigation involving unique features shall be to replace lost habitat by substituting and, additionally, to replace or relocate as much of the unique feature as possible.

(13) Mitigation shall "maintain" habitats and diversity of native species. The law does not mandate that every habitat and species affected by intertidal removal and fill be replicated in the mitigation proposal. However, the law does require consideration of whether or not habitat or diversity of native species of an estuary generally will be adversely affected by an intertidal removal or fill, and if so, what mitigation will offset the impact. The Agency will maintain habitats and diversity of native species through habitat replacement required under OAR 141-085-0256(4) of this rule;

(a) "In-kind" or "like-kind" mitigation will be encouraged whenever possible by approving mitigation proposals and mitigation banks that involve a diversity of resource-habitat types. The Agency will maintain a record, by estuary, of the amounts and types of habitats involved in intertidal removal-fill sites and mitigation sites. No additional mitigation is required under this subsection unless the Agency determines that a mitigation proposal under OAR 141-085-0256(4) of this rule would reduce or impair habitats and diversity of native species.

(14) Mitigation shall maintain "water quality" through enhancement of physical, chemical, and biological characteristics of the waters at and near the site;

(a) Oregon has stringent water quality standards that the Agency routinely incorporates into removal-fill permits. The Agency will not approve a development activity that reduces water quality to a persistent level below state water quality standards, nor will the Agency approve a mitigation proposal that would degrade water quality. The Agency will rely on state and federal resource agencies, primarily DEQ for guidance on water quality issues;

(b) A mitigation proposal that produces an identifiable enhancement in estuarine water quality may be used to offset a portion of the resource losses of an intertidal removal-fill activity provided that the mitigation proposal also includes habitat replacement under OAR 141-085-0256(4) of this rule in an amount at least equal to the area affected by the intertidal removal and fill;

(c) A mitigation proposal claiming water quality enhancement as a mitigative action shall describe the action in detail and explain why and how the project will enhance water quality. The proposal shall identify the nature and areas extent of habitats affected by the water quality enhancements. A water quality enhancement activity mandated by a state or federal agency to raise water quality to state or federal standards is not mitigation under this section;

(d) If the Agency determines that the water quality enhancement proposal will significantly enhance water quality, mitigation credits may be determined as provided in OAR 141-085-0256(9) of this rule.

NOTE: An acceptable mitigation project must include creation, restoration, or enhancement of an estuarine area approximately equal to the intertidal removal-fill area. A project that enhances water quality may serve as mitigation once sufficient estuarine area has been created, restored, or enhanced to meet the conservation of surface area requirement.

(15) Activities that do not require mitigation even though they may involve intertidal removal include:

(a) Maintenance dredging — Provided that the applicant can show that the site has been dredged before and is part of a regularly used project. First time dredging activities that remove intertidal lands to obtain water depth will require mitigation;

(b) Aggregate mining — Provided that the site has been used historically for aggregate removal on a periodic basis.

(16) Examples of activities that are not considered mitigation within the meaning of ORS 196.830 except when mitigation would otherwise be waived in part under ORS 196.830:

(a) The transfer of private intertidal estuarine lands to public ownership (Att. Gen. Op. 3774, 1976);

(b) The dedication of intertidal estuarine lands for natural uses;

(c) Large scale piling and dolphin removal unless associated habitats would be enhanced by the removal through increased circulation;

(d) Creation of subtidal lands except when the area was originally upland. In general, creation, restoration, and enhancement of subtidal lands produce less mitigation credit than similar actions relating to intertidal lands. Less credit is given because habitat replacement is not "in-kind," i.e., not intertidal as are the lands affected by the removal-fill activity. For purposes of these rules, the creation, restoration, or enhancement of a subtidal habitat will produce one-half the mitigation credits produced by an intertidal area of the Relative Value.

NOTE: The Relative Values for subtidal habitats may be adjusted up to 25 percent up or down in the same manner as intertidal habitats.

(17) Examples of areas and activities considered suitable for restoration and enhancement activities include:

(a) Areas where poor water quality, or similar degradation, limits fish and shellfish production and harvest or public recreation;

(b) "Dredge spoil islands" which could be lowered to create or restore intertidal surface area;

(c) Tide flat or tidal marsh areas suitable for restoration;

(d) Areas where circulation or flushing can be restored or enhanced by breaching dikes or roadfills or removing pile groups or structures.

(18) Mitigation sites and activities need not be fully developed biologically at the time of acceptance, but there must be a high probability of success associated with the proposed action. There is no penalty assessed for a mitigative action that takes time to produce the anticipated resources and habitats;

(a) The Agency may require bonding in an amount sufficient to cover the costs of site acquisition, any necessary physical alterations, monitoring and contingencies. The need for bonding will be considered especially carefully in cases where mitigation actions will be taken after the development project, or in cases where the results of the mitigation action will not occur for several years.

NOTE: Late maturing projects are not as acceptable as those where good results may be anticipated in one or two years.

(19) The Agency will require monitoring of a mitigative action to determine performance over time in the same manner as described in OAR 141-085-0151.

(20) The Agency may require funding for research in cases where the ramifications of a given mitigation action are uncertain. Such requirement shall be set out in detail in the authorization.

(21) The procedures described in this section are suitable for estimating the mitigation liabilities and credits of a proposed intertidal or tidal marsh removal-fill project and the attendant mitigative action. In most cases, these guidelines will produce a mitigation proposal acceptable to the Agency and interested parties;

(a) However, estuarine habitats are diverse and dynamic, and the circumstances of any given application may require the Agency to amend or adjust mitigation proposals to carry out the provisions of the Removal-Fill Law. Such right is reserved to the Agency.

(22) The Agency shall require security bonding for estuarine mitigation in the same manner as described in OAR 141-085-0176.

[ED. NOTE: Figures referenced in this rule are available from the agency.]

Stat. Auth.: ORS 196.825; ORS 196.835

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0257

Estuarine Resource Replacement

(1) As used in this section, "estuarine resource replacement" means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features and water quality.

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(2) Except as provided in OAR 141-085-0257(4) of this section, the Agency shall require estuarine resource replacement as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

(3) If the Agency requires estuarine resource replacement, the Agency shall consider:

- (a) The identified adverse affects of the proposed activity;
- (b) The availability of areas in which replacement activities could be performed;
- (c) The provisions of land use plans for the area adjacent to or surrounding the area of the proposed activity;
- (d) The recommendations of any interested or affected state or local agencies; and
- (e) The extent of compensating activity inherent in the proposed activity.

(4) Notwithstanding any provisions of this chapter and ORS Chapter 195, 197 or the statewide planning goals adopted there under to the contrary, the Agency may:

(a) Waive estuarine resource replacement in part for an activity for which replacement would otherwise be required if, after consultation with appropriate state and local agencies the Agency determines that:

- (A) There is no alternative manner in which to accomplish the purpose of the project;
- (B) There is no feasible manner in which estuarine resource replacement could be accomplished;
- (C) The economic and public need for the project and the economic and public benefits resulting from the project clearly outweigh the potential degradation of the estuary;
- (D) The project is for a public use; and
- (E) The project is water dependent or the project is publicly owned and water related; or

(b) Waive estuarine resource replacement wholly or in part for an activity for which replacement would otherwise be required if the activity is:

(A) Filling for repair and maintenance of existing functional dikes and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(B) Riprap to allow protection of an existing bankline with clean, durable erosion resistant material when a need for riprap protection is demonstrated that cannot be met with natural vegetation and no appreciable increase in existing upland will occur;

(C) Filling for repair and maintenance of existing roads and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(D) Dredging for authorized navigation channels, jetty or navigation-aid installation, repair or maintenance conducted by or under contract with the Army Corps of Engineers;

(E) Dredging or filling required as part of an estuarine resource restoration or enhancement project agreed to by local, state and federal agencies; or

(F) A proposed alteration that would have negligible adverse physical or biological impact on estuarine resources.

(5) Nothing in this section is intended to limit the authority of the Agency to impose conditions on a permit under ORS 196.825(4).

Stat. Auth.: ORS 196.825; ORS 196.830
Stats. Implemented: ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0262

Mitigation Trust Fund

(1) The Agency may establish an Oregon Mitigation Trust Fund to provide loans for approved mitigation banks.

(2) Funds for the Oregon Mitigation Trust Fund may be provided by gift, bequest, donation, grant, or other similar source.

(3) Funds shall be loaned for a period not to exceed ten years. Repayment of the principal shall require no more than ten annual installments.

(4) Funds shall be loaned at not more than the prime rate with interest on the unpaid balance payable annually on the anniversary of the loan.

(5) The highest priority for loans will be given to mitigation banks in deep draft development estuaries. The next highest priority shall be given to mitigation banks in shallow draft estuaries.

Stat. Auth.: ORS 196.640; ORS 196.645; ORS 196.650
Stats. Implemented: ORS 196.600- 196.692
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0263

Estuarine Mitigation Banks

(1) The mitigation needs of an intertidal removal-fill activity can be met using mitigation "credits" stored in a "mitigation bank." Mitigation credits result from a mitigative action accomplished under agreement with the Agency. Such credits can be used to offset the mitigation needs of projects that occur at some time after the mitigation bank is created.

(2) A "Mitigation Credit," the currency of a mitigation bank, is the product of the adjusted or enhancement Relative Value of a habitat type and the number of acres affected by the mitigation action(s). For example, a mitigation action might involve a large diked former brackish marsh that could be restored to the estuarine system by breaching dikes. The site might yield acreage of high brackish marsh (Relative Value 4.0), low brackish marsh (Relative Value 5.0), and unvegetated brackish sand flats (Relative Value 3.0) that could be used for mitigation. Based on five acres of each habitat type, the bank would have some 60 mitigation credits available to offset mitigation liabilities of future projects.

(3) The following rules are established for the creation and use of mitigation banks and are to be used in conjunction with OAR141-085-0421.

(a) A mitigation bank may be created in any estuary to provide mitigation for one or more development projects in that estuary. More than one bank may be created in any estuary. Any legal entity may create a bank;

(b) Mitigation banks shall be created by written agreement with the Agency and may be administered by the Agency. Such agreements shall provide the basis for creation and operation of the bank and shall specifically provide for the following:

(A) The exact location of affected real property;

(B) Proof of ownership or control, i.e., deed, title report;

(C) The nature and extent of the mitigative action. This analysis will require information about site salinity, elevation, wave and current actions, substrate, and other physical and biological characteristics;

(D) How and when the mitigative action will be performed;

(E) A statement of informed opinion as to what habitat types will result from the action and a statement as to Relative Value of each anticipated type;

(F) How the resulting habitat changes will be monitored and evaluated;

(G) How the mitigation site will be protected, i.e., dedication, conservation easement, deed;

(H) How funding for necessary construction or alteration work will be guaranteed, i.e., bonding;

(4) The Agency may authorize creation of mitigation banks making use of restoration of estuarine lands caused by a naturally occurring or human activity that occurred after July 21, 1979, even though mitigation through restoration was not the intent of the action;

(a) Such mitigation banks shall be created under the procedures set out in OAR 141-085-0263(2) of this rule.

(5) Applicants for removal and fill permits requiring mitigation are not obligated, or automatically entitled, to use an existing mitigation bank to meet the mitigation needs of any project. Permit applicants must negotiate directly with the owner of a bank to secure the right to use the bank. Agreements between the owner of a bank and a permit applicant are subject to the Agency 's approval as to the number of mitigation credits charged against the bank.

Stat. Auth.: ORS 196.600- 196.665; ORS 196.825
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0264

Maps and Charts

The following maps and charts are adopted by reference and are available from the Division of State Lands (Estuarine Mitigation The Oregon Process, Division of State Lands, April 1984, p 25).

(1) Salinity map, Columbia River.

(2) Salinity map, Necanicum River.

(3) Salinity measuring stations, Nehalem River.

(4) Mean quarterly salinities, Nehalem Bay.

(5) Salinity Measuring Stations, Tillamook Bay (Two maps).

(6) Mean quarterly salinities, Tillamook Bay (Two charts).

(7) Salinity Measuring Stations, Netarts Bay.

(8) Mean quarterly salinities, Netarts Bay.

(9) Salinity Measuring Stations, Nestucca River.

(10) Mean quarterly salinities, Nestucca River.

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- (11) Salinity Measuring Stations, Salmon River.
 - (12) Mean quarterly salinities, Salmon River.
 - (13) Salinity Measuring Stations, Siletz Bay.
 - (14) Mean quarterly salinities, Siletz Bay.
 - (15) Salinity Measuring Stations, Yaquina Bay.
 - (16) Mean quarterly salinities, Yaquina Bay.
 - (17) Salinity Measuring Stations, Alsea Bay.
 - (18) Mean quarterly salinities, Alsea Bay.
 - (19) Salinity Measuring Stations, Siuslaw River.
 - (20) Mean quarterly salinities, Siuslaw River.
 - (21) Salinity Measuring Stations, Umpqua River.
 - (22) Mean quarterly salinities, Umpqua River.
 - (23) Salinity Measuring Stations, Coos Bay (South Slough).
 - (24) Mean quarterly salinities, Coos Bay (South Slough).
 - (25) Salinity Measuring Stations, Coos Bay.
 - (26) Mean quarterly salinities, Coos Bay.
 - (27) Salinity Measuring Stations, Coos Bay (Isthmus Slough).
 - (28) Mean quarterly salinities, Coos Bay (Isthmus Slough).
 - (29) Salinity Measuring Stations, Coquille River.
 - (30) Mean quarterly salinities, Coquille River.
 - (31) Salinity Map, Rogue River.
 - (32) Salinity Map, Chetco River.
- Stat. Auth.: ORS 196.825; ORS 196.835
Stats. Implemented: ORS 196.800-196.990
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0266

Tidal Elevations in Oregon Estuaries

The figures and tables in Exhibit 1 (*Estuarine Mitigation The Oregon Process*, Division of State Lands, April 1984, p 47) illustrate the elevations of specified tidal datum for each Oregon estuary. The tables will assist in locating areas subject to the mitigation requirement.

Stat. Auth.: ORS 196.825; ORS 196.835
Stats. Implemented: ORS 196.800- 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0400

Purpose

These rules describe when, and under what conditions, the Agency will allow mitigation banking as a means of wetland compensation when fill or removal of material is proposed in wetlands regulated by the State of Oregon. Mitigation banking is used to provide larger scale compensatory wetland mitigation in advance of anticipated smaller wetland losses. These rules also specify the requirements to obtain authorization to develop a wetland mitigation bank.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0406

Applicability

- (1) These rules shall apply to:
 - (a) All wetland mitigation banks proposed after rule adoption; and
 - (b) Existing mitigation banks that are substantially modified after rule adoption.
- (2) The sponsor of a mitigation bank that has been proposed, is under construction, or was established prior to the adoption of these rules, may request that the Agency apply the provisions of these rules to the proposed, under construction, or established bank.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0410

Policies

- (1) Mitigation banks, as described under the Oregon Wetlands Mitigation Bank Act of 1987 (ORS 196.600 through 196.665), can only be used to provide compensatory wetland mitigation for anticipated losses in wetland function(s) and value(s) when on-site mitigation is not practicable or when off-site mitigation is environmentally preferable.
- (2) The availability or use of mitigation banks shall not:
 - (a) Create a presumption that the Agency will be more willing to allow wetland losses under the Removal-Fill Law (ORS 196.800 through 196.990); or
 - (b) Eliminate the requirement to fully demonstrate that the applicant for a Removal-Fill Permit has considered alternatives that avoid and/or minimize losses to jurisdictional wetlands; and

- (c) Eliminate the requirement to comply with these rules.
- (3) Both freshwater and estuarine mitigation banks shall only be debited for wetland losses pursuant to the provisions of ORS 196.620 regarding the mitigation service area limits of all banks.
- (4) Mitigation banks shall be designed to compensate for expected or historic wetland losses to:
 - (a) Ensure maintenance of regional wetland function in their service area;
 - (b) More closely match the demand for wetland credits with wetland losses; and
 - (c) Meet other ecological or watershed needs as determined by the Agency.
- (5) The long-term goal of mitigation banks is to provide compensatory wetland mitigation in advance of wetland losses.
- (6) Mitigation banks shall be subject to all rules governing freshwater and estuarine resource replacement in OAR 141-085-0102 thru 141-085-0266.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0421

Requirements to Establish a Mitigation Bank

- (1) All persons proposing to establish a mitigation bank shall:
 - (a) Meet with the Agency to discuss their proposed bank and the content of their Mitigation Bank Prospectus.
 - (b) Prepare and submit a Mitigation Bank Prospectus to the Agency.
- (2) The Mitigation Bank Instrument shall contain the following elements, as applicable:
 - (a) The location of the proposed bank and identification of service area (indicated through the use of maps or aerial photographs clearly showing recognizable geographic place names, features, and/or watershed boundaries).
 - (b) Demonstration of need for the bank as shown by past removal-fill activities, projected demographics for the proposed service area, statements of expected activities from the local planning agency, and like documentation.
 - (c) List of adjacent property owners within five hundred (500) feet of any boundary of the proposed bank.
 - (d) Proof of ownership of, or explicit legal and recordable permission granted by the landowner to perpetually dedicate the land upon which the bank and any associated buffer is proposed.
 - (e) Site plan for the mitigation area indicating the location of hydrogeomorphic and Cowardin wetland classes to be produced at the site, areas where grading will be required, location of buffers, vegetation planting plan, etc.
 - (f) Description of former or current uses of the proposed bank site which may have resulted in contamination by toxic materials.
 - (g) Description of the ecological goals and objectives of the bank.
 - (h) Description of the degree to which the bank potentially will provide wetland functions such as flood storage and shoreline protection, wildlife and fisheries habitat, wildlife corridors, and/or filtration of nutrients and pollution reduction.
 - (i) Description of the effects of adjacent existing, potential, and proposed land uses on the proposed bank.
 - (j) Description of the wetland losses by hydrogeomorphic and Cowardin wetland classes for which the bank will be designed to offer credits.
 - (k) Description of the specific and measurable performance standards against which the development of the credits in the bank will be judged.
- (3) Description of reference site(s), if proposed, and their relationship to OAR 141-085-0421(2)(j) of these rules.
- (m) A site assessment of the proposed bank area providing information on the:
 - (A) Hydrogeomorphic and Cowardin wetland classes;
 - (B) Ecological baseline characterizing the level of each function (if the site is currently a wetland), as well as vegetation, soils, hydrology, and wildlife habitat and usage; and
 - (C) Results of a wetland determination or delineation.
- (n) Description of the method(s) used to determine the availability of credits at the proposed bank, as well as those that will be used to account for and report credit and debit transactions.
- (o) Total estimated project cost itemized by major cost elements (for example, land acquisition, bank design and construction, consulting and legal fees, maintenance and monitoring over the long-term, and contingency fund).

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(p) Proof that the sponsor has the financial resources to undertake, operate, and maintain the proposed bank over the long-term, as well as the ability to correct project deficiencies or performance failures.

(q) Description of the sampling protocols (including sampling frequency and seasonal schedule) used to monitor bank elements, and the name(s) and qualifications of the person(s) who will conduct such monitoring.

(r) Detailed contingency plan describing how project deficiencies or performance failures will be corrected, including assignment of responsibilities for failures such as earthquakes, floods, vandalism, damage by pests and wildlife, invasion by undesirable vegetation, etc.

(s) Proof in the form of written approval from the local government and in zone designations for the mitigation bank site and surrounding lands, applicable overlay zones, permitted and conditional uses in base and overlay zones, applicable local policies, and identification of necessary local permits and other approvals that the wetland bank is consistent with the requirements of all applicable comprehensive plans and land use regulations, watershed management plans, and/or other applicable land use plans.

(t) All items required in Compensatory Mitigation Plans provided in OAR 141-085-0141.

(u) Drafts of proposed long-term protection measures (such as conservation easements, deed restrictions, donation to non-profit environmental groups, etc.), and management plans, and mechanisms for funding. Prior to approval of the Instrument, these documents shall be signed and recorded with the appropriate government agency.

(v) Statement indicating when each of the conditions of the Instrument will terminate, unless they are perpetual in nature.

(3) The Agency will review the Prospectus for sufficiency, and shall notify the sponsor in writing of the sufficiency of the document within thirty (30) calendar days of receipt. Each submittal containing substantial revisions shall restart the time clock.

(4) Any Prospectus received by the Agency that does not provide sufficient information for review, or that appears to present a proposal in which the Agency will not participate, will be returned to the sponsor with a written explanation.

(5) The Agency reserves the right to decline to participate in the development of a Mitigation Bank Instrument and may, instead, suggest other options to the sponsor including the standard Removal-Fill Permit process, or participation in other wetland stewardship options if the sponsor cannot demonstrate:

- (a) Need for the mitigation credits; or that
- (b) The bank is technically feasible and ecologically desirable.

(6) Upon determining that the Prospectus is sufficient, the Agency shall give public notice of the Prospectus. This notice shall be called "Intent To Create A Mitigation Bank" and shall:

(a) Be published not less than once each week for three (3) successive weeks in a statewide newspaper and in a newspaper of general circulation in the area where the mitigation bank will be located.

(b) Be sent to city and county planning departments, and state agencies having jurisdiction over the mitigation bank site(s), adjacent landowners, and persons requesting such notices.

(c) Briefly describe the proposed mitigation bank and reference the Prospectus provided by the bank sponsor.

(d) Indicate that the Agency for thirty (30) calendar days from the date of the public notice shall accept comments.

(7) A Mitigation Bank Review Team (MBRT) shall be formed within thirty (30) calendar days of the date of the public notice. An MBRT shall not have more than ten (10) members, and shall be chaired jointly by a representative of the Agency and, if applicable, the Corps. When the Corps does not participate in a mitigation bank proposal, the Agency may, but is not obligated to, invite other federal involvement.

(a) The members of a MBRT shall be selected jointly by the Agency and the Corps. Each of the following agencies will be asked to nominate a representative to participate in each MBRT:

- (A) Oregon Department of Environmental Quality;
- (B) Oregon Department of Fish and Wildlife;
- (C) Oregon Department of Land Conservation and Development;
- (D) U.S. Fish and Wildlife Service;
- (E) U.S. Environmental Protection Agency;
- (F) Soil and Water Conservation District; and
- (G) Local Government Planner, or equivalent.

(b) Other members of the MBRT shall be selected based on the nature and location of the project, particular interest in the project by persons or groups, and/or any specific expertise which may be required by the Agency and the Corps in development of the Instrument.

(8) The MBRT shall:

(a) Review and comment upon the Prospectus, and provide input to the Agency concerning deficiencies noted, and additional information required.

(b) Consider the comments received in response to the notice of "Intent To Create A Mitigation Bank."

(c) Assist with the drafting of the Instrument.

(d) Determine an appropriate level of financial assurance to ensure project development, construction, long-term maintenance and monitoring, and the ability of the sponsor to correct project deficiencies or performance failures.

(e) Review the performance of the bank annually, or more frequently as set by the MBRT, to determine whether it is in compliance with the ecological goals and objectives established in the Instrument, and continues to hold adequate financial resources and assurances to ensure continued long-term operation pursuant to those goals and objectives. This review may include site visits and audits of bank documents at irregular time periods.

(f) The consensus of the MBRT shall be fully considered by the Agency throughout the life of the bank.

(9) A sponsor may begin construction of a bank prior to developing an Instrument by:

(a) Providing detailed documentation of the baseline conditions existing at the proposed site(s) of the bank; and

(b) Receiving written consent from the Agency prior to undertaking any construction. However, such consent from the Agency does not exempt the sponsor from having to apply for, and obtain a Removal-Fill Permit, if required. Written consent from the Agency recognizes the sponsor's intent to create a bank only, but does not guarantee subsequent approval of the Mitigation Banking Instrument by the Agency, which assumes no liability for the sponsor's actions.

(10) The Instrument shall:

(a) Contain all information listed in OAR 141-085-0421(2) of these rules, as well as any other data required by the Agency.

(b) Be approved and signed by the Agency and the sponsor, at the discretion of the Agency.

(c) Be subject to revision over time as mutually agreed to by the signers of the Instrument.

(11) Upon approval of the Instrument, the Agency shall give public notice of the approval of the Mitigation Bank Instrument. This notice shall be called "Notice Of Mitigation Bank Instrument Approval" and shall:

(a) Be published not less than once each week for three (3) successive weeks in a statewide newspaper and in a newspaper of general circulation in the area where the mitigation bank will be located.

(b) Be sent to affected city and county planning departments, affected state agencies, adjacent landowners, and persons requesting such notices.

(c) Briefly describe the proposed mitigation bank and reference the Mitigation Bank Instrument.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665

Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0425

Establishment of Mitigation Credits

(1) Credits can be established by using:

(a) The ratios stipulated in OAR 141-085-0136; or

(b) Any other wetland and habitat functional assessment and evaluation methodology approved by the Agency, which provides that credits within a bank are determined by the difference between the baseline conditions of the bank prior to restoration, enhancement, or creation activities, and the increased wetland functional attributes that result, or are expected to result, from those activities.

(2) Additional credits within the bank may be realized contingent on achievement of the performance standards contained in the Instrument over time and subject to the discretion of the Agency. These credits are derived from the increased wetland functions that accrue as wetlands in the bank improve over time. Wetlands that are enhanced should exhibit a measurable increase in wetland function more readily than those that are created. Credits created by restoration may be subject to certification at an earlier date. Adjustments in credits shall be calculated based on superior performance as follows:

(a) For banks utilizing ratios provided in OAR 141-085-0136(2) or 141-085-0256:

(A) After five (5) years, the remaining enhanced wetland credits within the bank may be increased by no more than one-third and after ten (10)

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years, remaining enhanced wetland credits may be increased by no more than two-thirds;

(B) After ten (10) years or more, the remaining created wetland credits within the bank may be increased by no more than one-half.

(C) For the purpose of calculating available credits by these rules, the new number of credits is determined by multiplying the relative proportion of restored, enhanced, created, and/or protected wetlands and buffers present at the time of bank establishment by the total number of credits remaining.

(b) For banks using wetland assessment methods other than the ratios provided in OAR 141-085-0136(2) or 141-085-0256, remaining credits within the bank may be reevaluated at five (5), and ten (10) year intervals at the discretion of the Agency. A new number of available credits may be realized using the same assessment method as originally employed to determine credits expected to be produced from the bank. OAR 141-085-0425(4) of these rules does not apply when the chosen assessment method evaluates the included upland buffers along with the wetlands because credits for inclusion of upland buffers in the bank shall not be counted twice.

(3) Credits may be granted on an area basis for upland buffers at the discretion of the Agency. The calculation provided here is only for banks using ratios provided in OAR 141-085-0136(2) or 141-085-0256 and wetland functional assessment methods that do not evaluate buffers. However, such credits can only be established if the buffers are included as an integral part of the bank, a majority of credits are produced by the bank are from wetland restoration, enhancement, or creation, and all performance standards required in the Instrument are met. Credits for buffers will be determined as follows:

(a) Five (5) years after construction, credits for buffers may be granted. Depending on the quality of the buffer, between 10 to 20 acres of buffer will produce one (1) acre of wetland credit.

(b) Ten (10) years after construction, credits for buffers may again be calculated. Depending on the quality of the buffer, between 5 to 10 acres of buffer will produce one (1) acre of wetland credit.

(4) Credit for the protection of existing wetlands shall be considered only if:

(a) The area(s) to be preserved exhibit(s) healthy wetland functional attributes that are not likely to be increased appreciably by restoration or enhancement. The existence of "healthy wetland functional attributes" may be evaluated partly through comparison of the level of each function in the wetlands with the levels of the same functions in wetlands (of the same hydrogeomorphic class) identified as being among the least altered in the region or basin;

(b) The functional attributes of the wetlands proposed for protection are clearly threatened by human activities outside of the control of the bank sponsor;

(c) Additional protections such as upland buffers, fencing, and removal of contaminated soils, in addition to appropriate long-term protection measures that will substantially reduce the threat are proposed; and

(d) The applicant provides proof of ownership of, or explicit legal and recordable permission granted by the landowner, to perpetually dedicate the protection of wetland(s) and buffer(s) through any mechanism that unequivocally preserves the functional attributes of the wetland(s);

(e) The applicant provides documentation of the signed and recorded perpetual protection mechanisms.

(5) Mitigation bank credits for conservation in lieu may be granted on an area basis at no less than a 10:1 ratio for wetland(s) protected to wetland(s) lost in compliance with the criteria in OAR 141-085-0131(4).

(6) All adjustments in credits shall be applied only to those credits remaining in, or newly added to, the bank.

(7) The Agency reserves the right to allow a bank sponsor to create credits by improving nonwetland ecological resources such as in-stream channel habitat, riparian floodplains, non-wetland inclusions in wetland/upland mosaics, and other ecosystem components provided that a bank producing credits in such a manner has produced a majority of its credits by wetland restoration, enhancement, or creation. Sponsors seeking to derive credits for nonwetland ecological resources shall develop a method to quantify and compare the derived credits. The method proposed must be acceptable to the Agency, the Federal action agency, and the MBRT.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800-196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0430

Use and Sale of Mitigation Credits

(1) Mitigation credits may only be purchased from a sponsor to offset permitted wetland losses or to resolve violations under the Removal-Fill Law. Credit sales and purchases for future anticipated adverse affects not part of Removal-Fill Permit applications are prohibited.

(2) The maximum number of credits that may be sold in advance of certification of the bank credits by the Agency shall be clearly specified in the Instrument. In no case shall more than thirty (30) percent of the total credits expected to be produced initially by the bank be sold prior to their certification.

(3) The Agency shall not allow the sale or exchange of credits by a mitigation bank that is not in compliance with the terms of the Instrument, the Removal-Fill Law, and all rules governing freshwater and estuarine resource replacement in OAR 141-085-0121 through 141-085-0266. The Agency may consult with the MBRT for the bank in order to determine noncompliance and appropriate remedies, including enforcement action.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0436

Siting of Mitigation Banks

(1) Banks shall be sited in locations where they will conflict to the least extent possible with other existing and potential land uses, while yielding the most functional benefits.

(2) Ecological criteria to be considered in the siting of banks include:

(a) Maintenance and enhancement of wildlife/fish habitat and corridors.

(b) Reliability of hydrological sources.

(c) Ability to provide stormwater storage/flood attenuation.

(d) Ability to enhance the water quality of the watershed.

(e) Ability to provide buffers for the site(s).

(f) Ability to provide a diversity of wetlands.

(g) Proximity to large undisturbed uplands, wetlands or other riverine or aquatic systems.

(h) Absence of disturbance by human (airports, dumping, vehicular intrusion, nearby presence of exotic species, etc.)

(i) Presence of rare plants or animals and the ability of the bank to accommodate them.

(3) Banks on public lands shall be allowed provided that the public agency owning or having authority over the subject land(s) grants its approval and perpetually dedicates the land upon which the bank, and any associated buffer, is proposed.

(4) To the extent possible, the Agency shall require that bank site locations and/or bank construction activities will not result in any adverse affects to state or federally listed species, and that the bank is in compliance with the state and federal endangered species acts.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0440

Removal-Fill Permits for Mitigation Banks

(1) Bank sponsors shall be required to obtain Removal-Fill Permits if any of the actions necessary to create the proposed bank are subject to the requirements of the Removal-Fill Law (ORS 196.800 through 196.990).

(2) When removal-fill permits are not required to establish a mitigation bank, the Instrument shall be accompanied by an order from the Agency.

(3) If a Removal-Fill Permit is required for a bank, the Instrument shall become a part of that permit and an order will not then be required from the Agency.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0445

Appeals

Appeals shall be processed in the manner described in OAR 141-085-0075.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665
Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

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141-085-0610

Purpose

The purpose of these rules is to implement the requirements of ORS 196.635 regarding development of an Oregon Wetlands Priority Plan for inclusion in the Statewide Comprehensive Outdoor Recreation Plan.

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600-196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0620

Definitions

(1) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by State Parks and Recreation Department pursuant to the federal land and Water Conservation Fund Act of 1965, as amended (16 U.S.C.460-L et seq.) ORS 196.635.

(2) "Oregon Wetlands Priority Plan" or "Plan" means a plan developed pursuant to these rules and approved by the State Land Board that establishes a procedure for setting priorities and creates a list of wetlands and interests therein for possible acquisition in accordance with the federal Emergency Wetlands Resources Act of 1986 (Public Law 99-645).

(3) "Emergency Wetlands Resources Act of 1986" means the federal legislation adopted as Public Law 99-645.

(4) "Land and Water Conservation Fund Act" means the federal legislation adopted as Public Law 88-578, as amended. (16 U.S.C. Section 460-L et seq.)

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600-196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0630

Policy

(1) The purpose of the Oregon Wetlands Priority Plan is to promote the protection and effective management of wetlands in the state of Oregon.

(2) The Oregon Wetlands Priority Plan will establish criteria and provide guidance and direction in determining the locations and types of wetlands and interests therein that should receive priority consideration for state acquisition utilizing state dedicated funds from the Oregon Wetlands Mitigation Bank Revolving Fund account or federal monies granted under authority of the Land and Water Conservation Fund Act (Public Law 88-578).

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600-196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0640

Plan Development Process

(1) The Agency shall prepare a draft Oregon Wetlands Priority Plan, consistent with requirements of the Emergency Wetlands Resources Act, for inclusion in the Statewide Comprehensive Outdoor Recreation Plan.

(2) In preparing the draft plan, the Agency shall consult with the Oregon Departments of Fish and Wildlife, Land Conservation and Development, Environmental Quality, Economic and Community Development, and State Parks and Recreation Department and a representative of Oregon's local governments.

(3) Upon completion, the draft plan shall be submitted for comment to:

(a) The state agencies in OAR 141-085-0640(2) of this rule;

(b) Other state agencies including, but not limited to those on the Division of State Lands mailing list;

(c) Federal natural resource and regulatory agencies including but not limited to: the Corps of Engineers, National Park Service, U.S. Fish and Wildlife Service, National Marine Fisheries Services, Environmental Protection Agency, Forest Service, Bureau of Land Management, Natural Resources Conservation Service, Bureau of Reclamation and Federal Emergency Management Administration;

(d) Local governments and special districts including but not limited to port districts, and soil and water conservation districts;

(e) Conservation organizations and interested parties who have requested to be placed on a mailing list maintained by the Agency for such purposes.

(4) The Agency shall hold one or more public hearings to provide opportunity for clarifications, recommendations and other public input on the draft plan.

(5) The Agency shall review and evaluate comments received to determine appropriate revisions to the draft plan.

(6) After consideration of comments received, the Agency shall present to the State Land Board a recommended Oregon Wetlands Priority Plan.

The presentation shall include a summary of comments made on the draft plan and an explanation of how the comments were accommodated in the recommended Plan or otherwise addressed.

(7) The Agency shall submit the Oregon Wetlands Priority Plan, as approved by the Land Board, to the State Parks and Recreation Department for inclusion in the Statewide Comprehensive Outdoor Recreation Plan.

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600-196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0650

Receipt and Application of Funds

(1) Funds made available to the State of Oregon from the federal Land and Water Conservation Fund to achieve the purposes of the Oregon Wetlands Priority Plan shall be transferred by the State Parks and Recreation Department into the Oregon Wetlands Mitigation Bank Revolving Fund Account pursuant to ORS 196.650.

(2) As provided in ORS 196.650 funds received pursuant to OAR 141-085-0650(1) of this rule shall be reserved for disbursement by the Agency for acquisition of wetland parcels or interests therein identified by the Oregon Wetlands Priority Plan.

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600-196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0660

Plan Update

(1) The Agency shall review the Oregon Wetlands Priority Plan annually and update the plan at least every five years under the process set out in OAR 141-085-0640.

(2) The Agency shall report to the State Land Board annually on the status of wetland acquisitions taken under the plan.

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600-196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0100

Purpose and Applicability

(1) This rule sets forth conditions under which a person may, without an individual removal-fill permit from the Agency, place or remove material within waters of the state (including Essential Salmon Habitat as designated in OAR 141-102) for the purposes of fish habitat enhancement as defined by OAR 41-085-0010.

(2) A letter of authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and OAR 141-085-0020.

(5) Unless specified, the terms used in this general authorization (GA) are defined in OAR 141-085-0010.

(6) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805-390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

ADMINISTRATIVE RULES

141-089-0105

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Agency shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

- (a) Be constructed for the sole purpose of improving habitat conditions for fish;
- (b) Consist of fill or removal of material as:
 - (A) Randomly placed rock
 - (B) Deflectors
 - (C) Rock and log weirs
 - (D) Gravel placement
 - (E) Pool and pond construction
 - (F) Back/side channel construction
 - (G) Channel reconstruction
 - (H) Barrier removal and placement of fishways
 - (I) Woody material
- (2) A project is not eligible for this general authorization if:
 - (a) The project fails to meet any eligibility or mandatory requirements.
 - (b) The project diverts a waterway from its natural bed; or
 - (c) The project is not for the sole purpose of improving habitat conditions for fish;
 - (d) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925
Hist: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0110

Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory requirements:

- (1) Be consistent with the Oregon Aquatic Habitat Restoration and Enhancement Guide.
- (2) Demonstrate consistency with the Oregon Department of Fish and Wildlife's requirements under ORS 509.580 to 509.645 for upstream and downstream fish passage.
- (3) Fills shall be of a size appropriate to the stream, as recommended by the Oregon Department of Fish and Wildlife, but in no case exceed 150 cubic yards per site. For purposes of this general authorization, a site can be a single location of the entire project or a component of a project with multiple elements and geographic locations.
- (4) Channel reconstruction projects shall restore pre-channelized morphology to channelized streams by providing for sinuosity and width/depth ratios that emulate the natural stream channel.
- (5) In order to stabilize deflectors, log weirs and other similar structures, the bed and the bank may be stabilized with nonstructural methods or riprap not more than 15 feet upstream and downstream of the structure. Rock fill shall not exceed 50 cubic yards at each site.
- (6) Rock and log weirs and full-spanning boulder weirs may be placed within the bed and banks only if they promote fish passage, prevent streambed degradation and/or recruit spawning gravel and do not require annual reconstruction. Weirs must incorporate a keystone rock or rocks that allow for juvenile fish passage at all flows.
- (7) Deflectors may be placed only if they add stream structure and increase habitat complexity.
- (8) Clean, river-run gravel used for enhancing or improving spawning areas must come from within the same river system as the placement site and not exceed 100 cubic yards per site.
- (9) Pools and ponds shall be designed to allow fish to escape during low water periods. Bed material may be removed to create instream pools and hydrologically connected off-channel ponds, so long as pool depth does not exceed natural maximum scour depth.
- (10) Gravel and bed materials may be removed to create or clear side or back channels.
- (11) Artificial barriers to fish passage including but not limited to culverts, tidegates and road crossings (not exempt from the removal-fill law under OAR 141-085-0020) may be removed and fish passage structures may be placed within the bed and banks of waters of the state.
- (12) The project may convert wetlands to other waters if the project approximates or restores fish habitat lost by past land use activities. The project shall have only minimal adverse impacts to wetlands.

(13) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency (unless exempt) in accordance with OAR 141-100.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0115

Application Requirements; Public Notice Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) Within five (5) calendar days of receipt of the application, the Agency shall provide notice of the application to the local planning department, the local Soil and Water Conservation District, Oregon Water Resources Department, Department of Land Conservation and Development (if the project is in the coastal zone), affected Tribal government, State Historic Preservation Office, Oregon Department of Environmental Quality, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(3) The Agency shall consider comments received within twenty-one (21) calendar days of the notice date. In the event a party fails to comment within the twenty-one (21) calendar day period, the Agency shall assume the party has no objection to the application.

(4) The Agency may waive or shorten the review period described in (3) above upon a showing by the applicant in the application that the interested parties listed in (2) have previously reviewed and approved the project.

(5) The Agency shall notify the applicant within twenty-one (21) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is deemed incomplete, the Agency shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(6) Following the twenty-one (21) day comment period set forth in (3) and not more than forty (40) calendar days from the receipt of a completed application, the Agency will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

- (a) Approve the application and issue a letter of authorization to the applicant;
- (b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or
- (c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Agency may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0120

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

ADMINISTRATIVE RULES

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Agency for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Agency as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Agency.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Agency, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) The authorization holder shall obtain a water right or reservoir permit, if needed, from the Oregon Department of Water Resources if the project involves a water diversion or impoundment.

(13) The authorization holder may use streambed gravels from the trench excavation for a filter blanket.

(14) Upon completion of the project the authorization holder shall report to the Oregon Watershed Enhancement Board on Restoration Inventory Report forms provided by the Agency.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Agency and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Agency makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Agency may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The Agency may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0125

Violation of General Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0130

Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Agency on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0135

Purpose and Applicability

(1) This rule sets forth conditions under which a person may, without an individual removal-fill permit, place or remove material within waters of the state, except estuaries and the Pacific Ocean, for streambank stabilization.

(2) A letter of authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 0020.

ADMINISTRATIVE RULES

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0140

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Agency shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be an active erosion area.

(b) Involve not more than one thousand (1,000) cubic yards of material placed in a one-quarter mile reach of waters of the state for a single project or more than two thousand (2,000) cubic yards for multiple-related projects within a subbasin.

(2) A project is not eligible for this general authorization if:

(a) The project is not for streambank stabilization;

(b) The project area is not currently subject to active erosion.

(c) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085.

(d) The project includes channel relocation and gravel bar alteration;

(e) The project consists entirely of structural streambank stabilization methods (e.g. riprap, bulkheads).

(f) The project involves fill in wetlands exceeding 0.2 (two-tenths) acres.

(g) The project fails to meet any eligibility or mandatory requirements.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0145

Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory standards:

(1) Where revetments, riprap and/or any other structural techniques are unavoidable, they shall be used in combination with nonstructural approaches to streambank stabilization.

(2) Nonstructural approaches such as slope pull-back, willow mats, rock barbs, revegetation with native plant species, log and boulder deflectors, shall be used to the maximum extent possible and where technically feasible.

(3) Only clean, durable rock shall be used as riprap. Riprap used for the toe material shall be placed in an irregular pattern using large boulders or rock clusters.

(4) No material shall be removed in excess of the amount required to construct a toe trench, key material to the bank, or slope the bank.

(5) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency (unless otherwise exempt) in accordance with OAR 141-100.

(6) No material shall be placed in excess of the minimum needed to stabilize the area subject to active erosion.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0150

Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) Within five (5) calendar days of receipt of the application, the Agency shall provide notice of the application to adjacent property owners, Oregon Department of Fish and Wildlife, Department of Environmental Quality, Department of Land Conservation and Development, local planning department, State Historic Preservation Office, affected Tribal governments, local Soil and Water Conservation District, affected Diking and/or Drainage Districts, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice of the application to the appropriate U.S. Forest Service or Bureau of Land Management office.

(3) The Agency shall consider comments received within twenty-one (21) calendar days of the notice date. In the event a party fails to comment within the twenty-one (21) calendar day period, the Agency shall assume the party has no objection to the application.

(4) The Agency may waive or shorten the review period described in (3) above upon a showing by the applicant in the application that the interested parties listed in (2) have previously reviewed and approved the project.

(5) The Agency shall notify the applicant within twenty-one (21) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is deemed incomplete, the Agency shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(6) Following the twenty-one (21) day comment period set forth in (3) and not more than forty (40) calendar days from the receipt of a completed application, the Agency will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Agency may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0155

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Agency for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Agency as soon as possible.

ADMINISTRATIVE RULES

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Agency.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Agency, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(13) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Agency as a part of the project plan.

(14) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(15) Employees of the Agency and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(16) The Agency makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(18) The Agency may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(19) The Agency may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this gen-

eral authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0160

Violation of General Authorization; Enforcement

Violations of the terms and conditions of any general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0165

Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Agency on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0170

Purpose and Applicability

(1) This rule sets forth conditions under which a person may, without obtaining an individual removal-fill permit, may place or remove material from waters of the state (as described in OAR 141-085-0016), except within estuaries and the Pacific Ocean, for certain transportation-related structures including roads, railroads, culverts, bridges, bicycle lanes trails.

(2) A letter of authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

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141-089-0175

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Agency shall determine that the project is eligible and meets the applicable Mandatory Requirements as described in this rule. To be eligible a project must:

(a) Be for the following purposes:

(A) Widening shoulder for new roadside embankment, curbs, trails, sidewalks and rail crossings;

(B) Widening road for additional passing lanes, turn lanes and refuges and travel lanes;

(C) Widening, realigning or removing existing railroad beds;

(D) Widening, realigning or removing existing roads;

(E) Widening, realigning or removing existing bridges or similar structures;

(F) Widening, realigning or removing existing bicycle, pedestrian or other lanes or trails;

(G) Constructing new bicycle, pedestrian or other lanes or trails;

(H) Replacement of culverts or similar water conveyance structures along roads and trails that extend beyond the existing road prism;

(I) Construction of new culverts;

(J) Extension of existing culverts beyond the existing road prism;

(K) Streambank stabilization associated with projects listed in (A) through (J); and

(L) Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; placing new riprap to stabilize a transportation structure foundation.

(b) Be for no more than a total of five thousand (5000) cubic yards of material filled, removed, or altered in waters of the state for a single and complete project.

(c) Be for streambank stabilization associated with a transportation-related project as listed above, with no more than one thousand (1,000) cubic yards of material placed in a one-quarter mile reach of waters of the state for a single project or two thousand (2,000) cubic yards for multiple-related projects within a subbasin.

(d) Involve fill in wetlands of 0.5 acres or less for projects as described above in (a).

(e) Be for test holes, borings and similar activities associated with planning and design of transportation structures.

(2) A project is not eligible for this general authorization if:

(a) The project is not a transportation-related structure as described above;

(b) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(c) The project is located within an estuary or the Pacific Ocean.

(d) The project involves stream channel relocation, other than temporary diversions approved by the Agency.

(e) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0180

Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency in accordance with OAR 141-100; and

(2) A compensatory mitigation plan or compensatory wetland mitigation plan is required pursuant to OAR 141-085 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses. Applicants for projects involving wetland impacts to areas less than 0.2 acres may use indirect compensatory wetland mitigation.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0185

Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the applica-

tion packet provided by the Agency including: A wetland delineation or determination approved in advance of the application by the Agency.

(2) Within five (5) calendar days of receipt of the application, the Agency shall provide notice of the application to the local planning department, the local Soil and Water Conservation District, Department of Land Conservation and Development (if the project is in the coastal zone), affected Tribal government, State Historic Preservation Office, Oregon Department of Environmental Quality, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(3) The Agency shall consider comments received within twenty-one (21) calendar days of the notice date. In the event a party fails to comment within the twenty-one (21) calendar day period, the Agency shall assume the party has no objection to the application.

(4) The Agency may waive or shorten the review period described in (3) above upon a showing by the applicant in the application that the interested parties listed in (2) have previously reviewed and approved the project.

(5) The Agency shall notify the applicant within twenty-one (21) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is deemed incomplete, the Agency shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(6) Following the twenty-one (21) day comment period set forth in (5) and not more than forty (40) calendar days from the receipt of a completed application, the Agency will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Agency may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0190

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Agency for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously

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unknown listed species are encountered during the project, the authorization holder shall contact the Agency as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Agency.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Agency, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Agency as a part of the project plan.

(13) The authorization holder shall ensure that nonstructural approaches to bank stabilization such as slope pull-back, willow mats, rock barbs, revegetation with localized native plant species, log and boulder deflectors, are utilized unless otherwise approved by Agency. Where, riprap and/or other structural techniques are unavoidable, they shall be used in combination with nonstructural approaches. Where riprap is used, the toe material shall be placed in an irregular pattern using large boulders or rock clusters. Only clean, durable rock shall be used as riprap. No concrete or asphalt shall be used.

(14) In the case of road removal, the authorization holder shall ensure that all affected stream and bank areas are restored to their approximate original contour.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Agency and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Agency makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the

resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Agency may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The Agency may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0195

Violation of General Authorization; Enforcement

Violations of the terms and conditions of any general authorization are subject to administrative and/or legal action which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800- 196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0200

Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Agency on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0205

Purpose and Applicability

(1) This rule sets forth conditions under which a person may, without an individual permit from the Agency, place or remove material within waters of the state for the purposes of wetland restoration or enhancement as defined in OAR 141-085-0010.

(2) A letter of authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

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(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0210

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Agency shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be constructed for the specific purpose of restoring or enhancing a wetland such as a project developed and funded by the Wetland Reserve Program, the Oregon Conservation Reserve Enhancement Program, Coastal Wetlands Protection and Enhancement Program or the North American Waterfowl Conservation Act; and

(b) Restore wetland types historically found in the region; and

(c) Restore or enhance wetland functional attributes such as fish and wildlife habitat, water quality and quantity; or

(d) Support the purposes of waterfowl or wetland management within a state or federally designated management area as identified in a management plan for the area.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements.

(b) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085.

(c) The project is proposed primarily for the purpose of storm or waste water management, stock ponds, or aquaculture; or

(d) The project is proposed for the purpose of complying with the requirements of compensatory wetland mitigation under OAR 141-085 unless the project is included in a Wetland Conservation Plan approved by the Agency under ORS 196.678; or

(e) The project is for restoring a wetland previously constructed, restored or enhanced for the purpose of complying with the requirements for compensatory wetland mitigation under OAR 141-085; or

(f) The project is proposed within a Wetland Conservation Plan area and is not in conformance with the approved plan; or

(g) The project is designed to restore or enhance wetlands used as amenities in golf courses, subdivisions or similar settings where their purpose is primarily aesthetic.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0215

Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory requirements:

(1) The project shall have only minimal adverse impact to existing wetlands and result in a measurable increase in wetland functional attributes;

(2) The project may not include clearing or removal of trees from forested wetlands to convert the forested wetland to emergent or open water wetlands, unless the resultant wetland type was historically abundant but currently scarce within the basin;

(3) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency in accordance with OAR 141-100.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0220

Project Guidelines

(1) The wetland restoration or enhancement project should use techniques identified in An Introduction and Users' Guide to Wetland Restoration, Creation and Enhancement developed by the Interagency Work Group on Wetland Restoration.

(2) The following activities are specifically allowed under this general authorization:

(a) Water diversion structures. Water diversion structures may be used to direct flow into restoration or enhancement sites.

(b) Water impoundment structures. Water depth, duration and degree fluctuation in the restored wetland should be characteristic of similar wetlands in the ecoregion. Water control structures may be used to manipulate water levels to simulate historical conditions, including complete drying out of the wetland.

(c) Dikes and ditches. Dikes and/or ditches may be altered or constructed. Relocating existing dikes to expand the floodplain and enlarge wetlands is an appropriate use of this general authorization. All spoil materials should be removed from the wetland or floodplain portion of the wetland site, but some material may be used within the restoration area as long as it assists in accomplishing the objectives of the restoration. Dike and levee slopes should be constructed at between 6:1 and 20:1 unless the wetland site does not allow it due to shape/size.

(d) Dike removal or breaching. For the purposes of restoring seasonal, tidal or other periodic flooding or saturation, dikes may be removed or breached under this General Authorization. Any breach should be sized sufficiently to prevent hydraulic interference in tidal and/or other flooding and to prevent scour. Dike material may be used in the restoration project or moved to an offsite, upland location.

(e) Filling of drainage ditches and or removal of drain tile. Drainage ditches may be filled and drain tile removed or broken under this general authorization.

(f) Streambank excavation. Expanding the surface area of areas subject to seasonal inundation in order to expand the wetland fringes of adjacent wetland areas by removal of bank material may be authorized under this general authorization.

(g) Surface excavation and recontouring. Restoring the uneven topographic surface to lands that have been subject to excavation and historical degradation may be authorized. All materials removed must be placed on uplands.

(h) Blasting. Blasting to create depressions or recreate habitat channels is allowed. A blasting permit may be required by the Oregon Department of Fish and Wildlife.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800- 196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0225

Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) Within five (5) calendar days of receipt of the application, the Agency shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(3) The Agency shall consider comments received within twenty-one (21) calendar days of the notice date. In the event a party fails to comment within the twenty-one (21) calendar day period, the Agency will assume the party has no objection to the application.

(4) The Agency may waive or shorten the review period described in (3) above upon a showing by the applicant in the application that the interested parties listed in (2) have previously reviewed and approved the project.

(5) The Agency shall notify the applicant within twenty-one (21) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is deemed incomplete, the Agency shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(6) Following the twenty-one (21) day comment period set forth in (3) and not more than forty (40) calendar days from the receipt of a completed application, the Agency will determine if the project meets the eligibility

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and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Agency may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800- 196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0230

Conditions for Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Agency for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Agency as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Agency.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Agency, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-

lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(13) The authorization holder shall provide a vegetated buffer of at least 50 feet to be maintained on uplands adjacent to the wetland enhancement or restoration project area, unless otherwise authorized by the Agency.

(14) Upon completion of the project, the project shall be reported to the Oregon Watershed Enhancement Board and the Agency on a Restoration Inventory Report form provided by the Agency.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Agency and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Agency makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Agency may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The Agency may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0235

Violation of General Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800- 196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0240

Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process

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described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Agency on or before January 1, 2006, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0245

Purpose and Applicability

(1) These rules set forth conditions under which a person may, without an individual removal-fill permit from the Agency, place (fill), remove (removal), alter material in waters of the state within areas designated as Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat as described in OAR 141-102) for the purposes of recreational and small scale placer mining.

(2) "Prospecting" as defined by law and OAR 141-085-0010; "non-motorized methods" as defined in OAR 141-085-0010; and "Highbanking" as defined in OAR 141-085-0010, conducted beyond the jurisdiction of the removal-fill law, as described in OAR 141-085 -0015 are all activities exempt from regulation under the removal-fill law, OAR 141-085 and this general authorization.

(3) A letter of authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. This letter of authorization is not transferable to another person.

(4) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(5) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(6) This general authorization is exclusive to recreational and small scale placer mining.

(7) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(8) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(9) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(10) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800- 196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0250

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Agency shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be for the specific purpose of recreational or small scale placer mining;

(b) Be conducted within Essential Salmon Habitat; and

(c) Remove, fill or alter less than twenty-five (25) cubic yards of material annually from the bed of a stream designated as Essential Salmon Habitat; and

(2) A project is not eligible for this general authorization if:

(a) The project does not meet the eligibility and mandatory requirements;

(b) The project involves the construction of permanent dams; or

(c) The project involves excavation from the streambank.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0255

Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory requirements:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency in accordance with OAR 141-100.

(2) If the project is within a State Scenic Waterway, no dredge may be used having a motor exceeding sixteen (16) horsepower, or as otherwise established by statute.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800- 196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0260

Application Requirements; Review and Approval Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) Within ten (10) calendar days of receipt of an application, the Agency will review the application for eligibility and compliance with the mandatory requirements and notify the applicant of approval, denial, or modification.

(3) If the application is deemed incomplete, the Agency shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(4) If the Agency determines that the application meets all the requirements for this general authorization, it shall do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(5) The Agency may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0265

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) An authorization holder may construct a temporary low rise dam if the structure:

(a) Does not extend across the entire width of waterway, and allows the free passage of water in an amount sufficient to enable fish to travel unimpeded up and down the stream;

(b) Creates only the minimal area of impounded water necessary to operate the dredge; and

(c) Is removed upon completion of the mining activity unless otherwise instructed by the Agency.

(2) The general authorization does not allow nozzling, sluicing, or digging to occur outside the wet perimeter, nor extend the wet perimeter.

(3) The general authorization does not allow disturbance of rooted or embedded woody plants including trees and shrubs, regardless of their location (for example, on gravel bars).

(4) The general authorization does not allow movement of boulders, logs, stumps, or other woody material from within the wet perimeter other than movement by hand and non-motorized equipment.

(5) The general authorization requires that the authorization holder upon completion of the project, and to the greatest extent possible, level all piles outside the main channel of the waterway created by the activity. In addition, all furrows, potholes, or other depressions outside the main channel of the waterway created by the activity shall, if practical, have at least one open side to prevent fish entrapment as the water level falls.

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(6) The authorization holder shall obtain landowner permission before operating on public or private property.

(7) If the authorization holder intends to use a motorized suction dredge, a suction dredge waste discharge permit from the Department of Environmental Quality, must be obtained, as applicable.

(8) The authorization holder shall conduct the activity only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources", unless after consultation with ODFW, a waiver is granted by the Agency for a longer or alternative time period.

(9) The authorization holder shall not allow petroleum products, chemicals or deleterious materials to enter the water.

(10) The authorization holder must ensure that the activity complies with other applicable local, state, and federal laws and regulations, including the state and federal Endangered Species Act.

(11) The authorization holder shall not allow the project to interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(12) For activities within State Scenic Waterways the authorization holder shall adhere to the following conditions:

(a) The activity shall not impede recreational boating.

(b) Use of motorized suction dredges shall be restricted to the hours between 8 a.m. and 6 p.m. within five hundred (500) feet of a residence or within five hundred (500) feet of a campground except within a federally designated recreational mining site.

(c) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(d) No dredge may be used having a motor exceeding sixteen (16) horsepower, or as otherwise established by statute.

(13) The authorization holder shall report, on a form provided by the Agency, the estimated amount of material removed, placed, or altered in each waterway operated in during the preceding calendar year. The Agency must receive this report no later than January 31st of each year that this general authorization is valid.

(14) The project shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Agency.

(15) The Agency may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(16) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(17) Employees of the Agency and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Agency may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(19) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0270

Violation of Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0275

Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) No letter of authorization will be issued with an expiration date beyond January 1, 2006, at which time this General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5).

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0280

Purpose and Applicability

(1) These rules set forth conditions under which a person may, without an individual removal-fill permit from the Agency, dispose (fill), and place (fill), remove (removal), or alter material in waters of the state for the purposes of removing and disposing of sediment while maintaining or cleaning natural or artificially created drainage ditches upstream from tidegates.

(2) This general authorization is exclusive to:

(a) The disposal of sediments within waters of the state (e.g. wetlands) removed as a result of ditch maintenance/cleaning in drainage ditches upstream of tidegates; and/or

(b) The removal of material from drainage ditches (cleaning) upstream of tidegates that does not meet the requirements described in OAR 141-089-0280(4) below.

(3) Drainage ditches that have a free and open connection (as defined in OAR 141-085-0010) to other natural waterways (as defined in OAR 141-085-0010) and are presumed to contain food and game fish are waters of the state.

(4) The regular maintenance of legally constructed or altered ditches upstream of tidegates is exempt from regulation under the removal-fill law, OAR 141-085-0020 and this general authorization if:

(a) The drainage ditch was serviceable within the past five (5) years; and

(b) The maintenance would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of the drainage ditches.

(5) The placement of sediment removed from drainage ditches on wetlands may be an activity subject to the removal-fill law, OAR 141-085 and this general authorization.

(6) A letter of authorization from the Agency is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(7) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(8) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(9) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(10) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(11) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(12) In the event a dispute arises as to the applicability of this general authorization to any project application, the Agency shall make the final determination. The Agency shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

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Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0285

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Agency shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be conducted for the specific purpose of disposal of sediments within waters of the state (e.g. wetlands) removed as a result of maintenance/cleaning of drainage ditches upstream of tidegates; and/or

(b) Be conducted for the specific purpose of the removal of material (cleaning) from drainage ditches upstream of tidegates that does not meet the requirements described in OAR 141-089-0280(4) above; and

(c) Remove, fill or alter more than fifty (50) cubic yards of material from waters of the state unless the activity is within an Essential Salmon Habitat stream or State Scenic Waterway where the no amount of material is to be removed, filled or altered without prior authorization of the Agency.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements.

(b) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0290

Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory requirements:

(1) The removal of sediments from drainage ditches shall be kept to the minimum amount necessary to remove recently deposited materials. Additional channel widening or deepening beyond that amount is not allowed under this general authorization.

(2) The sediments removed from drainage ditches may be spread in a thin layer (three inches or less) on farmed wetland or wet pasture provided the impacts are temporary and there is no permanent conversion from wetland to upland. Freshwater wetland (other than farmed wetland or wet pasture mentioned above), salt marsh, tidal flats or permanent or semi-permanent open water areas shall not be used for sediment disposal.

(3) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency in accordance with OAR 141-100.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0295

Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Agency. A complete application is one that contains all the information required in the application packet provided by the Agency.

(2) Within five (5) calendar days of receipt of the application, the Agency shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Agency shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(3) The Agency shall consider comments received within twenty-one (21) calendar days of the notice date. In the event a party fails to comment within the twenty-one (21) calendar day period, the Agency will assume the party has no objection to the application.

(4) The Agency may waive or shorten the review period described in (3) above upon a showing by the applicant in the application that the interested parties listed in (2) have previously reviewed and approved the project.

(5) The Agency shall notify the applicant within twenty-one (21) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is

deemed incomplete, the Agency shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(6) Following the twenty-one (21) day comment period set forth in (3) and not more than forty (40) calendar days from the receipt of a completed application, the Agency will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Agency may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Agency determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Agency may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800- 196.990; ORS 390.805- 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0300

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Agency for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Agency as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Agency.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Agency, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorization holder shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with

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no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard. The authorization holder shall implement, as appropriate, all practicable erosion control measures including the following:

(a) Prevent all construction materials and debris from entering waterway;

(b) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, or other measures sufficient to prevent movement of soil;

(c) Use impervious materials to cover stockpiles when unattended or during rain event; and

(d) Erosion control measures shall be inspected and maintained periodically to ensure their continued effectiveness.

(12) For drainage ditch cleaning activities, the authorization holder shall comply with the following:

(a) Removal of existing woody vegetation, other than that growing within the maintained channel bed is prohibited;

(b) Only sand and silt sediments may be removed. This authorization is not for the removal of gravel;

(c) Erosion of disturbed areas (i.e., drainage ditch banks and work areas) shall be minimized through revegetation with grass and/or planting of trees and shrubs; and

(d) Removal shall be conducted with land-based equipment from one side of the drainage ditch unless specifically authorized by the Agency.

(13) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(14) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(15) Employees of the Agency and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(16) The Agency makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(18) The Agency may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(19) The Agency may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800- 196.990; ORS 390.805- 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0305

Violation of General Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the

activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0310

Appeals; Expiration; Review of General Authorization

(1) A person whose application for the general authorization is determined by the Agency to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Agency's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Agency's decision and does not give the person a right to a contested case hearing.

(2) No letter of authorization will be issued with an expiration date beyond January 1, 2006, at which time this general authorization will be reviewed in accordance with the provisions of ORS 196.850(5).

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990; ORS 390.805- 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

Employment Department Chapter 471

Adm. Order No.: ED 8-2002

Filed with Sec. of State: 11-22-2002

Certified to be Effective: 11-24-02

Notice Publication Date: 10-1-02

Rules Amended: 471-030-0080

Subject: OAR 471-030-0080(10) is being deleted as ORS Chapter 657.340(5) has been deleted by legislative action.

Rules Coordinator: Richard L. Luthe—(503) 947-1724

471-030-0080

Professional Technical Training

(1) Professional technical training, as defined in ORS 657.335, shall not be approved by the Director unless the public or private institution, school, or agency offering such program is certified or licensed by the Oregon State Board of Education, the Superintendent of Public Instruction, Regional Workforce Investment Board, or other Oregon State agency authorized to grant such certification or license or an equivalent state agency in the state where the training is to be provided.

(2) Professional technical training shall not be approved by the Director if the Director finds that the planned curriculum of classes and course activity is less than the equivalent of full-time student status. The Director may waive this requirement when such requirement would be inconsistent with the policy set forth in ORS 657.337.

(3) To receive benefits for any week during professional technical training, a dislocated worker who is otherwise eligible for unemployment insurance benefits must:

(a) Submit a written application for approval of professional technical training on forms prescribed or approved for such purpose by the Director with a local office of the Employment Department within 90 days of:

(A) Certification as a dislocated worker; or

(B) Termination from the dislocating employment; or

(C) The filing of a claim for unemployment insurance benefits; and

(b) Submit to the Employment Department a timely claim for such week in accordance with procedures established in 471-030-0045(3) of these rules; and

(c) Submit to the Employment Department a statement signed by an authorized representative of the training facility which certifies that the claimant was satisfactorily pursuing the approved professional technical training during such week; and

(d) Be in attendance half or more of the scheduled class days during such week unless the days not in attendance will not prevent satisfactory completion of the approved professional technical training.

(4) Decisions of the Director to approve or disapprove an application for course approval or to discontinue such approval for one or more weeks during professional technical training or to approve or deny supplemental benefits under the provisions of ORS 657.335 through 657.360 shall be in writing, shall set forth the reasons therefor, and shall be served upon the claimant by

personal delivery or by mailing to the claimant's last known address of record with the Employment Department.

(5) As used in ORS 657.335(1):

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(a) "Eligible dislocated workers" includes any worker defined under Title IB of the Workforce Investment Act of 1998 (P.L. 105-220) as a "dislocated worker" including any worker fitting the definition of a "displaced homemaker" as contained in that Act.

(b) "Long-term unemployed" means unemployed from the dislocated occupation for at least 15 of the last 26 weeks or for at least 8 consecutive weeks immediately prior to application (including survival jobs during such period).

(6) In applying the provisions of ORS 657.340, the Director may approve a program of instruction, including transfer credit programs of instruction given at community colleges, leading toward a baccalaureate or higher degree or training that has for its purpose the preparation of persons for employment in occupations which require a baccalaureate or higher degree from institutions of higher education if:

(a) The individual does not have significant transferable skills for other occupations in the statewide labor market;

(b) Unless previously approved in accordance with the provisions of Title IB of the Workforce Investment Act of 1998 (P.L. 105-220), the individual is within 48 quarter credit hours (or the semester equivalent) from completing the baccalaureate or higher degree; and

(c) Completing the baccalaureate or higher degree offers the best chance of long term employment.

(7) As used in ORS 657.340(2), "attendance in professional technical training" means the period of time beginning with the referral of an individual to Career Assessment or an equivalent program, when that program is offered in a locality, or when the individual is accepted into approved professional technical training, whichever event occurs first in time, and ends with satisfactory completion of the training program. The period of time defined in this section includes customary academic recesses for holidays and between academic terms but does not include the customary academic summer recess. For purposes of applying ORS 657.340(2), an individual may be determined not to be in "attendance in professional technical training" as defined in this section if the individual fails to demonstrate satisfactory progress and attendance as defined in section (3) of this rule or the individual fails to attend Career Assessment or an equivalent program when the individual has been referred to that program.

(8) As used in ORS 657.340(3), "terms and conditions" includes "benefit year" as defined in ORS 657.010(3). In applying the provisions of ORS 657.340(3), the benefit year of an eligible dislocated worker may be extended, whether or not the benefit year has expired, if the eligible dislocated worker has not filed a subsequent initial claim establishing a new benefit year.

(9) In applying the provisions of ORS 657.345(1), an individual who meets the definition of dislocated worker as defined in paragraphs (a), (b), (c) and (d) of ORS 657.335(1) or the Workforce Investment Act of 1998 (P.L. 105-220) shall be considered to have been identified as a dislocated worker. The determination that an individual meets the definition of dislocated worker may be made by the Employment Department for purposes of paying benefits under ORS 657.335 to 657.360.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.335 - ORS 657.360

Hist.: IDE 150, f. & ef. 2-9-76; IDE 1-1983(Temp), f. & ef. 3-9-83; IDE 2-1983, f. & ef. 8-12-83; ED 1-1991, f. & cert. ef. 4-1-91; ED 4-1991(Temp), f. & cert. ef. 12-30-91; ED 3-1992, f. & cert. ef. 6-29-92; ED 4-1992(Temp), f. & cert. ef. 10-19-92; ED 1-1993, f. & cert. ef. 3-22-93; ED 4-1994, f. & cert. ef. 9-2-94; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 5-2000, f. 10-6-00, cert. ef. 10-8-00 thru 4-6-01; ED 5-2001(Temp), f. 4-6-01, cert. ef. 4-7-01 thru 10-4-01; ED 6-2001, f. 4-20-01, cert. ef. 4-22-01; ED 8-2002, f. 11-22-02 cert. ef. 11-24-02

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Adm. Order No.: ED 9-2002(Temp)

Filed with Sec. of State: 11-27-2002

Certified to be Effective: 12-1-02 thru 5-30-03

Notice Publication Date:

Rules Amended: 471-010-0054

Subject: The Employment Department is revising the Customer Information rule to allow partner staff authorized by the Director to witness "third party or agent" disclosure authorization forms.

Rules Coordinator: Richard L. Luthe—(503) 947-1724

471-010-0054

Authorized Disclosure

(1) The department is authorized to disclose confidential information or records to public agencies, provided that a written disclosure agreement is in place, under the following circumstances:

(a) In the "discharge of duties" as authorized by the department Director;

(b) For public administration of compensation and retirement, relief or welfare laws;

(c) To state and federal agencies authorized by ORS Chapter 657;

(d) For the purpose of providing payment of unemployment insurance benefits; or

(e) To state agencies or political subdivisions for governmental planning functions, consistent with Section (2) of this rule.

(2) The department is authorized to disclose confidential information or records for governmental planning functions by state agencies or political subdivisions provided that the information is:

(a) Only for planning purposes;

(b) Only if the information or records are necessary for the successful performance of those planning activities; and

(c) Only if the requesting agency's authorizing statute clearly and reasonably provides that the agency perform planning functions.

(3) The department is authorized to disclose confidential information or records as authorized under ORS Chapter 657 to non-governmental entities if the non-governmental entity enters into a written disclosure agreement with the department that:

(a) Requires informed consent from the individual to whom the information pertains;

(b) Safeguards the information once in the hands of the non-governmental entity; and

(c) Requires the non-governmental entity to pay all costs associated with the disclosure.

(4) The department is authorized to disclose confidential information or records to a third party or agent if:

(a) The Oregon Employment Department staff receives a written authorization signed and dated by the customer that specifically states the information that may be disclosed;

(b) The written authorization is witnessed or verified by Oregon Employment Department staff, partner staff authorized by the Director, or notarized; and

(c) The third party or agent presenting the request is the same party authorized to receive the information.

(5) Unless otherwise authorized by these rules the department is authorized to disclose confidential information or records to a customer only under the following provisions:

(a) The Oregon Employment Department staff is sure that the information was provided by the customer, or was previously provided to the customer; or

(b) For Oregon Employment Department wage records, the wage records are identified under the name, social security number or account number of the customer; and

(c) The Oregon Employment Department staff is sure that the customer's identity is the customer to which the information directly relates.

(6) The department is authorized to disclose confidential information or records to the customer's attorney or Certified Public Accountant without written authorization by the customer if the attorney or CPA affirmatively represents their client relationship with the customer. Disclosure to any other agent of the customer requires a written authorization under Section (4) of this rule.

(7) The department is authorized to disclose:

(a) Confidential information or records necessary to prepare for a pending hearing to the extent necessary for the proper presentation of an Unemployment Insurance benefit claim at a hearing before a hearing officer, once a request for hearing has been filed, or for a review arising under a state or federal program administered by the department to a party or agent of a party.

(b) Hearing information or records to a party or agent of a party to the hearing. Information or records submitted but not received into evidence remain confidential and are not subject to disclosure except to the party submitting the information or records.

(8) The department is authorized to disclose confidential information or records pursuant to a customer's request, to a legislator or other elected official, or their staff, if the department receives a copy of the customer's letter to the legislator or other elected official. The department will treat the letter as the customer's authorization for the legislator or other elected official, or their staff, to disclose the information necessary to fulfill the customer's request. If no letter is available, Oregon Employment Department staff will provide customer information only after verifying with the legislator or other elected official, or their staff, that the contact is from the customer. If contact was not from the customer, a written authorization is required.

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(9) The department is authorized to disclose confidential information or records without the customer's specific authorization and without a written disclosure agreement under the following provisions:

(a) In the "discharge of duties" as authorized by the department Director for Oregon Employment Department programs under ORS Chapter 657;

(b) For mandatory disclosures under the Social Security Act or other federal law; or

(c) In accordance with state or federal laws requiring cooperation with properly identified law enforcement officers or District Attorneys in the performance of their duties and pursuant to a warrant for the arrest of an individual;

(d) To a court in a civil or criminal proceeding to which the State of Oregon is a party;

(e) To authorized personnel of agencies of other states for the purpose of administering federally funded unemployment insurance programs, Temporary Assistance to Needy Families, child support enforcement programs, and food stamps;

(f) To properly identified officials of the United States Social Security Administration and the United States Department of Health and Human Services for audit and administration of the Supplemental Security Income Program;

(g) To properly identified officials of the United States Department of Agriculture for audit and administration of the food stamp program; or

(h) To properly identified officials of state and federal agencies charged with administration of fair employment practices and anti-discrimination activities.

(10) Oregon Employment Department staff are expected to comply with Oregon child abuse reporting laws, elderly abuse reporting laws and patient abuse reporting laws.

(11) When an authorized representative of the department has been served a subpoena or other legal compulsory process to produce or disclose information from department records and the disclosure of such information is not specifically allowed under ORS Chapter 657 or this rule:

(a) The Director shall promptly inform the Assistant Attorney General assigned to the department of such demand;

(b) If the disclosure would, in the opinion of the Assistant Attorney General, be inconsistent with the provisions of state law or any policy or rule adopted pursuant to such law, the Assistant Attorney General shall take action to prevent the disclosure.

(12) Drug or alcohol abuse information or records received from federally funded treatment programs, facilities or activities may not be used or redisclosed by the department without the written consent of the patient.

(13) The Workforce Investment Act requires the department to provide its core services funded under the Wagner-Peyser Act (29 U.S.C. 49 et. seq.) through a one-stop delivery system with other one-stop partners. HB 3835 (codified chapter not yet available; Oregon Laws 2001) requires the implementation of an Oregon integrated workforce investment system to serve employers and workers that is in compliance with the Workforce Investment Act. Under these provisions the Employment Department provides information about the unemployment insurance program and delivers core activities of the employment service program to employer and job seeker customers of the one-stop delivery system. It is within the responsibilities of the department Director to ensure that the administration of the Department's programs and services for claimants, job seekers and employers is within the one-stop delivery system. With the increased need for collaboration and customer service in the one-stop delivery system the Director is able to disclose the following information to workforce partners about customers within the authority of "discharge of duties."

(a) The department is authorized to disclose confidential unemployment insurance wage records to required or mandatory entities in the one-stop delivery system for performance measurement purposes only under the following conditions:

(A) The requesting entity is a required or mandatory one-stop delivery system partner as described in Section 121 of the Workforce Investment Act or HB 3835 (codified chapter not yet available; Oregon Laws 2001);

(B) The individual for whom information is requested must have been provided with full disclosure of:

(i) How the information will be used;

(ii) The authority which authorizes the disclosure of the information and whether disclosure of such information by the individual is mandatory or voluntary; and

(iii) The effects on the individual, if any, of not allowing disclosure of the information.

(C) The information requested shall not be used for eligibility determination, case management, intake, compliance, or any other purposes, except as required by state or federal law;

(D) The data can only be disclosed to "public employees", i.e. employees of governmental agencies and shall not be disclosed to volunteers or employees of non-governmental entities that may be mandatory or optional partners in a local one-stop delivery system;

(E) The requesting entity must disclose program-related performance information, for the same individual, to Oregon Employment Department staff; and

(F) There must be an interagency or other applicable agreement with the one-stop delivery system partners that provides for safeguarding of the disclosed information, prohibits re-disclosure of the information without the express consent of the Employment Department, and imposes sanctions for the unauthorized disclosure of confidential information.

(b) Job orders that are designated by the employer for "self-referral" may be shared among one-stop delivery system partners without consent of the employer and without an interagency or other applicable agreement among the one-stop delivery system partners. Identifying information on job orders that are designated by the employer as "suppressed", meaning the employer wants referrals on the job order to be screened by the Employment Department, may not be shared with one-stop delivery system partners. One-stop delivery system partners are required to refer clients or customers to the department for referral on "suppressed" job orders. The Employment Department may share "suppressed" job orders with one-stop delivery system partners if there is an interagency or other applicable agreement with the one-stop delivery system partner(s) that establishes, to the satisfaction of the Employment Department Director, how the job order system will be managed in a one-stop delivery system center and that assures employers quality referrals on "suppressed" job orders, including coordination of referrals by one-stop delivery system partners.

(c) Information necessary for providing employer relations services to employers for marketing, visitation, or promoting the one-stop delivery system, including details such as who to contact, planned contact schedules, and results of contacts and telephone calls, can be shared for coordinated employer relations efforts in a one-stop delivery system if there is an interagency or other applicable agreement with the one-stop delivery system partners that describes the needs, the process, and expectations of the employer relations program. The agreement should also provide for steps in safeguarding confidential employer information and assurance to the Employment Department Director that a high level of customer service is provided to the employer concerning the various activities offered by the one-stop delivery system partners. This subsection does not authorize any disclosure of employer wage records and employer tax data.

(d) The department is authorized to disclose job seeker information to partners in the one-stop delivery system under the following conditions:

(A) The requesting entity is a required or mandatory one-stop delivery system partner as described in Section 121 of the Workforce Investment Act or HB 3835 (codified chapter not yet available; Oregon Laws 2001);

(B) There is an interagency or other applicable agreement with the one-stop delivery system partner describing how the information will be used, that provides for the safeguarding of the information, and imposes sanctions for the unauthorized re-disclosure of the information;

(C) The individual for whom information is requested must have been provided with full disclosure of:

(i) How the information will be used;

(ii) The authority which authorizes the disclosure of the information and whether disclosure of such information by the individual is mandatory or voluntary; and

(iii) The effects on the individual, if any, of not allowing disclosure of the information.

(D) The disclosed information shall only be used for the purposes of "intake and referral", which would not include activities such as program eligibility or sanctions; and

(E) The information to be disclosed must be based on a "need to know" for job placement purposes by the one-stop partner. "Need to know" data would include a person's work history, education, training, and skill background as well as personal identification. This subsection does not authorize disclosure of job referrals, job orders or unemployment insurance claims information.

(14) Oregon Employment Department staff is authorized to access confidential information only as needed to perform official duties. Oregon Employment Department staff is not authorized to access confidential information to satisfy curiosity, use the information for personal gain, or provide confidential information to friends or relatives or any unauthorized

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individual. Oregon Employment Department staff is prohibited, except as authorized under these rules, from disclosing confidential information to any individual who is not an employee or hosted worker of the department (including a spouse or relative) and shall not discuss confidential information among co-workers except as needed to perform the job. Disclosure or discussion of confidential information on personal time or in non-work settings is prohibited.

(15) Hosted workers are authorized to access confidential information only when there is an interagency or other applicable agreement with the employing entity, or the hosted worker if there is no employing entity, that provides sanctions for the unauthorized disclosure of confidential information. Hosted workers must be under the functional control of Oregon Employment Department staff.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & ORS 657

Hist.: IDE 6-1980, f. & ef. 9-8-80; IDE 1-1981, f. & ef. 1-15-81; IDE 1-1982, f. & ef. 6-30-82; IDE 2-1984, f. & ef. 9-28-84; IDE 3-1985, f. & ef. 12-16-85; ED 1-1991, f. & cert. ef. 4-1-91; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 3-2001(Temp), f. 3-16-01, cert. ef. 3-18-01 thru 9-14-01; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 9-2002(Temp), f. 11-27-02 cert. ef. 12-1-02 thru 5-30-03

Employment Department, Child Care Division Chapter 414

Adm. Order No.: CCD 4-2002

Filed with Sec. of State: 11-22-2002

Certified to be Effective: 11-24-02

Notice Publication Date: 10-1-02

Rules Adopted: 414-600-0000, 414-600-0010, 414-600-0020, 414-600-0030, 414-600-0040, 414-600-0050, 414-600-0060, 414-600-0070, 414-600-0080, 414-600-0090, 414-600-0100

Subject: The Employment Department, Child Care division, is proposing to implement a new rule in response to HB 2676 (ORS Chapter 657A.700 through 657A.718), which creates a new tax credit for certified contributions to the Child Care Division and/or a qualified community agency for the purpose of promoting child care (effective 1/1/2002 through 12/31/2006); and establishes a fund for collecting these contributions.

Rules Coordinator: Richard L. Luthe—(503) 947-1724

414-600-0000

Purpose

(1) The purpose of these rules is provide guidance for administration of the child care investment tax credit program as authorized in ORS 314.752, 315.202 and 318.031 and section 10, Chapter 682, Oregon Laws 1987, and section 87, chapter 625, Oregon Laws 1989. The child care investment tax credit was enacted by the 2001 legislature to:

(a) Encourage taxpayers to make contributions to the Child Care Division or a selected community agency by providing a financial return on qualified contributions and by soliciting other contributions.

(b) Achieve specific and measurable goals for targeted communities and populations by strategically allocating tax credit certificates.

(c) Set standards for the child care industry concerning the cost of providing quality, affordable child care.

(d) Strengthen the viability and continuity of child care providers while making child care more affordable for low and moderate income families.

(2) The Child Care Division, in collaboration with the Advisory Committee established in OAR 414-600-0020 shall establish regions in the state in a manner that facilitates the planning of the program, the allocation of tax credit certificates to taxpayers, and the distribution to child care providers of moneys from contributions made to the Child Care Division and selected community agencies.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

414-600-0010

Definitions

(1) "Child care provider" means a provider, for compensation, of care, supervision or guidance to a child on a regular basis in a center or in a home other than the child's home. Child care provider does not include a person who is the child's parent, guardian or custodian.

(2) "Community agency" means a nonprofit agency that is:

(a) Located in a region, established in OAR 414-600-0030, in which it provides services related to child care, children and families, community development or similar services; and

(b) Eligible to receive contributions that qualify as deductions under section 170 of the Internal Revenue Code.

(3) "Qualified contribution" means a contribution made by a taxpayer to the Child Care Division of the Employment Department or a selected community agency for the purpose of promoting child care, and for which an application is submitted for a tax credit certificate.

(4) "Tax credit certificate" means a certificate issued by the Child Care Division to a taxpayer to qualify the taxpayer for a tax credit.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

414-600-0020

Advisory Committee

(1) The Child Care Division shall guide and direct the implementation of this program in collaboration with an Advisory Committee appointed by the Division.

(2) The Advisory Committee shall be comprised of representatives of state agencies, local organizations, advocates, and consumers with experience or interest in tax credit programs, high quality child care, or community development. Members shall serve staggered terms of either one or two years. A member may be re-appointed upon completion of their term.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

414-600-0030

Regions

For the purpose of implementing this program, there are five regions established within the state. The regions shall include the following counties:

(1) Region 1: Harney; Malheur; Grant; Baker; Union; Wallowa; Gilliam; Wheeler; Morrow; Umatilla.

(2) Region 2: Coos; Curry; Jackson; Douglas; Josephine; Klamath; Lake.

(3) Region 3: Lane; Linn; Benton; Yamhill; Polk; Marion; Lincoln; Tillamook.

(4) Region 4: Multnomah; Washington; Clackamas; Clatsop; Columbia.

(5) Region 5: Jefferson; Crook; Sherman; Deschutes; Hood River; Wasco.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

414-600-0040

Community Agencies

(1) The Child Care Division shall select the community agency that, in the judgment of the Child Care Division and based on the criteria set forth in OAR 414-600-0050(a) through (d), will best serve the interests of the region.

(2) Community agencies shall:

(a) Encourage taxpayers to make contributions for child care by promoting the program and by soliciting other contributions;

(b) Distribute moneys to child care providers in the region;

(c) Coordinate an application process by which persons may apply to be participating providers;

(d) Enter into agreements with participating providers under which the duties and responsibilities of providers and the community agency are stated;

(e) Provide or coordinate required training for participating providers;

(f) Monitor providers through on-site visits;

(g) Oversee the process by which a provider verifies the income of a family and establishes the total child care fee charged to a family;

(h) Report on provider compliance with OAR 414-600-0080 and other applicable requirements to contributors and the Child Care Division;

(i) Establish a maximum family income level for the region for purposes of the child care fee limitation to which providers are subject under OAR 414-600-0080; and

(j) Forward applications and moneys it receives from taxpayers as contributions to the Child Care Division.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

ADMINISTRATIVE RULES

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

414-600-0050

Application and Renewal Process for Community Agencies

(1) A community agency desiring to represent a region described in OAR 414-600-0030 shall submit an application to the Child Care Division, in a form prescribed and provided by the Child Care Division. The application will demonstrate and describe the agency's experience and abilities in the following areas:

(a) Financial soundness, net worth, cash flow, and accounting capacity to manage a tax credit program.

(b) Demonstrated ability to serve low- and moderate- income families.

(c) A governing board that is stable, has experience with financial matters, is representative of the community, and has a history of collaboration with other community agencies.

(d) An executive officer and staff with skill and experience in child care business management and small business development.

(2) The Child Care Division, in collaboration with the Advisory Committee established in OAR 414-600-0020, shall select a community agency to represent a region.

(3) A selected community agency shall enter into a written agreement with the Child Care Division that specifies the duties and performance expectations required of the agency.

(4) A selected community agency shall represent a region for a period of two years, unless earlier terminated by the Child Care Division for cause or by mutual consent of the parties as specified in the written agreement.

(a) A community agency may apply to continue as a selected community agency for subsequent two-year periods by submitting a renewal application to the Child Care Division.

(b) In deciding whether to renew an application, the Child Care Division and the Advisory Committee shall consider community satisfaction with services delivered and the agency's performance of responsibilities under the written agreement.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

414-600-0060

Distribution of Funds to Community Agencies

(1) The Child Care Division shall determine the total value of moneys to be available to each selected community agency to distribute to providers based on goals established for the program by the Child Care Division, in collaboration with the Advisory Committee appointed in OAR 414-600-0020 and transmit those determinations to the selected community agencies by February 1 of each year. The Child Care Division shall distribute moneys to the community agencies by June 30 of the year following the year the application is made.

(a) The total value of moneys available to all selected community agencies may not exceed the amount of contributions received from taxpayers during the tax year, minus any reasonable administrative costs incurred by the Child Care Division and the selected community agencies.

(b) Distributions shall be made to selected community agencies in the proportion that the Child Care Division determines best promotes the provision of child care in the state.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

414-600-0070

Participating Provider Eligibility Requirements

(1) To be eligible for disbursements under this program, child care providers shall:

(a) Be certified or registered by the Child Care Division;

(b) Accept children for whom child care is paid for through Department of Human Services subsidy;

(c) Provide high quality child care as defined by the Child Care Division in collaboration with the Advisory Council;

(d) Have training required by the Child Care Division;

(e) Maintain adequate liability insurance, financial records and parent policies and contracts; and

(f) Permit the community agency to conduct visits for monitoring purposes.

(2) If the provider is a home-based business, the provider shall meet the following requirements in addition to those in subsection (1) of this section:

(a) Enter into an agreement with the community agency to continue to provide child care services for at least two additional years; and

(b) Provide care to children from at least two families that have incomes of 80 percent or less of the median income for the region.

(3) If the provider is a child care center, at least 25 percent of the families served by the center must have incomes that are 80 percent or less of the median income for the region.

(4) In selecting participating child care providers, selected community agencies must give preference to providers that provide child care to low and moderate income families.

(5) For care provided to children of families whose income does not exceed the level established in subsections (2) and (3) of this section, the fee charged to the family by an eligible provider shall not exceed the percentage of the family's gross monthly income established by the Child Care Division in collaboration with the Advisory Committee appointed in OAR 414-600-0020.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

414-550-0080

Distribution of Funds to Participating Providers

(1) The selected community agency shall identify providers in the region that meet the requirements of OAR 414-600-005070 for the purpose of distribution of moneys. The selected community agency shall develop a process by which child care providers apply to receive distributions of moneys from contributions made by taxpayers.

(2) By the end of each calendar year, the selected community agency must distribute to participating child care providers all moneys available to the region as a result of this program. Distributions shall be based on:

(a) The actual costs of providing quality, affordable child care in the region for which distributions are being made, including training costs, operating expenses and wages.

(b) The incomes of the families the provider serves and the child care fees the provider charges.

(3) The selected community agency shall, through a process approved by the Child Care Division, determine the amount of moneys each eligible provider receives.

(4) A substantial portion of the moneys shall be distributed to providers who operate home-based child care businesses.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

414-600-0090

Allocation of Certificates

(1) The Child Care Division shall determine the total value of tax credit certificates available to taxpayers in each region.

(a) The Child Care Division shall transmit those determinations to the community agencies by February 1 of each year.

(b) The total value of tax credit certificates available to all community agencies may not exceed \$500,000 per calendar year.

(2) If a taxpayer makes a contribution to the Child Care Division or to a selected community agency for the purpose of receiving a tax credit under this program, the taxpayer shall submit an application for a tax credit certificate with the contribution.

(a) If the contribution is made to a community agency, the community agency shall forward the application and contribution to the Child Care Division.

(b) The application for a tax credit certificate shall be available to taxpayers from the Child Care Division and from selected community agencies.

(c) Applications must be submitted by December 31 of each year.

(3) The Child Care Division shall consider applications for tax credit certificates in the chronological order in which the applications are received by the Child Care Division.

(4) The Child Care Division may not issue a tax credit certificate to a taxpayer to the extent the claim for credit in the application, when added to the total amount of claims for credit previously certified by the Child Care Division for distribution, exceeds the value of tax credit certificates available to the Child Care Division for the calendar year.

ADMINISTRATIVE RULES

(5) A taxpayer who receives a notice of denial of a tax credit certificate or that receives a tax credit certificate issued for an amount that is less than the amount contributed may request a refund for the amount contributed within 90 days of the Child Care Division's denial or issuance of the certificate.

(a) The Child Care Division shall send notice of a denial or changed amount and refund the amount for which a tax credit will not be granted within 30 days after receiving the request.

(b) The refund shall be made from the Child Care Fund.

(6) The Child Care Division shall send a copy of all tax credit certificates issued to the Department of Revenue.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

414-600-0100

Taxpayer Requirements

(1) A credit against the taxes otherwise due under ORS Chapter 316 or, if the taxpayer is a corporation, under ORS Chapter 317 or 318, is allowed to a taxpayer for certified contributions made to the Child Care Division or a selected community agency under OAR 414-600-0090.

(a) The amount of a tax credit available to a taxpayer for a tax year shall equal the amount stated in the tax credit certificate.

(b) The tax credit may not exceed the tax liability of the taxpayer for the tax year in which the credit is claimed.

(2) Any tax credit not used by the taxpayer in a particular tax year may be carried forward and offset the taxpayer's tax liability in any of the four succeeding tax years. The credit cannot be carried forward for any tax year thereafter.

(a) A taxpayer shall include the tax credit certificate received under OAR 414-600-0090 with the return filed with the state Department of Revenue for the tax year in which the tax credit certificate applies.

(b) A credit under this section may be claimed by a non-resident or part-year resident without proration.

(3) The credit allowed under this section is in addition to, and not in lieu of, any credit or deduction allowed under ORS chapters 316, 317, or 318 for charitable contributions and contributions made in relation to child care.

(4) If a taxpayer makes a contribution to the Child Care Division or a selected community agency but does not want to receive a tax credit, the taxpayer may receive only deductions and credits otherwise allowed for a charitable contribution.

(5) Contributions made under this program shall be deposited in the Child Care Fund established under ORS 657A.010.

(5) Contributions made under this program shall be deposited in the Child Care Fund established under ORS 657A.010.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02

Insurance Pool Governing Board Chapter 442

Adm. Order No.: IPGB 4-2002(Temp)

Filed with Sec. of State: 12-6-2002

Certified to be Effective: 12-6-02 thru 6-4-03

Notice Publication Date:

Rules Amended: 442-004-0010

Subject: To retain membership of current legal non-citizens.

Rules Coordinator: Karla Messer-Holt—(503) 373-1692

442-004-0010

Definitions

(1) "Appeal" means the opportunity for an applicant or member to request and receive administrative review by Board staff of a decision made or action taken by the TPA or state agency regarding program eligibility, subsidy level, disenrollment, re-enrollment, overpayments, fraudulent misrepresentation, or any other decision adverse to the applicant or member.

(2) "Applicant" means a person who has initially applied or a member who is applying for continuation of FHIAP subsidy payments, but who has not yet been determined or redetermined to be eligible to receive such subsidy or continued subsidy.

(3) "Benchmark" means an identified minimum level of health insurance benefits qualifying for subsidy eligibility. The benchmark is established by the Board in consultation with the Health Insurance Reform

Advisory Committee and is submitted to and approved by the federal government.

(4) "Board" means the Insurance Pool Governing Board established under ORS 735.704.

(5) "Carrier" means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services that authorizes the transaction of health insurance. Carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(6) "Certified carrier" means a carrier that has been certified by the Board to participate in FHIAP. Certified carrier also includes the Oregon Medical Insurance Pool established under ORS 735.610.

(7) "Dependent" for the purposes of FHIAP means:

(a) An applicant's or member's spouse.

(b) All of the applicant's or member's and applicant's or member's spouse's unmarried children and step children (dependent children, unless otherwise stipulated in this section, must be under the age of 19 and reside with the applicant at least 50 percent of the time as stipulated in an official court document; or, who are full-time college students under the age of 23 who may or may not reside with the applicant while attending college. The term "full-time" will be as defined by the institution in which the dependent is enrolled; the burden of proving full-time college student status will be on the applicant).

(c) An applicant's or member's and applicant's or member's spouse's unmarried legally adopted children or children placed under the legal guardianship of the applicant or member or their spouse. All of the children described in this subsection (c) must also meet the criteria in subsection (b) directly above.

(d) An applicant's or member's and applicant's or member's spouse's unmarried child over the age of 18 with a severe disability as documented by the Social Security Administration.

(e) An unborn child of any applicant or member or their dependent as verified by written correspondence from a licensed medical practitioner.

(8) "Disenrollment" means termination of participation in FHIAP.

(9) "Family" is defined in ORS 735.720(2).

(10) "Federal poverty level" means the poverty income guidelines as defined by the United States Department of Health and Human Services. These guidelines will be adopted by FHIAP no later than May 1 each year.

(11) "FHIAP" means the Family Health Insurance Assistance Program established by ORS 735.720 to 735.740.

(12) "Fraudulent misrepresentation" means the intentional making of an untrue statement of fact, either by word, action, or omission of material fact.

(13) "Health Benefit Plan" is defined in ORS 735.720(3)(a) & (b).

(14) "Health insurance agent" means a person who holds a current, valid license from the Insurance Division of the Department of Consumer and Business Services to act as an agent.

(15) "Hearing" means a time when the applicant or member and the state agency present a hearing officer with evidence and arguments on the issues. Hearings may be on the following issues, including but not limited to:

(a) Untimely responses;

(b) Eligibility;

(c) Disenrollment;

(d) Overpayments;

(e) Fraudulent misrepresentation.

(16) "Incarcerated" means a person living in a correctional facility. The following individuals are considered to be living in correctional facilities:

(a) Individuals who are legally confined to a correctional facility such as jail, prison, penitentiary, or juvenile detention center;

(b) Individuals temporarily released from a correctional facility to perform court-imposed community service work;

(c) Individuals on short-term leave, fewer than 30 days, from a correctional facility;

(d) Individuals released from a correctional facility for the sole purpose of obtaining medical care.

(17) "Income" includes, but is not limited to, earned or unearned income received by adults and unearned income of children received. Income includes bartering, or working in exchange for goods/services or discounts on goods/services, or working in exchange for rent.

(a) For purposes of determining average income, FHIAP allows a deduction from average gross monthly income in the amount of child support or spousal support payments made by the applicant or member to an obligee.

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(b) No deduction is allowed for support that is owed but not paid or that is collected through a tax offset.

(c) In order for FHIAP to take this deduction in income, the applicant must provide proof of the support payments by sending FHIAP either a printout from the Support Enforcement Division, or by sending copies of cancelled checks showing the payments made to the obligee.

(18) "Investments and savings" include, but are not limited to: cash, checking accounts, savings accounts, time certificates, stocks, bonds, annuities and other securities easily converted to cash, the tax-assessed value, as indicated by the county assessor, of any residential property owned by the applicant or their dependent that is not owner-occupied. It also includes assets of a business owned by an applicant, member, or their spouse. Investments and savings do not include qualified retirement accounts such as IRAs and 401(k) plans.

(19) "Liable adult" means a person or persons who applied for and/or receives a subsidy for themselves and/or others. Children are not considered liable adults if their parent or guardian applied for or received a subsidy on the child's behalf.

(20) "Material misrepresentation" has the same meaning as in ORS 742.013.

(21) "Medicaid," see OHP.

(22) "Medicare" is a federal health insurance program for those who are 65 or older, disabled, or have permanent kidney failure. May include both Parts A and B, or may only include Part A or Part B.

(23) "Member" means a person enrolled in FHIAP and eligible for and/or receiving a subsidy from the program.

(24) "OHP" means the Oregon Health Plan Medicaid program and all programs that include medical assistance provided under 42 U.S.C. section 396a (section 1902 of the Social Security Act).

(25) "Overpayment" means any subsidy payment made that exceeds the amount a member is eligible for, and has been received by, or on behalf of, that member.

(26) "Overpayment amount" means:

(a) The total amount of subsidy payments the Board has paid to, or on behalf of, an ineligible member; or

(b) The total amount of subsidy payments in excess of the correct subsidy amount paid to, or on behalf of, an eligible member; or

(c) Both (a) and (b).

(27) "Postmark" means the postmark date affixed by the United States Postal Service.

(28) "Public institution" means state-funded residential facilities such as Eastern Psychiatric Center, Oregon State Hospital, or Eastern Oregon Training Center.

(29) "Qualified non-citizen" for the purposes of FHIAP means a person who is not a United States citizen but is any of the following:

(a) Was a qualified non-citizen on or before August 22, 1996; or

(b) Was a resident of the United States before August 22, 1996; became a qualified non-citizen after August 22, 1996; and has lawfully and continuously resided in the United States for five years; or is any of the following:

(A) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(B) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(C) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(D) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1523(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(E) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(F) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(G) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(H) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(I) American Indians born in Canada to whom the provision of section 289 of the INA (8 U.S.C. 1359) apply.

(J) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(K) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(L) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(M) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(N) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(O) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

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(Q) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(R) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(S) A person granted immigration status according to the Amerasian Homecoming Act, section 584(a) of the INA.

(T) A veteran of the U.S. Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty requirements described in 38 U.S.C. 5303A(d).

(U) A member of the U.S. Armed Forces on active duty (other than active duty for training).

(V) The spouse or dependent child of a person described above.

(c) A legal non-citizen approved for FHIAP subsidy prior to November 1, 2002.

(d) Except as provided in subsections (a), (b) and (c) of this rule, non-citizens who were given qualified non-citizen status on or after August 22, 1996 are ineligible for FHIAP for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(30) "Redetermination" means the periodic review and determination of a member's continued eligibility and/or subsidy level.

(31) "Reservation list" means a list of potential applicants for FHIAP, entered onto a register maintained by the TPA or state agency as authorized by ORS 735.724.

(32) "Resident" means an individual who demonstrates to the Board that the individual is lawfully residing in Oregon and intends to reside in Oregon permanently.

(a) There is no minimum amount of time a person must have lived in Oregon to be a resident;

(b) Applicants and members and applicant's and member's dependents must intend to remain in Oregon, except for full-time students attending school in another state who are eligible for coverage under the terms of the health benefit plan selected by the member and are dependents of an Oregon resident.

(33) "Self-employment" criteria include, but are not limited to, applicants who submit with their FHIAP application an Internal Revenue Service (IRS) Schedule C tax form and/or a federal form 1099, and for adult foster care givers proof that the recipient of the care resides in the applicant's home. Self-employment does not include partnerships, S-corporations, C-corporations, limited liability corporations, and adult foster caregivers whose care recipient does not reside in the applicant's home. Any income reported on the IRS Schedule E is also not considered self-employment and will not be subject to any deductions.

(34) "Support" means any court-ordered monetary payment for a child(ren) or former spouse or domestic partner.

(35) "Voluntary payroll deduction" means an amount the employee has authorized the employer to deduct from the employee's income to pay expenses not required by law.

Stat. Auth.: ORS 735.724, ORS 735.734 & ORS 735.720 - ORS 735.740

Stats. Implemented: ORS 735.720 - ORS 735.740

Hist.: IPGB 2-1998, f. 4-29-98, cert. ef. 5-1-98; IPGB 1-1999(Temp), f. & cert. ef. 12-7-99 thru 5-7-00; IPGB 1-2000, f. 5-5-00, cert. ef. 5-7-00; IPGB 1-2002, f. 1-24-02, cert. ef. 2-1-02; IPGB 2-2002(Temp), f. 4-19-02, cert. ef. 5-11-02 thru 10-31-02; IPGB 3-2002, f. 10-31-02, cert. ef. 11-1-02; IPGB 4-2002(Temp), f. & cert. ef. 12-6-02 thru 6-4-03

ADMINISTRATIVE RULES

Landscape Contractors Board Chapter 808

Adm. Order No.: LCB 4-2002

Filed with Sec. of State: 12-4-2002

Certified to be Effective: 12-4-02

Notice Publication Date: 11-1-02

Rules Adopted: 808-002-0290, 808-003-0081, 808-003-0085, 808-004-0120, 808-004-0260, 808-004-0450, 808-009-0430

Rules Amended: 808-001-0020, 808-001-0030, 808-002-0220, 808-002-0670, 808-002-0680, 808-003-0025, 808-003-0055, 808-003-0070, 808-003-0075, 808-003-0100, 808-004-0180, 808-004-0250, 808-004-0320, 808-004-0340, 808-004-0440, 808-004-0460, 808-004-0480, 808-004-0500, 808-004-0520, 808-004-0540, 808-004-0550, 808-004-0560, 808-004-0600, 808-005-0020, 808-005-0030, 808-009-0020, 808-009-0070, 808-009-0100, 808-009-0120, 808-009-0160, 808-009-0220, 808-009-0400, 808-009-0420, 808-009-0440

Rules Ren. & Amended: 808-004-0200 to 808-004-0510, 808-004-0580 to 808-004-0470

Subject: 808-001-0020 adds a fee for copies of duplicate tape records; 808-001-0030 clarifies computation of time.

808-002-0220 defines an employee claim and clarifies tax claim; 808-002-0290 defines "days" as calendar days; 808-002-0670 expands the use of respondent to enforcement actions; 808-002-0680 corrects phrase so it matches the phrase used in ORS 671.703.

808-003-0025 clarifies what is required as alternative experience; 808-003-0055 defines "hand-held calculator"; 808-003-0070 amends the time periods between retaking the exam; 808-003-0075 permits applicants to receive in person; 808-003-0081 does not allow for an appeal of the exam scores; 808-003-0085 clarifies the Boards' policy regarding cheating on the exam; 808-003-100 clarifies when a business entity must apply for a new business license.

808-004-0120 makes landscaping business subject to claims committed by certain entities associates with the landscaping business; 808-004-0180 clarifies procedure to close claim if claimant fails to respond to the agency; 808-004-0200 amended and renumbered to 808-004-0510; 808-004-0250 prohibits inclusion of attorney fees and other costs except under specified circumstances, the agency will suspend processing when the claimant obtains a judgment; 808-004-0260 clarifies procedures and standards for closure of a claim, declares it to be an order that is not a contested case and clarifies the type of appellate review available, sets up standards for reconsideration, clarifies that agency may reopen a claim on its own initiative, and requires a party to file a motion for reconsideration to obtain judicial review of the claim closure; 808-004-0320 clarifies jurisdictional requirements; 808-004-0340 clarifies monetary damages to the extent they are known at the time the claim is filed; 808-004-0440 provides for contractual requirements to mediate; 808-004-0450 establishes who may represent claimant at an on-site meeting, provides procedure to close the claim if claimant files to comply; 808-004-0460 changes "licensee" to "respondent;" 808-004-0480 allows agency to present a settlement proposal at an on-site meeting; 808-004-0500 clarifies procedure to close a claim where a settlement is made; 808-004-0510 allows claimant to file a claim in court or have the claim arbitrated outside the LCB; 808-004-0520 allows claimant to choose to file a claim in court; 808-004-0540 clarifies when the agency may dismiss a claim on the merits or issue an order to contractor to pay damages; 808-004-0550 deletes the requirement that a proposed order to dismiss be issued if claimant refuses to allow respondent to attend the on-site meeting; 808-004-0560 housekeeping and establishes what portion of the agency file on the claim will be included in the record of the hearing for purposes of hearing the case if a party fails to appear at the hearing; 808-004-0580 renumbered to 808-004-0470; 808-004-0600 replaces the word "licensee"

with "respondent" and prohibits surety company from conditioning payment on the bond.

808-005-0020 and 808-005-0030 corrects references.

808-009-0020 allows claim items added up to and through the initial on-site investigation; 808-009-0070 corrects citations and language; 808-009-0100 clarifies burden of proof; 808-009-0120 updates the language of the standard of proof to be consistent with the standard stated in other rules; 808-009-0140 housekeeping; 808-009-0160 makes consideration of amounts due under the contract at issue mandatory, housekeeping; 808-009-220 corrects language; 808-009-0400 and 808-009-0420 establishes requirements for filing exceptions to an agency order and eliminates requirement that exceptions be considered at the next meeting of the Board after exceptions are filed; 808-009-0430 establishes requirements for exceptions to a proposed order issued by the Hearing Officer Panel; and 808-009-0440 updates language.

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6561

808-001-0020

Charges for Documents; Refunds

(1) All requests for copies of public records pertaining to the State Landscape Contractors Board and available at the Board's office shall be in writing.

(2) Charges for copies, documents, and services shall be as follows:

(a) For machine copies requested by other state agencies and by the general public, twenty-five cents per image;

(b) \$10 per half-hour unit or portion of a half-hour unit for research of records for each request from a person beginning with the 31st minute of research time;

(c) For both machine copies and documents, an additional amount set at the discretion of the Administrator for staff time required for search, handling, and copying.

(d) \$20 for duplicate tape recording of Board meetings.

(e) \$20 for duplicate tape recordings of a three hour agency hearing or arbitration and \$10 for each additional 90 minute or fraction thereof of the hearing or arbitration.

(3) Charges to the general public shall be payable in cash. Charges to state agencies shall be payable in cash unless billing to such agencies is authorized by the Administrator.

(4) The agency shall not refund fees or civil penalties overpaid by an amount of \$25 or less unless requested in writing within three years after the date payment is received by the agency, as provided by ORS 293.445(4).

(5) If an applicant decides to withdraw their application for a landscape contractor license or renewal, they must make a written request for a refund. The agency may retain an application-processing fee of \$20. If an applicant decides to withdraw their application for a landscape business license or renewal, the agency may retain an application-processing fee of \$50.

(6) 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 183, ORS 293.445 & ORS 671

Stats. Implemented: ORS 183, ORS 192.430, ORS 293.445 & ORS 671

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1988(Temp), f. 3-17-88, cert. ef. 4-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 2-1999, f. & cert. ef. 5-4-99; LCB 4-2002, f. & cert. ef. 12-4-02

808-001-0030

When Mail Deemed Delivered; Response Time to Notices

(1) Except as provided in section (2) of this rule, mail shall be considered delivered to a person when deposited in the United States mail with the correct amount of postage and addressed to the last known address of record of the person.

(2) If the agency directs mail to a person who is not a licensee or a claimant under Division 4 of these rules, the mail shall not be deemed delivered if it is returned as undeliverable because the person moved with no forwarding address.

(3) Time for responses to all notices to a person delivered by placement in the United States mail with the correct amount of postage and addressed to the last known address of the person shall run from the date of mailing, unless otherwise specified in the notice.

ADMINISTRATIVE RULES

(4) OAR 137-003-0520(8) shall apply to the computation of time to respond to a notice under this rule, whether the notice is related to a contested case, arbitration or any other matter.

Stat. Auth.: ORS 183.415, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183.415 & ORS 671
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02

808-002-0220

Claims

"Claims" as used in ORS 671.690 to 671.670 and in division 4 of this chapter are:

(1) "Breach of contract claim" means a claim for amounts due from a landscaping business as a result of a breach of contract in performing work subject to ORS 671.510 to 671.710.

(2) "Material or equipment claim," means a claim for amounts due from a landscaping business for material or for renting or supplying equipment to a landscaping business.

(3) "Employee claim" is a claim for unpaid wages or benefits filed by an employee of a landscaping business or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a landscaping business for work done by the employee relating to the licensee's operation as a contractor under ORS chapter 671.

(4) "Negligent or improper work claim" means a claim for amounts due from a landscaping business as a result of negligent or improper work subject to ORS 671.510 to 671.710.

(5) "State tax and contribution claim" means a claim filed by the State of Oregon for amounts due from a landscaping business for taxes and contributions due to the State of Oregon from a landscaping business.

(6) "Subcontractor claim" is a claim filed by a subcontractor arising out of a contract between the subcontractor and a landscape business for unpaid labor or materials furnished under the contract.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.510 - ORS 671.720
Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02

808-002-0290

Days

"Days" as used in this chapter means calendar days, unless otherwise provided or the context otherwise indicates.

Stat. Auth.: ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671
Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-002-0670

Respondent

"Respondent" as used in this chapter, means a landscaping business that a claim is filed against under ORS 671.690 to 671.710 or that the board proposes to impose a penalty against under ORS 671.510 to 671.625 and 671.950 to 671.992.

Stat. Auth.: ORS 183.325 - 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.690 - ORS 671.710
Hist.: 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 4-2002, f. & cert. ef. 12-4-02

808-002-0680

Nature and Complexity

"Nature or Complexity" includes, but is not limited to the following meaning:

(1) Involves issues requiring legal interpretation of statutes in addition to ORS chapter 671 (i.e., contract law, corporate law, etc.);

(2) In the interest of fairness and equity, requires rulings against persons or entities outside the jurisdiction of the agency; or

(3) Is outside the expertise of the agency.

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.703
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 4-2002, f. & cert. ef. 12-4-02

808-003-0025

Alternative Experience

(1) In lieu of experience required by ORS 671.570(1)(a), an applicant may submit documentation showing two years of related landscaping experience by identifying six individual projects per calendar year for two years.

For the maximum, two years' experience, the applicant may document 24 projects, six per calendar year, for four years.

(2) To qualify under subsection (1), the applicant shall submit documentation for each project on forms provided by the agency. The following shall be provided for each project, for use by the agency in verifying the information:

- (a) Name and address of person for whom the project was done;
- (b) Description of work done;
- (c) Cost of project (must be \$100 or more but less than \$500 for a single non-recurring project);
- (d) Date of project; and
- (e) Copy of contract, if available.

(3) An applicant will be deemed to have qualifying experience under ORS 671.570(1)(b) if the applicant completes the Certified Landscape Technician (CLT) program administered by the Oregon Landscape Contractors Association or Associated Landscape Contractors of America.

(4) An applicant will be deemed to have qualifying experience under ORS 671.570(1)(b) if the applicant obtains an Associate, Bachelor's or Master's Degree in horticulture or other related fields from an accredited school or college, which includes the completion of a cooperative work experience requirement.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.570
Hist.: LC 1-1985, f. & ef. 7-1-85; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0016; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 2-1998, f. & cert. ef. 4-30-98; LCB 4-2002, f. & cert. ef. 12-4-02

808-003-0055

Examination Requirements

(1) The agency shall provide written or computerized examinations for those licenses issued.

(2) Applicants may schedule an appointment with the agency, or designated proctors throughout the state, to take an examination after receipt of a letter of authorization from the agency and payment of the required fee(s).

(3) Applicant shall show picture identification and the letter of authorization before taking an exam.

(4) The examinations shall be "closed book". Applicants may use only a hand-held calculator, scale ruler, and pencil or pen in addition to examination materials.

(5) "Hand-held calculator" as used in this rule means a hand held electronic device that performs only basic mathematical calculations.

Stat. Auth.: ORS 183 & ORS 671
Stats. Implemented: ORS 671.570
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0024; LCB 4-2002, f. & cert. ef. 12-4-02

808-003-0070

Exam Failure

(1) Applicants who attempt and fail an examination or section of the exam must wait two weeks before retaking the exam or section of the exam.

(2) After two unsuccessful attempts to pass a written or computerized exam, an applicant may petition the agency for an oral exam.

Stat. Auth.: ORS 183 & ORS 671
Stats. Implemented: ORS 671.570
Hist.: LC 1-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0027; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 4-2002, f. & cert. ef. 12-4-02

808-003-0075

Notice of Score

(1) If the applicant takes a written exam, the agency will notify the applicant by mail of their examination scores.

(2) If the applicant takes the computerized exam, the applicant will receive scores in person immediately after taking the exam.

Stat. Auth.: ORS 183 & ORS 671
Stats. Implemented: ORS 671.570
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0028; LCB 4-2002, f. & cert. ef. 12-4-02

808-003-0081

Appeal of Examination Scores

An applicant who fails an examination or section of an exam may not appeal the examination scores.

Stat. Auth.: ORS 183 & 671
Stats. Implemented: ORS 671.570
Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

ADMINISTRATIVE RULES

808-003-0085

Cheating on the Exam

(1) Any person sitting for the examination who is caught cheating during the examination:

(a) Will not receive a score for any of the exam sections for the current sitting;

(b) Will forfeit the exam fee;

(c) May not retake any sections of the exam for 30 days;

(d) Must submit a new exam fee; and

(e) Must take all future exam sections in the Board office.

(2) The Landscape Contractors Board will not grade examinations of applicants who are caught cheating.

(3) Actions that may be considered cheating include, but are not limited to:

(a) Copying answers from another applicant during the examination;

(b) Helping another applicant during the examination;

(c) Unauthorized communication with another individual, in or out of the examination room, during the examination;

(d) Using unauthorized written materials, notes or equipment during the examination; or

(e) Removing examination materials, such as a question booklet page, in whole or in part, from the exam.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.570

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-003-0100

Licenses

(1) A landscape contractor or landscaping business license and its identifying license number will be issued to one entity only. Other entities shall not be included in that license, but each shall be separately licensed and shall separately meet the licensing requirements. No entity may perform work subject to ORS chapter 671 through the use of another entity's license.

(2) The Board adopts the form "Independent Contractor Certification Statement", as required by ORS 671.565.

(3) If an entity licensed as a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or joint venture seeks to change to another entity, the former license will be terminated. The new entity must license anew. If a new Employee Identification Number is required for the business, then the business is considered a new entity.

(4) Landscape contractor licenses shall be issued in the name of the individual.

(5) Landscaping business licenses shall be issued as follows:

(a) If the business is a sole proprietorship, the license shall be issued in the name of the sole proprietor;

(b) If the business is a sole proprietorship and the sole proprietor is using an assumed business name, both the name of the individual and assumed business name shall appear on the license;

(c) If the business is a partnership, the license shall be issued in the names of the partners;

(d) If the business is a partnership using an assumed business name, the names of the partners and the assumed business name shall appear on the license;

(e) If the business is a corporation, the license shall be issued in the corporate name;

(f) If the business is a limited liability company, the license shall be issued in the limited liability company name.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.560

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0030; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 2-2002, f. & cert. ef. 5-24-02; LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0120

Liability of Landscaping Business

A licensed landscaping business participating in a corporation wholly-owned by the landscaping business, or a limited liability partnership, limited liability company, joint venture or partnership, may be held liable for claim actions brought under ORS 671.690 to 671.710, whether or not the corporation, limited liability partnership, limited liability company, joint venture or partnership was licensed as required by ORS chapter 671.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671

Stats. Implemented: ORS 671.

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0180

Claimants' Responsibility to Pursue Claim

(1) Throughout the processing of a claim, a claimant has the responsibility to pursue the claim and to respond in a timely manner to requests from the agency for information or documentation.

(2) The agency may close a claim under OAR 808-004-0260 if:

(a) The claimant fails to respond to a written request from the agency, or to provide requested information or documentation within a time limit specified in that request; or

(b) The claimant fails to respond in writing to a written request from the agency, after being instructed to do so by the agency.

(3) A written request from the agency under section (2) of this rule must comply with the requirements of OAR 808-004-0260.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 671.703

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 4-2002, f. & cert. ef. 12-4-02

808-004-0250

Exclusion of Certain Damages from Award

(1) Except as provided in section (2) of this rule, an order of the board awarding monetary damages in a claim, including but not limited to an order of the Board arising from a court judgment or arbitration award, may not include an award for:

(a) Attorney fees;

(b) Court costs;

(c) Interest;

(d) Costs to pursue litigation or the claim;

(e) Service charges or fees; or

(f) Other administrative damages.

(2) An order of the board may include attorney fees, court costs, other costs and interest included in a court order or arbitration award that are related to the portion of the court judgment or award that is within the jurisdiction of the board if the court order or arbitration award arises from litigation:

(a) That was initiated by the respondent; or

(b) That the agency required the claimant to initiate under ORS 671.703(12) due to the nature or complexity of the claim.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415 & ORS 183.460

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 4-2002, f. & cert. ef. 12-4-02

808-004-0260

Order Closing a Claim

(1) If the agency closes a claim because the claimant failed to act in response to a request from the agency, the closure of the claim is an order that is not an order in a contested case. An order to close a claim is subject to a motion for reconsideration under ORS 183.484 and OAR 137-004-0080 and an appeal for judicial review under ORS 183.484.

(2) The agency may close a claim under this rule only if it complies with the following:

(a) The agency must include notification in its request to claimant that failure to act as requested may result in closure of the claim and that closure of the claim will prevent access to the bond.

(b) The agency may not close the claim sooner than 14 days after giving the notification required in subsection (a) of this section.

(c) The agency shall notify the parties to the claim that the claim is closed and cite the statutes and rules under which the order may be appealed.

(3) The agency may reopen a claim closed under this rule if the record of the claim contains evidence that shows that the cause of the failure of claimant to act as requested by the agency was due to excusable neglect by the claimant. The agency may reopen the claim:

(a) In response to a motion for reconsideration; or

(b) On the agency's own initiative under OAR 137-004-0080 after receiving evidence supporting reconsideration of the order closing the claim.

(4) At the agency's discretion, the agency may refer a claim to the Hearing Officer Panel for a contested case hearing on whether closure of the claim under this rule is proper.

(5) A party must file a motion for reconsideration of an order closing a claim under this rule before seeking judicial review of the order.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 670.310, 671.703
Stats. Implemented: ORS 183.480, 671.703
Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0320

Jurisdictional Requirements

(1) A claim must be of a type described under ORS 671.690(2) and OAR 808-002-0220.

(2) The agency will only process a claim that is filed within the following time limitations:

(a) State tax and contribution claims must be filed within one year of the due date of the tax or contribution.

(b) Labor, material and equipment claims must be filed within one year of the delivery date of the labor, material or equipment.

(c) Negligent or improper work claims must be filed within one year following the date the work was completed.

(d) Breach of contract claims must be filed within one year of the contract date or the last date of work on the project, whichever is later.

(3)(a) A claim will be processed only against a licensed landscaping business.

(b) For a State tax and contribution claim, the landscaping business against which the claim is filed will be considered licensed if the tax and contribution liability arose while the business was licensed.

(c) For a material claim, the landscaping business against which the claim is filed will be considered licensed if one or more invoices involve material delivered while the landscaping business was licensed.

(d) For any other claim, the landscaping business against which the claim is filed will be considered licensed if the landscaping business was licensed during all or part of the work period.

(4) A labor, material and equipment claim, negligent or improper work claim or breach of contract claim will be accepted only when one or more of the following relationships exists between the claimant and the licensed landscaping business:

(a) A direct contractual relationship based on a contract entered into by the claimant and the landscaping business, or their agents; or

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim.

(5) A claim by a person furnishing material, or renting or supplying equipment to a landscaping business may not include a claim for non-payment for tools sold to a landscaping business, for equipment sold to the landscaping business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.

(6) Claims will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for installation or use on property located within the boundaries of the State of Oregon.

(7) The agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 671.510 to 671.710 that is the same as an allegation contained in a claim previously filed by the same claimant against the same landscaping business.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.703
Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0020; LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0340

Form of Claims

(1) A claim shall be submitted on a Statement of Claim form provided by the agency. The agency may require the use of the most recent revision of the Statement of Claim form.

(2) The claimant shall provide the following information, if applicable to the claim, on or enclosed with the claim form:

(a) The name, address, and telephone number of the claimant;

(b) The name, address, telephone number and license number of the landscaping business;

(c) The amount, if known at the time the Statement of Claim is filed, that the claimant alleges is due from the business after crediting payments, offsets, and counterclaims in favor of the landscaping business to which the claimant agrees;

(d) A brief statement of the nature of the claim, setting forth whether the claim is for labor, material or equipment, taxes or contributions due the State of Oregon, negligent or improper work or breach of contract related to a contract with the claimant;

(e) The date on which the contract was entered into;

(f) If the contract was in writing, a copy of the contract with attached material invoices, time sheets, or other relevant attached documents;

(g) Location of the work;

(h) The beginning and ending date of the work or invoices;

(i) Payments, offsets, and counterclaims of the landscaping business, if known, to which the claimant does not agree;

(j) A certification by the claimant that the Statement of Claim is true; and

(k) A copy of any court judgment or arbitration award related to the work that is the subject of the claim.

(3) A claim by a landscaping business shall include a copy of each original invoice relating to the claim and a recapitulation showing the date, number, amount and description of each invoice submitted.

(4) An employee claim shall include copies of time cards or other evidence of the amount of compensation claimed.

(5) A material or equipment claim shall include a copy of each original invoice relating to the claim and a recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, and each invoice amount. Claimant shall include documentation that claim is a minimum of 60 days old and two attempts to collect have been made.

(6) A claim involving negligent or improper work shall include a list of the alleged negligent or improper work. A claim involving a breach of contract shall describe the nature of the breach of contract.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.703
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 808-010-0040; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0010; LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0440

Contracts With Mediation or Arbitration Agreements

(1) If a claim is received that is based upon a contract that contains an agreement by the parties to mediate or arbitrate disputes arising out of the contract, the specific terms of the mediation or arbitration agreement supersede agency rules except as provided in this rule.

(2) Unless the contract requires mediation or arbitration by the agency, the agency will inform the claimant and the respondent that the agency will accept the claim but will suspend processing for 60 days during which time the agency must receive either:

(a) Written signed waivers of mediation or arbitration under the contract from both parties; or

(b) Evidence that one or both parties initiated mediation or arbitration under the contract to resolve the same facts and issues raised in the claim.

(3) The agency may close the claim under OAR 808-004-0260 if the agency does not receive either written signed waivers of arbitration under the contract from both parties or evidence that arbitration has been initiated as required under section (2) of this rule within the time period provided in that section. The agency may not close the claim under this section if the respondent initiates mediation or arbitration under the contract prior to the expiration of the 60-day period for providing the waivers.

(4) If the respondent does not waive mediation or arbitration under the contract, the agency will allow the respondent the time allowed under section 2 of this rule to commence mediation or arbitration. If the respondent fails to submit evidence to the agency that mediation or arbitration under the contract commenced within the time allowed under section 2 of this rule and if the claimant waived mediation or arbitration within the time allowed under section 2 of this rule, the agency will continue to process the claim.

(4) If mediation or arbitration under the contract is properly commenced under this rule, the agency may suspend processing the claim under OAR 808-004-0520 until the mediation or arbitration is complete.

(5) If the claimant is unsuccessful in obtaining an arbitration award upon completion of arbitration under the contract, the claim will be closed. A new claim on the same facts and issues at issue in the arbitration will be subject to OAR 808-004-0320(7).

(6) A claim closed under section (3) of this rule will not be reopened, but the claimant may file a new claim on the same facts and issues. The new claim will not be subject to OAR 808-004-0320(7) but will be subject to the time limitations in OAR 808-004-0320 and other jurisdictional requirements in this chapter.

(7) Nothing in this rule prevents the parties from mutually agreeing to have the agency arbitrate the dispute, rather than process the claim as a contested case.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.703
Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02

ADMINISTRATIVE RULES

808-004-0450

On-site Meeting and Attendance of Claimant

(1) The agency may schedule an on-site meeting among the parties for the purpose of discussion of a settlement of a claim and investigation of the claim under ORS 671.703. The agency shall mail notice of the meeting no less than 14 days prior to the date scheduled for the meeting. The notice shall include notification of the requirements of section (2) and (3) of this rule and shall comply with the requirements of OAR 808-004-0260.

(2) If the agency schedules an on-site meeting, the following apply:

(a) The claimant must allow access to the property that is the subject of the claim.

(b) The claimant or an agent of the claimant must attend the meeting. An agent of the claimant must have knowledge of all claim items included in the claim and must have authority to enter into a settlement of the claim. The agency may waive the requirement that an agent have authority to enter into a settlement of the claim if there is evidence that the respondent will not attend the on-site meeting.

(c) The claimant must allow the respondent to be present at the on-site meeting as required under ORS 671.703.

(3) If the claimant fails to comply with the requirements of section (2) of this rule, the agency may close the claim under OAR 808-004-0260.

Stat. Auth.: ORS 670.310, ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-004-0460

Agency Recommendation of Resolution

If it appears that the respondent has performed negligent or improper work, or breached a contract, the agency may recommend to the claimant and respondent a resolution consistent with the terms of the contract, generally accepted landscaping practices, and industry standards.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 671.703

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 4-2002, f. & cert. ef. 12-4-02

808-004-0470

Challenge to Investigation Report

The claimant or respondent may challenge and offer evidence to disprove the agency's investigation report, if any, at a contested case hearing.

Stat. Auth.: 183, 670.310 & ORS 671.670

Stats. Implemented: ORS 671.703

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 4-2002, f. & cert. ef. 12-4-02; Renumbered from 808-004-0580

808-004-0480

Resolution by Settlement and Construction of Settlement Agreement

(1) The agency may present a settlement proposal to the claimant and respondent for their consideration and agreement at an on-site meeting conducted under OAR 808-004-0450.

(2) If the claimant and respondent sign a settlement agreement, the agreement shall be binding upon each party unless breached by the other.

(3) Settlement agreements may be considered by the agency to be substituted contracts and damages may be based on the settlement.

(4) If at any time during the processing of the claim, the claimant accepts a promissory note from the respondent or other compromise as settlement of the claim, the agency may consider the agreement to be a substituted contract, and base the continued processing of the claim on the substituted

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 671.703

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 4-2002, f. & cert. ef. 12-4-02

808-004-0500

Closure of Claim After Settlement

If claimant and respondent agree to a settlement, the following apply:

(1) The agency shall notify the claimant that the claimant must notify the agency in writing whether the terms of the settlement have been fulfilled within 30 days of the date shown on the settlement for completion of the terms of the settlement. This notice must comply with the requirements of OAR 808-004-0260.

(2) If the claimant notifies the agency that the terms of the settlement agreement have been fulfilled, the agency shall close the claim.

(3) If the claimant does not notify the agency as required under section (1) of this rule, the agency may close the claim under OAR 808-004-0260.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.460 & ORS 671.703

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 4-2002, f. & cert. ef. 12-4-02

808-004-0510

Court Judgments and Other Authorized Entity Determinations

(1) "A court judgment or other authorized entity determination" means a judgment or determination by a court or other entity, as that phrase is defined in Division 2.

(2) A court judgment or other authorized entity determination may constitute the basis for a claim if a statement of claim is filed under OAR 808-004-0300 and 808-004-0340 within the time limitation in OAR 808-004-0320(2) and all or a portion of the judgment is within the jurisdiction of the board.

(3) Facts and issues within the jurisdiction of the agency previously determined by a court or other authorized entity will not be relitigated unless a party shows there was not a full and fair opportunity to be heard in the prior proceeding. A party contesting a prior determination must specify the facts and issues involved and provide a copy of appropriate parts of the record of the prior proceeding.

(4) A claim based on a judgment or other authorized entity determination shall be processed under OAR 808-004-0520. An award of damages on the claim based on a judgment or other authorized entity determination may be limited under OAR 808-004-0250.

Stat. Auth.: ORS 183.325 - 183.410, 670.310, ORS 671.670

Stats. Implemented: ORS 671.703

Hist.: 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. 1-27-92, cert. ef. 2-1-92; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0040; 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 4-2002, f. & cert. ef. 12-4-02; Renumbered from 808-004-0200

808-004-0520

Processing of Claim Submitted to Court or Other Entity

(1) "Court or other entity" has the meaning given that phrase in division 2 of this chapter.

(2) The agency may suspend processing a claim if:

(a) The respondent submits a complaint against claimant to a court or other entity that relates to same facts and issues contained in the statement of claim filed against respondent, including but not limited to a breach of contract claim or a suit to foreclose a lien involving the same contract at issue in the claim;

(b) Claimant submits a complaint against respondent to a court or other entity that relates to same facts and issues contained in the statement of claim filed against respondent; or

(c) The agency requires the claimant to submit the claim to a court because the agency determined that a court is the appropriate forum for the adjudication of the claim because of the nature or complexity of the claim.

(3) If the agency suspends processing a claim under subsection (2) of this rule, the agency shall notify the claimant on the date it suspends processing the claim that processing has been suspended. The following provisions apply to the agency and the claimant if processing is suspended:

(a) The notice of suspension of processing shall include notification of the requirements contained in subsections (b) and (d) of this section and shall comply with the requirements of OAR 808-004-0260.

(b) Beginning six months after the date that the agency suspends processing the claim and no less frequently than every sixth month thereafter, the claimant shall deliver to the agency a written report describing the current status of the action before the court or other entity.

(c) The agency may, at any time, demand from the claimant a written report describing the current status of any action before a court or other entity. Such demand must be in writing and must comply with the requirements of OAR 808-004-0260. The claimant shall deliver a written response to the agency within 30 days of the date the demand letter is mailed by the agency.

(d) Within 30 days of the date of final action by the court or other entity, the claimant shall deliver to the agency a copy of the judgment or decision together with a copy of the complaint or other pleadings on which the judgment or decision is based.

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(e) If claimant complies with subsections (b), (c) and (d) of this section, the agency may resume processing the claim. If the claimant fails to comply with subsections (b), (c) or (d) of this section, the agency may close the claim under OAR 808-004-0260.

(4) If the agency suspends processing a claim under subsection (2)(a) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency shall notify the claimant that the claimant must file the claim as a counter-suit or complaint in the court or other entity and submit evidence, including a copy of the counter-suit or complaint, to the agency that the claimant has done so within 30 days of notification. The notice shall comply with the requirements of OAR 808-004-0260.

(b) If the claimant fails to submit the evidence as required under subsection (a) of this section, the agency may close the claim under OAR 808-004-0260.

(5) If the agency suspends processing a claim under subsection (2)(c) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency shall notify the claimant, in a notice that complies with the requirements of OAR 808-004-0260, that agency has suspended processing the claim and that the claimant must:

(A) File the claim as a complaint in a court of competent jurisdiction within 90 days of notification that the agency has suspended processing the claim; and

(B) Submit evidence, including a copy of the complaint, to the agency that the claimant complied with paragraph (A) of this subsection within 21 days of filing the complaint.

(b) If the claimant fails to submit the evidence as required under subsection (a) of this section, the agency may close the claim under OAR 808-004-0260.

(6) If the agency resumes processing a claim under section (3) of this rule:

(a) The agency shall accept a judgment of a court of competent jurisdiction or a decision of another entity as the final determination of the merits of the claim.

(b) Based on the judgment or decision, the agency shall issue a proposed default order to pay damages or to dismiss or refer the claim to the Hearing Officer Panel for a hearing. The following apply to proceedings under this subsection:

(A) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral to the Hearing Officer Panel.

(B) A proposed default order to pay damages issued under this section must include a statement of the portion of the judgment that the agency finds is within the jurisdiction of the agency.

(C) If the agency refers the claim to the Hearing Officer Panel for a hearing, the hearing officer shall determine the portion of the judgment, if any, that is within the jurisdiction of the agency.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670
Stat. Implemented: ORS 183.415, ORS 183.460, ORS 671.703 & ORS 671.575
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 4-2002, f. & cert. ef. 12-4-02

808-004-0540

Establishing Monetary Damages, Issuing Proposed Default Order or Referring Claim for Hearing

(1) A claimant may seek monetary damages if the agency has not closed the claim and:

(a) The claimant disagrees with the resolution proposed by the agency;

(b) The respondent cannot or will not comply with the resolution proposed by the agency;

(c) The parties signed a settlement agreement proposed by the agency but, through no fault of the claimant, the respondent has not fulfilled the terms of the settlement agreement, and the agency is so advised in writing by the claimant within 30 days of the date the settlement agreement was to have been completed.

(2) If the claimant seeks monetary damages or the agency so requests, the claimant shall file a declaration of damages stating the amount the claimant alleges the respondent owes the claimant, limited to claim items listed in the Statement of Claim. The agency may require the claimant to submit, in support of the amount alleged:

(a) One or more estimates from licensed landscape businesses for the cost of correction of each of the claim items; or

(b) Other basis for monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the claim for a hearing under section (4) of this rule after each party to the claim has had an opportunity to provide evidence supporting its position with regard to the claim. The agency may require that the claimant file a declaration of damages and supporting evidence described under section (2) of this rule.

(4) After documentation required under sections (2) or (3) of this rule is received, the agency may:

(a) Issue a proposed default order proposing dismissal of the claim under OAR 808-004-0550(2) or payment of an amount by the respondent to the claimant; or

(b) Refer the claim to the Hearing Officer Panel for a hearing to determine the validity of the claim and whether the amount claimed, or some lesser amount, is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to claimant if the record of the claim contains evidence that persuades the agency that:

(A) Claimant suffered damages;

(B) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(C) The monetary value of those damages is substantiated on the record.

(b) The agency may issue a proposed default order that is not described in subsection (a) of this section if the record of the claim contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral to the Hearing Officer Panel issued under this rule.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703

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 4-2002, f. & cert. ef. 12-4-02

808-004-0550

Proposed Default Order to Dismiss, Other Resolution of Claim by Proposed Default Order

(1) The agency may issue a proposed default order proposing dismissal of a claim if the evidence in the claim record persuades the agency that one of the following grounds for dismissal exists:

(a) The claim is not the type of claim that the agency has jurisdiction to determine under ORS 671.690 or 671.703.

(b) The claim was not filed within the time limit specified under ORS 671.710 and OAR 808-004-0320.

(c) The claimant did not permit the respondent to comply with agency recommendations under ORS 671.703.

(d) The claim must be dismissed for lack of jurisdiction under OAR 808-004-0320(4).

(e) The respondent breached a contract or performed work negligently or improperly, but the monetary value of damages sustained by the claimant is less than an amount due to the respondent from the claimant under the terms of the contract.

(f) The claimant contends that the respondent failed to fulfill the terms of a settlement that resolved the claim but the agency finds that the respondent fulfilled the respondent's obligation under the settlement agreement.

(2) The agency may issue a proposed default order proposing dismissal of a claim if the agency investigates the claim and finds that the record of the claim does not contain evidence that persuades the agency that:

(a) The claimant suffered damages;

(b) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(c) The monetary value of those damages is substantiated on the record.

(3) If the claimant makes a timely request for a hearing after the agency issued a proposed default order under section (1) or (2) of this rule, the agency may:

(a) Refer the claim for a hearing solely to determine whether the dismissal was proper; or

(b) Require that the claimant file a declaration of damages stating an amount the claimant alleges the respondent owes the claimant and refer the claim for a hearing to determine if the claim should be dismissed and if not,

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the validity of the claim and whether the amount claimed, or some lesser amount is proper.

(4) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral to the Hearing Officer Panel issued under this rule.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 183.46 & ORS 671.703

Hist.: 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 4-2002, f. & cert. ef. 12-4-02

808-004-0560

Requirements for Proposed Default Order or Referral to Hearing Officer Panel, Hearing Request

(1) A proposed default order on a claim issued by the agency shall include a contested case notice that complies with OAR 137-003-0505.

(2)(a) A referral to the Hearing Officer Panel for a hearing must comply with OAR 137-003-0515.

(b) If the agency did not issue a contested case notice under OAR 137-003-0505 prior to the agency's referral of a claim to the Hearing Officer Panel for a hearing, the agency shall issue a contested case notice with the referral to the Hearing Officer Panel under this section.

(3) If the agency refers a claim to the Hearing Officer Panel for a hearing on the amount, if any, that the respondent owes the claimant, the following requirements apply:

(a) The referral to the Hearing Officer Panel must identify by date the declaration of damages or the Statement of Claim that limits the amount that the respondent may be ordered to pay the claimant and state the amount that the order is limited to under OAR 808-009-0160.

(b) The agency shall serve on the parties an explanation of the limitation on the amount a respondent may be ordered to pay a claimant under OAR 808-009-0160 and the procedure to file a new declaration of damages under OAR 808-009-0020.

(4)(a) To be timely, a request for a hearing must be in writing and be received by the agency within 21 days from the date a proposed default order is mailed by the agency.

(b) An untimely request for a hearing must comply with the requirements of OAR 137-003-0528. The agency may require that the request be supported by an affidavit setting out facts that affirmatively show that the failure to make a timely request was beyond the reasonable control of the party.

(5) The agency may issue a proposed default order under OAR 137-003-0670(4) that will automatically become a final order 21 days after the date of issue without further notice if no party makes a timely request for a hearing.

(6)(a) Except as provided in subsection (b) of this section, a contested case notice issued under this rule must include a statement that the agency's file on the claim is designated as the record only for purposes of a default order issued under this rule and not for purposes of an order by default issued after a hearing under OAR 808-009-0140.

(b) If a proposed default order issued under this rule is an order to dismiss a claim, a contested case notice issued under this rule may include a statement that the agency's file on the claim is designated as the record for purposes of a default order issued under this rule and of an order by default issued after a hearing under OAR 808-009-0140.

Stat. Auth.: ORS 183.415, ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415

Hist.: LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 1-2000, f. & cert. ef. 2-1-00, Renumbered from 808-001-0025; 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 4-2002, f. & cert. ef. 12-4-02

808-004-0600

Payment from Bond or Security

(1) The agency may notify the surety of claims pending.

(2) The agency shall order the claim paid out of the surety bond or deposit required under ORS 671.690 when all of the following have occurred:

(a) A final order has been issued and 20 days have elapsed after appeals permitted under ORS 183.310 to 183.550, if any, have been resolved;

(b) The agency has received no evidence that the respondent has complied with the final order; and

(c) All other claims filed against the licensee under ORS 671.510 to 671.710 within the same 90-day period under ORS 671.710 have either been resolved, been closed or have reached the same state of processing as the subject claim.

(3) Claims related to a job that are satisfied from a surety bond or deposit shall be paid as follows:

(a) If a surety bond or deposit was in effect when the work period began, payment shall be made from that surety bond or deposit.

(b) If no surety bond or deposit was in effect when the work period began, but a surety bond or deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond or deposit to become effective after the beginning of the work period.

(c) A surety bond or deposit that is liable for a claim under subsection (a) or (b) of this section is liable for all claims related to the job and subsequent bonds or deposits have no liability for any claim related to the job.

(4) If during a work period the amount of a surety bond or deposit is changed and a claim is filed relating to work performed during that work period, the claimant may recover from the surety bond or deposit up to the amount in effect at the time the contract was entered into.

(5) Unless the order provides otherwise, if a final order provides that two or more respondents are jointly and severally liable for an amount due to a claimant and payment is due from the surety bonds or deposits of the respondents, payment shall be made in equal amounts from each bond or deposit subject to payment. If one or more of the bonds or deposits is or becomes exhausted, payment shall be made from the remaining bond or deposit or in equal amounts from the remaining bonds or deposits. If one of the respondents liable on the claim makes payment on the claim, that payment shall reduce the payments required from that respondent's bond or deposit under this section by an amount equal to the payment made by the respondent.

(6) A surety company may not condition payment of a claim on the execution of a release by claimant.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.690 & ORS 671.710

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-004-0060; LCB 4-2002, f. & cert. ef. 12-4-02

808-005-0020

Schedule of Civil Penalties

The agency may assess civil penalties according to the following schedule:

(1) For operating as a landscaping business in violation of ORS 671.530(3) or (4), \$1,000; to be reduced to \$600 if the respondent obtains a landscaping business license within a specified time.

(2) For operating as a landscaping business in violation of ORS 671.530(3) or (4), when a claim has been filed for damages arising out of that work, \$2,000; to be reduced to \$600 if the respondent obtains a landscaping business license within a specified time and settles or makes reasonable attempts to settle with the claimant.

(3) For operating as a landscaping business in violation of ORS 671.530(3) or (4), when one or more previous violations have occurred, \$2,000.

(4) For advertising in violation of ORS 671.530(2) or (4), \$600; to be reduced to \$200 if the respondent obtains a landscaping business license within a specified time, or to \$50 if the advertisement is withdrawn immediately upon notification from the agency and no work was accepted as a result of the advertisement.

(5) For advertising in violation of ORS 671.530(2) or (4), when one or more previous violations have occurred, \$600.

(6) For operating as a landscaping business without employing at least one licensed landscape contractor licensed within the phase of work performed, in violation of OAR 808-003-0035, \$200.

(7) For performing landscaping work while not subject to a written contract, in violation of ORS 671.625(2) and these rules, \$200.

(8) For failure to include the license number in advertising, in violation of OAR 808-003-0010:

(a) First offense, \$100;

(b) Second offense, \$400; and

(c) Subsequent offenses, \$1000.

(9) For working in a specialty not licensed for, \$400.

(10) For installation of irrigation backflow prevention equipment or tapping into the potable water supply:

(a) In violation of OAR 808-003-0040, per offense, \$500; or

(b) In violation of a written agreement with the Board as provided in OAR 808-003-0035(3)(b) and 808-003-0040(3), \$1,000 and suspension of the license.

(11) For failure to maintain the insurance required by ORS 671.565 in effect continuously throughout the license period, \$200.

(12) For failure to maintain the insurance required by ORS 671.565 in effect continuously throughout the license period, if the licensee, in performance of work subject to ORS 671.510 to 671.710, causes damage to

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another entity or to the property of another person for which that entity or person could have been compensated by an insurance company had the required insurance been in effect, \$2,000, in addition to such other action as may be authorized by statute.

(13) Failure to conform to information provided on the application in violation of ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of conformance with the application.

(14) Failure to comply with any part of ORS chapters 316, 656, 657, and 671, as authorized by ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of compliance with the statutes.

(15) Violating an order to stop work as authorized by ORS 671.510 to 671.710, \$1,000 per day.

(16) For failure to obtain a permit to tap into a potable water supply and install irrigation backflow prevention equipment or failure to comply with applicable plumbing code requirements, \$500 per offense.

(17) For failure to comply with an investigative order issued by the Board, \$500, and suspension of the license until the license-holder complies with the order.

(18) When as set forth in ORS 671.610(8), the number of licensed landscaping businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under ORS 671.525(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

- (a) \$1,000 for the first offense,
- (b) \$2,000 for the second offense,
- (c) Six month suspension of the license for the third offense, and
- (d) Three-year revocation of license for a fourth offense.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.720

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2002, f. & cert. ef. 12-4-02

808-005-0030

Civil Penalty Collections

The agency may initiate its own collection proceedings, assign the matter to the Department of Revenue for collection, and/or commence an action as provided in ORS 671.955

Stat. Auth.: ORS 183.325 - ORS 183.410, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 671.670

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1991 (Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 4-2002, f. & cert. ef. 12-4-02

808-009-0020

Amendment to Declaration of Damages

(1) If the agency refers a claim to the Hearing Officer Panel for a hearing on the amount that the respondent owes the claimant, the claimant may amend the amount the claimant alleges the respondent owes the claimant by filing a new declaration of damages form. An amended declaration of damages must be filed under OAR 137-003-0520 and 808-009-0085 with the hearing officer or the Hearing Officer Panel if no hearing officer has been assigned to hear the claim. An amended declaration of damages filed under this section must be received by the hearing officer or the Hearing Officer Panel no later than 14 days prior to the scheduled date of a hearing on the matter.

(2) An amended declaration of damages filed under section (1) of this rule must be on a form provided by the agency or on a form that substantially conforms to the form provided by the agency. The amended declaration of damage must state the amount alleged to be owed by the respondent, limited to items of complaint in the Statement of Claim. The new declaration of damages must be signed by the claimant.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415 & ORS 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 4-2002, f. & cert. ef. 12-4-02

808-009-0070

Suspending Processing

(1) A hearing officer may suspend or cancel a hearing at any time if the hearing officer finds that the nature or complexity of the issues is such

that a court is a more appropriate forum for adjudication. If a hearing officer suspends or cancels a hearing under this rule, the hearing officer shall refer the claim to the agency with a memorandum recommending that processing of the claim be suspended under ORS 671.703 and OAR 808-004-0520 and stating the basis of the recommendation. A copy of this memorandum shall be served on the parties.

(2) If a claim is referred to the agency under section (1) of this rule, the agency may:

(a) Suspend processing the claim; or

(b) Refer the claim back to the hearing officer with instructions to resume the hearing.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415 & ORS 671.703

Hist.: 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 4-2002, f. & cert. ef. 12-4-02

808-009-0100

Burden of Proof and Failure to Meet Burden

(1) A claimant must prove that:

(a) The claimant suffered damages;

(b) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(c) The monetary value of those damages is substantiated on the record.

(2) If the claimant fails to carry the burden of proof described in section (1) of this rule, the hearing officer shall dismiss the claim.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703

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; Administrative correction 6-21-01; LCB 4-2002, f. & cert. ef. 12-4-02

808-009-0120

Determination of Validity of Claim

In determining the validity of the claim, the hearing officer shall determine:

(1) Whether the claim arose out of a transaction within the scope of ORS 671.510 to 671.710;

(2) Whether the agency has jurisdiction over the matters at issue;

(3) Whether:

(a) Claimant suffered damages;

(b) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(c) The monetary value of those damages is substantiated on the record.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183 & ORS 671.703

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 4-2002, f. & cert. ef. 12-4-02

808-009-0160

Order Based on Hearing, Limitation on Order

(1) "Order" as used in sections (2) to (5) of this rule means a proposed and final order a hearing officer is authorized to issue under section (6) of this rule.

(2) If a claim is referred for a hearing to determine the amount, if any, that a respondent owes a claimant, the hearing officer may not issue an order in an amount greater than the amount claimant alleges respondent owes claimant in:

(a) The most recent declaration of damages filed under OAR 808-004-0540 or 808-009-0020; or

(b) The Statement of Claim filed under OAR 808-004-0340, if no declaration of damages was filed.

(3) If a claim is referred for a hearing to determine whether any portion of a judgment is within the jurisdiction of the agency, the hearing officer may not issue an order requiring payment of an amount greater than the amount of the judgment.

(4) An order issued by a hearing officer may order the respondent to pay monetary damages to the claimant or dismiss the claim.

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(5) A hearing officer shall consider any amounts due to the respondent from the claimant under the terms of the contract and reduce the amount of an order by that amount.

(6) A hearing officer shall issue a proposed and final order under OAR 137-003-0645(4) that shall automatically become a final order 21 days after the date of issue without further notice if no party files timely exceptions under OAR 808-009-0400.

(7) Notwithstanding section (6) of this rule, after a hearing officer issues a proposed order under section (6) of this rule, the agency may request that the hearing officer hold a further hearing on a claim or revise or amend the proposed order under OAR 137-003-0655.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415, ORS 671.703

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 4-2002, f. & cert. ef. 12-4-02

808-009-0220

Petition for Reconsideration or Rehearing; Request for Stay

A petition for reconsideration or rehearing under OAR 137-003-0675 or a request for a stay under OAR 137-003-0690 of a final order on a claim issued by a hearing officer under this division must be filed with the agency.

Stat. Auth.: ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.415 & ORS 671.703

Hist.: 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 4-2002, f. & cert. ef. 12-4-02

808-009-0400

Exceptions to Agency Orders, Claims

(1) After a contested case claim hearing, claimant or licensee may file written exceptions if they believe that the hearing officer has made a procedural error or that the proposed order is not supported by evidence received at the hearing.

(2) To be considered:

(a) The first exceptions must be received by the agency within 21 days of the date of mailing the proposed order.

(b) If one party files timely exceptions, exceptions by the opposing party, if that party chooses to file them, must be received by the agency within 14 days after the date the agency mails a copy of the first exceptions to the opposing party.

(3)(a) If written exceptions are not timely received, the order will become final under OAR 808-009-0160.

(b) If exceptions are timely received, the matter will be set for consideration by the Board at of the Board.

(4) The exceptions must substantially conform to the requirements set forth in OAR 808-009-0430.

(5) Copies of exceptions filed will be mailed to the other side who may respond to the exceptions. Response and any written argument for or against the proposed order will be accepted up to seven days prior to the Board meeting date if the original exceptions were timely received.

(6)(a) If a party filing exceptions intends to rely on oral testimony given at the hearing, the party must include in the exceptions:

(A) A notice of the intention to rely on oral testimony, and

(B) A request for a copy of the tape of the hearing with the fee required under OAR 808-001-0020.

(b) After the agency receives a party's exceptions containing a notice of an intention to rely on oral testimony under subsection (a) of this section, the agency must send a copy of the tape of the hearing to the other party to the claim at no charge unless that party also filed exceptions that included a notice of intention to rely on oral testimony.

(c) The party that filed the notice of intention to rely on oral testimony must prepare a typed transcript of the portions of the hearing testimony that the party contends support the exceptions filed. The party must deliver the transcript to the agency 21 days after the date of mailing of the tape of the hearing by the agency to the party.

(d) The agency must mail a copy of the transcript to the other party to the claim.

(7)(a) The party opposing the exceptions may prepare a typed transcript of the portions of the hearing testimony that the party contends support opposition to the exceptions. The opposing party must deliver the transcript to the agency 21 days after the date the agency mailed the transcript under subsection (6)(d) of this rule.

(b) The agency must mail a copy of the transcript prepared under this section to the party that filed the exceptions.

(8) The Board may refuse to consider evidence of oral testimony submitted by a party if the party fails to comply with the requirements of sections (6) and (7) of this rule.

(9) Claimant and respondent may appear before the members of the Board to argue for or against the proposed order.

(10) The agency may waive or extend the time limitations in sections (5) through (7) of this rule on its own motion or on a showing of good cause by the person requesting the waiver.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.413 - ORS 183.470

Hist.: LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 1-2000, f. & cert. ef. 2-1-00, Renumbered from 808-001-0025; LCB 4-2002, f. & cert. ef. 12-4-02

808-009-0420

Exceptions to Agency Orders, Enforcement

(1) After a contested case enforcement hearing, the respondent may file written exceptions if the respondent does not believe the proposed order is supported by the evidence received at the hearing. To be considered, exceptions must be received by the agency within 21 days of the date of mailing of the proposed order. If written exceptions are not timely received, the agency may issue a final order as proposed.

(2) Exceptions must substantially conform to the requirements of OAR 808-009-0430.

(3) If exceptions are timely received, the matter will be set for consideration by the Board at a regular meeting of the Board. Written argument in opposition to the proposed order will be accepted up to seven days before the Board meeting date if the original exceptions were timely received. The Board may waive the seven-day requirement.

(4) The respondent may appear before the Board to argue against the proposed order, if the agency receives written notice of intent to do so before the Board meeting date. Oral argument will be permitted only if the original exceptions were timely received.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670

Stats. Implemented: ORS 183.413 - ORS 183.470

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00, Renumbered from 808-005-0010; LCB 4-2002, f. & cert. ef. 12-4-02

808-009-0430

Form of Exceptions to Agency Order

(1) Exceptions to an agency order filed by a party to a claim under OAR 808-009-0400 or a respondent under 808-009-0420 shall conform to the following requirements:

(a) Exceptions shall be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the exceptions must be titled "Exceptions to Proposed Order." If the exceptions are filed in a claim, the first page shall show the claim number, the names of the parties to the claim and the party submitting the exceptions at the top of the page. If the exceptions are filed in an enforcement action, the first page shall show the name of the respondent at the top of the page.

(c) Each page of the exceptions shall be numbered at the bottom of the page.

(d) For each finding of fact in the proposed order that the party alleges is not supported by the evidence in the record the following information shall be included in the exceptions:

(A) The pages on which the finding of fact appear and the number, if any of the finding of fact;

(B) The text of the finding of fact; and

(C) An explanation or argument supporting the party's contention that the evidence in the record does not support the finding of fact.

(e) For each conclusion in the proposed order that the party alleges is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision the following information must be included in the exceptions:

(A) The pages on which the conclusion and the opinion that supports it appear;

(B) The text of the conclusion; and

(C) An explanation or argument supporting the party's contention that the conclusion is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision.

(f) For each procedural error committed by the hearing officer that the party contends directly affected the decision in the proposed order in a manner prejudicial to the party the following information shall be included in the exceptions:

(A) A description of the procedural error; and

ADMINISTRATIVE RULES

(B) An explanation or argument supporting the party's contention that the procedural error affected the decision and was prejudicial to the party filing the exceptions.

(g) If the party intends to rely on oral testimony at the hearing, a notification that the party intends to rely on oral testimony shall be included in the exceptions.

(h) The party submitting the exceptions shall sign and date the exceptions.

(2) The Board may refuse to consider exceptions that do not substantially meet the requirements of section (1) of this rule.

Stat. Auth.: ORS 670.310, ORS 671.670, ORS 671.703
Stats. Implemented: ORS 183 & ORS 671.703
Hist.: LCB 4-2002, f. & cert. ef. 12-4-02

808-009-0440

Meeting of Board to Consider Appeals

(1) Claimant and respondent may appear before the members of the Board to argue for or against the proposed order.

(2) The Board may limit the time allowed for oral argument by a party before the Board to ten minutes.

(3) At the Board meeting, the Board will consider documentary evidence received at the hearing and exceptions and written or oral argument for or against the proposed order, but the Board will not consider new or additional evidence.

(4) After hearing oral argument, the Board may conduct its deliberations privately, under authority of ORS 192.690(1). If the Board conducts its deliberations privately, it will return to public meeting for any motions and voting.

(5) The Board may affirm the findings and proposed order, modify either or both, or send the case back to a new hearing to receive additional evidence. Unless the case is sent back to a new hearing, the agency shall issue a final order after the Board meeting.

(6) Final orders are subject to judicial review as provided under ORS chapter 183.

Stat. Auth.: ORS 183, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 183.413 - ORS 183.470
Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0050; LCB 4-2002, f. & cert. ef. 12-4-02

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Adm. Order No.: LCB 5-2002

Filed with Sec. of State: 12-4-2002

Certified to be Effective: 12-4-02

Notice Publication Date:

Rules Renumbered: 808-002-0670 to 808-002-0870

Subject: This renumbering is needed to keep the definitions in OAR 808, Division 002 in alphabetical order.

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6561

808-002-0870

Respondent

"Respondent" as used in this chapter, means a landscaping business that a claim is filed against under ORS 671.690 to 671.710 or that the board proposes to impose a penalty against under ORS 671.510 to 671.625 and 671.950 to 671.992.

Stat. Auth.: ORS 183.325 - 183.410, ORS 670.310 & ORS 671.670
Stats. Implemented: ORS 671.690 - ORS 671.710
Hist.: 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 4-2002, f. & cert. ef. 12-4-02; LCB 5-2002, f. & cert. ef. 12-4-02, Renumbered from 808-002-0670

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Office of Energy, Energy Facility Siting Council Chapter 345

Adm. Order No.: EFSC 2-2002

Filed with Sec. of State: 12-3-2002

Certified to be Effective: 12-3-02

Notice Publication Date: 10-1-02

Rules Amended: 345-026-0390

Subject: The amendment rule allows Portland General electric to use steel canisters designed by Holtec international Corp. for dry storage of spent nuclear fuel, and sets forth requirements for periodic temperature monitoring, radiological and environmental monitoring, cask inspection, preparedness for external events. The amended rule

also sets forth the requirements for any future changes to spent fuel storage facility design, operations, or implementing procedures.

Rules Coordinator: Lorreta Kohanes—(503) 378-2843

345-026-0390

Spent Nuclear Fuel Storage

(1) Purpose:

(a) Storage of spent nuclear fuel and related radioactive material and waste at a nuclear power plant is an interim measure; otherwise utilities and residents of Oregon would face the financial burden of maintaining, operating, and safeguarding the on-site storage facilities indefinitely;

(b) The purpose of this rule is to cooperate with the federal government in accordance with Oregon's siting policy in ORS 469.310 to ensure the safety of interim on-site storage and to ensure spent nuclear fuel and related radioactive materials and waste will not be an undue financial burden to utilities or people of Oregon.

(2) Capacity and Safety Standards: Storage of spent nuclear fuel shall be limited to a maximum of 791 complete and partial fuel assemblies; and storage of containers with nuclear fuel materials. Storage of spent nuclear fuel and related radioactive material and waste not eligible for disposal as low-level radioactive waste at a land disposal site (as defined in 10 CFR 61 in effect on June 15, 1995, herein after referred to as "Greater than Class C waste") at the site of a nuclear power plant by a certificate holder which has executed a contract with the United States of America pursuant to the Nuclear Waste Policy Act, shall be deemed a permitted use of the site pending transfer of spent nuclear fuel to the U.S. Department of Energy provided that:

(a) Storage facilities are designed to maintain discharges within the limits specified in applicable licenses authorized under the Atomic Energy Act of 1954, as amended, and permits under the National Pollutant Discharge Elimination System;

(b) Storage facilities are designed such that in case of accidents off-site radiation exposures will not exceed the Environmental Protection Agency Protective Action Guidelines (October, 1991) for off-site protective actions; and

(c) The facility may not be used to store any spent nuclear fuel or radioactive materials and wastes other than that generated or used in the operation of the facility.

(3) Approval of Alternative Spent Nuclear Fuel Storage: Spent Nuclear Fuel shall be stored only in the Trojan Spent Fuel Pool (SFP) or in an interim storage facility approved by the Council. Storage of spent nuclear fuel in any facility other than the Trojan Spent Fuel Pool shall require the prior adoption of rules by the Council allowing the specific type of proposed facility.

(4) The Council may approve by rule a plan by the owner for storage of spent nuclear fuel or other related radioactive materials and wastes in an interim storage facility other than the SFP, and in doing so the Council may impose criteria in addition to those set forth in this rule. After approval of any such proposal the nuclear installation operator may proceed with movement of spent nuclear fuel and related materials and waste from the Trojan Spent Fuel Pool to the approved interim storage facility. Any such plan must address the design and operation of storage casks and meet the criteria in section (2) of this rule and the criteria below:

(a) A proposal for an interim spent fuel storage installation (ISFSI) facility, including casks used for holding spent fuel and other radioactive materials and wastes, other than the Trojan Spent Fuel Pool shall include a safety analysis and report identifying the specific accidents considered in the design of the facility and demonstrating compliance with the criteria in section (2), subsections (a), (b) and (c) of this rule.

(b) The accident analysis shall include a Seismic Margin Event based on the "Seismic Margin Earthquake Study for the Trojan Site," submitted by PGE to the U.S. Nuclear Regulatory Commission and the Oregon Department of Energy on May 27, 1993. The facility shall be designed such that in the event of the Seismic Margin Earthquake, anticipated damage to spent nuclear fuel or containers will not preclude acceptance of spent nuclear fuel and related radioactive material at a Federally licensed disposal or storage facility, or release spent nuclear fuel, particulate matter or Greater Than Class C waste into the environment.

(c) The facility shall be designed such that in the event of the Seismic Margin Earthquake or any accident considered in the safety analysis required by subpart (a) of this rule, projected radiation exposure rates due to effluents and direct radiation shall not exceed the Environmental Protection Agency Protective Action Guidelines (October 1991) for off-site protective actions outside the interim storage facility controlled area as defined in 10 CFR 72.106 (June 15, 1995). The plan for the interim spent

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fuel storage facility shall demonstrate the capability to restore post-accident radiation exposure rates outside the interim storage facility controlled area to the levels permitted during normal facility operations.

(d) The site of the interim spent fuel storage facility shall be selected such that the expected ground motion in a seismic margin event is bounded by the accident analysis required by subsection 4(b) of this rule. The safety analysis report shall include a review of the seismic margin analysis referenced in 4(b) and shall demonstrate whether the Seismic Margin Event defined in subsection (4)(b) remains the appropriate design basis event for the proposed interim storage facility.

(e) Radiation and effluent monitoring programs, security plans, and emergency plans for an interim spent fuel storage facility shall be maintained in accordance with OAR 345-26-330, 345-026-0340, and 345-026-0350.

(f) In the absence of any accident considered in the safety analysis required by part (a) of this rule, activities related to transfer of spent fuel or other reactor components from the Spent Fuel Pool to an interim storage facility and subsequent storage and fuel handling activities will not result in anticipated annual radiation dose due to effluents to any member of the public in an unrestricted area to exceed 5 millirem Total Effective Dose Equivalent (TEDE) as defined in 10 CFR 20.1003 as of March 1, 1994. The plan shall provide an estimate of the quantity of the radionuclides expected to be released annually to the environment in liquid and gaseous effluents during normal operation of the ISFSI.

(g) Transfer of spent fuel or other reactor components to a temporary storage facility shall not adversely affect the owner's financial ability to decommission the Trojan site, including the interim storage facility site after the Federal government has accepted high level waste at a Federally licensed disposal facility.

(h) Activities related to transfer, storage and handling of fuel and other radioactive waste shall be performed in accordance with a radiation protection program which complies with 10 CFR 20 (effective March 1, 1994), including a program to maintain personnel radiation exposure As Low As Reasonably Achievable (ALARA) as that term is defined in 10 CFR 20.

(i) Any temporary storage facility shall not adversely impact the potential for unrestricted use of the site, including the storage facility site, after decommissioning, or the ability of the certificate holder to comply with the standards of OAR 345-26-370(2)(a) through (f), nor shall it excuse the certificate holder from any rules of the Council in OAR Chapter 345.

(j) A spent fuel storage facility other than the Spent Fuel Pool shall have a minimum design life of 40 years. The plan for an interim spent fuel storage facility shall demonstrate that the interim storage facility will perform as designed for the required 40 year life and shall describe all testing of storage equipment and materials during design and fabrication. The plan shall discuss the options available if the expected lifetime is reached and no Federally licensed permanent disposal or storage facility is available.

(k) To the extent feasible, an interim spent fuel storage facility shall be designed to minimize spent nuclear fuel handling. The plan for an interim spent fuel storage facility shall include the ability to transfer spent nuclear fuel from the interim spent fuel storage facility to a shipping container. Except as required for accident mitigation as described in the Safety Analysis Report, transfer of spent fuel from an interim spent fuel storage installation to new casks or shipping containers must be approved by the council prior to their removal.

(5) Reporting Requirements: The operator of an interim spent fuel storage facility shall submit every ten years and, no later than 5 years before the expiration of the facility's design lifetime, a report containing the actual or expected date when the Federal government will accept the High Level Waste, and an analysis of the facility's continued acceptability for use if a Federally licensed High level Waste site remains unavailable. This report need not be submitted if the Council or its successor determines that a Federally licensed high level waste site is available and that spent nuclear fuel from the facility will be accepted within the design life of the facility as stated in subsection (4)(h) of this rule.

(6) The Council approves the plan, as may be amended under Part (e), for an Independent Spent Fuel Storage Installation (ISFSI) as described in the ISFSI Safety Analysis Report (SAR) (PGE-1069), Revision 2, License Change Application LCA-237, Revision 5, and LCA-246, Revision 2. In addition to the criteria in OAR 345-026-0390(2)(a), (b), and (c), and (4)(a) through (k), the plan is subject to the following criteria:

(a) Controlled Area Boundary: Within six months after terminating the NRC operating license, under 10 CFR 50, PGE shall submit to the Oregon Office of Energy for approval evidence of its ability, in the event of an accident, to exercise control of personnel access to the Controlled Area

as described in the SAR, as may be amended. This evidence may include such factors as any lease or contractual agreements with tenants at the site, administrative controls, or the results of a drill.

(b) Programs: PGE shall establish and maintain programs for Temperature Monitoring and Air Vent Inspection, Radiation and Environmental Monitoring, and Structural Inspection, that are consistent with maintaining exposures to ionizing radiation As Low As Reasonably Achievable (ALARA) and with the assumptions and conclusions in the OOE "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002.

(c) Contingency Plans: Prior to loading the first canister, PGE shall have and demonstrate procedures to remove spent fuel from a previously loaded canister and safely return the fuel to the Spent Fuel Pool (SFP). PGE need not demonstrate procedures demonstrated during preoperational testing in 1999, provided those procedures involve substantially the same operations and utilize substantially the same equipment. Before loading the last canister, PGE shall submit for Council approval a plan for maintaining equipment onsite and having equipment available within a reasonable time period to respond to credible accident scenarios and a plan for construction of new concrete casks.

(d) Shipping License: If the 10 CFR 71 shipping license for the canister has not been amended to permit use of the Trojan canister at the time the final fuel assembly is transferred from the SFP to the ISFSI, then PGE shall submit for Council approval alternative plans and cost estimates for shipping spent fuel offsite prior to taking action that would preclude future use of the SFP.

(e) Changes to Commitments: PGE may make changes to the ISFSI as described in the plan without prior Council approval providing such changes do not reduce commitments or change the assumptions and conclusions in the OOE "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002. In the event that the proposed changes would reduce commitments or change the assumptions or conclusions of the OOE "Staff Evaluation of Holtec Design for Portland General Electric's Independent Spent Nuclear Fuel Installation (ISFSI)," September 2002, PGE shall obtain prior concurrence from OOE. Prior OOE concurrence is not required when the proposed change would not have the above effects, is required for compliance with the regulations or orders of the U.S. Nuclear Regulatory Commission or is necessary to protect the health and safety of the public when there is insufficient time to obtain prior OOE concurrence.

(f) Reporting Requirements: Within one year of the first cask loading and biennially thereafter, PGE shall provide a written report to the Council on the status of the ISFSI. The report shall include, as a minimum, results of radiation monitoring programs, a summary and breakdown of personnel exposure related to ISFSI maintenance and surveillance activities, a statement of expenses related to maintenance and surveillance activities, an estimate of funds available for continuing ISFSI maintenance and surveillance, and a statement of any significant developments regarding the opening of a Federally licensed High Level Waste facility. Other reports submitted pursuant to OAR 345-026-0380 may be used to satisfy this requirement.

(g) Frequency of Temperature Monitoring and Air Vent Inspection: Prior to loading the first canister, PGE shall implement a program for thermal monitoring that includes readings of air outlet and ambient temperatures. The program shall include temperature surveillances daily, with provisions for more frequent measurements if temperatures approach Technical Specification limits. The program shall also include a requirement to check air inlet and outlet vents for blockage weekly. PGE may reduce these surveillance frequencies with Office concurrence. Extensions of up to 25 percent of individual surveillance intervals may be applied to accommodate minor variations in work scheduling.

(h) Contractors: PGE shall require contractors who perform portions of the ISFSI loading, storage or transporting operations to adhere to all applicable provisions of OAR 345-026-0390.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.470

Stats. Implemented: ORS 469.410 & ORS 469.501

Hist.: EFSC 3-1994, f. & cert. ef. 6-28-94; EFSC 5-1994, f. & cert. ef. 11-30-94; EFSC 2-1995, f. & cert. ef. 11-3-95; EFSC 2-1999, f. & cert. ef. 4-14-99; EFSC 3-1999, f. & cert. ef. 4-21-99; EFSC 2-2002, f. & cert. ef. 12-3-02

Oregon Department of Aviation Chapter 738

Adm. Order No.: AVIA 4-2002

Filed with Sec. of State: 11-27-2002

Certified to be Effective: 12-1-02

ADMINISTRATIVE RULES

Notice Publication Date: 9-1-02

Rules Amended: 738-001-0035, 738-010-0025, 738-020-0020, 738-020-0025, 738-020-0030, 738-020-0040, 738-020-0045, 738-030-0015, 738-030-0020, 738-030-0025, 738-040-0010, 738-040-0020, 738-040-0040, 738-050-0020, 738-050-0060, 738-050-0070, 738-050-0090, 738-060-0050, 738-070-0010, 738-070-0020, 738-070-0040, 738-070-0060, 738-070-0070, 738-070-0080, 738-070-0100, 738-070-0160, 738-070-0170, 738-070-0180, 738-070-0210, 738-070-0230, 738-080-0030, 738-090-0030, 738-090-0040, 738-090-0050, 738-100-0010, 738-100-0035

Subject: These amendments conform the language of the Oregon Administrative Rules pertaining to Oregon Department of Aviation to be consistent with actions taken by the 70th Oregon Legislative Assembly to grant independent agency status to the Aeronautics Section of Oregon Department of Transportation. Specifically:

- To replace all references to "Aeronautics Section" with "Oregon Department of Aviation";
- To replace all references to "Oregon Department of Transportation" with "Oregon Department of Aviation";
- To replace all references to "Section" with "Department";
- To replace all references to "Oregon Transportation Commission" with "State Aviation Board";
- To replace all references to "Commission" with the term "Board";
- To replace all appropriate references to "Manager" with the term "Director";
- To correct the zip code in the Department's zip code from "97310" to accurately reflect "97302-1125";
- To add the agency's toll-free number "(800) 874-0102."
- To make minor grammatical/spelling corrections in 738-030-0025 and 738-100-0035.

Rules Coordinator: Carolyn R. Bolton—(503) 378-4880, ext. 223

738-001-0035

Public Records Access and Fees

All information in the custody of the Director of the Oregon Department of Aviation shall be disclosed or protected from disclosure in accordance with Chapter 192 of the Oregon Revised Statutes.

(1) Requests for records may be verbal; however, the Oregon Department of Aviation may require the request to:

- (a) Be in writing;
- (b) Be dated;
- (c) Be signed;
- (d) Adequately describe the records being requested; and
- (e) Indicate the date the records are needed.

(2) A reasonable period of time, as determined by the department, shall be allowed for the records custodian to locate and assemble the requested records.

(3) Unless otherwise provided by statute or other administrative rule, the fees shall be calculated as follows:

- (a) \$0.20 per page for photocopies;
- (b) Actual cost for use of material and equipment for producing copies of non-standard records. "Non-standard" records include, but are not limited to:
 - (A) Audio tapes;
 - (B) Video tapes;
 - (C) Oversize maps; and
 - (D) Machine readable formats such as computer hard drives, diskettes and magnetic tape.
- (c) Costs for labor, which includes locating, compiling, editing or otherwise processing information and records. There shall be no charge for the first 30 minutes of staff time. The labor rate assessed thereafter shall be \$15 per hour;
- (d) The actual cost for delivery of records such as postage, FAX costs and courier fees; and
- (e) \$5 for each true copy certification.

(4) Estimated payment or deposit may be requested in advance.

Stat. Auth.: ORS 835.112, ORS 192.430 & ORS 192.440

Stats. Implemented: ORS 192.410 - ORS 192.505

Hist.: AVIA 1-2000, f. & cert. ef. 12-26-00; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-010-0025

Flexibility of Fee Schedule: Negotiated Fees

(1) The fee schedule sets equitable fees for most ordinary special use situations which envisions the lease of relatively small parcels of land and/or buildings. However, unusual contingencies may arise even in the most conventional real property transactions or agreements. ORS 491.100(3) states that the Department shall develop and promote aeronautics in Oregon. The Department must retain sufficient flexibility to comply with ORS 491.100(3). As a result, the Department has established minimum and maximum fee levels in the schedule which are intended to be compatible with general economic conditions existing at the time an agreement is entered into.

(a) Waiver Provisions. The Director of the Department may, upon making a determination that waiving the collection of a given rate or fee will tend to promote aeronautics in Oregon, waive the collection of such fee or rate from any organization or person engaged in a non-profit aeronautically-related program or activity. Examples of parties potentially eligible to receive such waiver include, but are not limited to:

- (A) Organizations conducting aviation safety programs or demonstrations;
- (B) Organizations conducting air fairs for the benefit of any charitable organization or public corporation.

(2) It is necessary to utilize negotiations to establish equitable fees for other revenue-producing events that are not subject to the fixed schedule under ordinary special use situations.

(3) ORS 492.110(2) provides that charges or fees shall be reasonable and uniform for the same class of use. The statute, however, also commands that such charges shall be established with due regard to the property used by a commercial activity. To give effect to both of these statutory commands, the Department must retain latitude to set charges on a case-by-case basis where a given proposed use is in a class of its own:

(a) Upon finding that a proposed use possesses unusually high or low profit-making potential, and/or that the land or facilities to be occupied by the use are of unusually high or low business or rental value, the Department may enter into negotiations with the proponent in order to establish equitable charges for that use. The execution of an agreement negotiated hereunder shall constitute the finding required by this subsection;

(b) Examples of such potential uses include, but are not limited to:

- (A) Agricultural;
- (B) Glider and flying clubs;
- (C) Aerial applicator operations;
- (D) Commercial and light-industrial facilities; and
- (E) Other operations involving relatively large parcels of land.

(c) Ingress/egress permits, subject to the minimum fees set forth in OAR 738-010-0020, shall be subject to negotiation on the same basis as other uses under this section.

(4) In negotiating charges under this section, the Department will consider the reasonable commercial rental value of the subject property, the extent of the proponent's commitment to provide necessary aviation-related services, and facilities to the airport, and the criteria set forth in OAR 738-010-0030.

Stat. Auth.: ORS 835.035, ORS 835.040 & 835.112

Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055

Hist.: IAD 2-1981, f. & ef. 4-20-81; AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-020-0020

Designation of Minimum Standards

(1) Airports other than heliports:

(a) An airport that is open to the public shall conform as a minimum to the design and dimensions of General Aviation Airports shown on the drawing "Minimum Standards for General Aviation Airports", attached as **Exhibit 1** hereto. Airports for personal, recreational or emergency use, if not so conforming, may be approved if runway and approaches are adequate for the published operating characteristics and limitations of the aircraft to be accommodated;

(b) Sponsors of public-use airports shall have control of approach-departure zones with dimensions appropriate to the purpose and usage of the airport, but in no case extending less than 1,100 feet from end of the runway. Public-use airports which are exempted under ORS 836.080, or which held a license prior to December 25, 1974, are exempt from this requirement;

(c) If an airport having dimensions which meet state minimum standards but is deemed by the Director to be inadequate based on the amount and nature of air traffic, the type of aircraft to be accommodated, and the

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size and operational category of the airport, the design and dimensions of such airport shall conform as nearly as practicable to the applicable standards prescribed by the Federal Aviation Administration (FAA).

(2) Heliports:

(a) The landing and take-off area of a rectangular heliport at elevations not over 1,000 feet above sea level shall be not less in length and width than 1-1/2 times the overall length of the helicopter to be accommodated;

(b) A circular heliport shall have a minimum diameter equal to 1-1/2 times the overall length of the largest helicopter to be accommodated;

(c) For elevations over 1,000 feet above sea level, the above dimensions shall be increased by 15 percent for each 1,000 feet of elevation above the first 1,000 feet;

(d) The obstruction-free approach surface shall extend upward and outward from the edge of the landing and take-off area to the enroute altitude at the ratio of eight feet horizontally to one foot vertically (8:1) for a horizontal distance of 4,000 feet where the approach surface is 500 feet wide. The obstruction-free transitional surface or side slope shall extend upward and outward from the edge of the landing and take-off area at the ratio of two feet horizontally to one foot vertically (2:1) for a distance of 250' measured horizontally from the centerline of the landing and take-off area.

(3) The Department may waive any requirements contained in this rule as to any particular airport or heliport if it finds, following a documented review, such action to be consistent with safety and public interest.

[ED. NOTE: Exhibit referenced are available from the agency.]

Stat. Auth.: ORS 835 & ORS 836

Stats. Implemented: ORS 836.090

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; AERO 2-1989, f. & cert. ef. 9-20-89; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-020-0025

Application for Site Approval

(1) Except as provided in ORS 836.080, OAR 738-020-0030 or as approved by the FAA after a site selection study, no municipality or officer or employee thereof, nor any person, shall construct or establish an airport or heliport without first having obtained an approval from the Department for the proposed site.

(2) The provisions of this rule apply equally to establishment of new airports or heliports or substantial modification of existing facilities. Substantial modification is construed to mean any significant change of physical dimensions, as determined by the Director, or any change of physical conditions which causes the airport or heliport to become either unsafe or unusable for the aeronautical purposes for which the original license was issued. Substantial modification of existing facilities may be exempt from the provisions of this section if those modifications are constructed as a result of an FAA airport improvement project. To keep the Department informed as to the modifications made to an airport, a copy of the FAA approved Airport Layout Plan and the final "as constructed" plans shall be furnished to the Department.

(3) Written application for site approval shall set forth, on a form provided by the Department, the proposed use of the airport or heliport, a map, plan, or sketch depicting location, layout, dimensions, topographic features, obstructions, and relationship to all other aeronautical facilities within five miles. Payment of a nonrefundable fee of \$75, together with \$300 for the cost of inspecting an airport site for potential approval, as established by ORS 836.085(1), shall accompany the application.

(4) Within a reasonable time after receiving such application, the Director will render a finding as to whether the proposed airport is compatible with the State Aviation System Plan. If found to be compatible, an the Department inspector will then make a physical site investigation to evaluate certain aspects of the proposed site, including, but not limited to:

(a) All real property devoted to or to be used in connection with any aeronautical activity at the proposed airport;

(b) The location of the airport in relation to any surrounding topography, trees or structures that could affect the safety of the airport;

(c) The location and configuration of the proposed airport's runways and operation areas in relation to those of existing and approved airports or airport sites in the vicinity that could affect the safety of aircraft operating from the proposed airport, or from other airports.

(5) Following the site investigation, the inspector shall calculate the actual costs of the site investigation and refund to the applicant any excess monies paid from the \$300 received for the cost of the site inspection. Allowable costs shall be limited to the inspector's per diem and lodging expenses as defined by Department of Administrative Services policy, and cost of the state motor pool car. When it is reasonable to do so, the inspec-

tor shall combine inspections within a geographic area and prorate the charges specified above, for each of the airports or sites being inspected.

(6) If satisfied that the site will meet aeronautical safety standards for the proposed use of the airport or heliport, as well as safety of adjoining property, the Department will issue a provisional site approval. If not satisfied, the Department will deny site approval or may make suggestions as to how the site can meet the standards.

(7) The Department shall forward provisional site approval to the proponent of the airport or heliport and also provide a copy of the approval to the appropriate local planning/zoning bodies for review and comment. If no significant adverse comment is received within thirty days, and upon receipt of evidence that the proponent has notified the FAA, on the appropriate form, of this intent to establish an airport or heliport, the Department shall issue final site approval.

(8) If the proposed airport site is found not to be compatible with the State Aviation System Plan as provided in section (4) of this rule, or is for any other reason not inspected, the refundable inspection fee shall be returned to the applicant.

Stat. Auth.: ORS 184.616, ORS 184.619, ORS 835.035 & ORS 836.085

Stats. Implemented: ORS 836.085 & ORS 836.095

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; 1AD 3-1984, f. & ef. 7-31-84; AERO 2-1989, f. & cert. ef. 9-20-89; AERO 1-1998, f. & cert. ef. 2-25-98; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-020-0030

Application for License

(1) Except as provided in ORS 836.080, and except for those airports holding a certificate in compliance with Federal Aviation Regulation Part 139, no person, municipality, or officer or employee thereof shall operate a public-use airport without a license duly issued by the Oregon Department of Aviation. The fee for such license shall be as determined by statute and that fee shall be paid in full for the initial calendar year or portion thereof, and for each annual renewal. Application for license and renewal shall be in writing on a form provided by the Department and shall be accompanied by the prescribed fee. Application for initial license shall be accompanied by a drawing or sketch depicting the airport "as built". Sketches depicting any changes to the "as built" sketch submitted when the airport was first licensed, or as subsequently revised, shall accompany any application for renewal of license.

(2) Personal-use airports are exempt from licensing, but sponsors will be required to register such airports annually with the Department. There shall be no fee for registration, but the owner shall register the airport prior to February 1 of each year on a form furnished by the Department. New airports shall be registered within thirty days of completion of the airport in accordance with plans submitted for site approval and approved by the Department. These airports may be approved for use by aircraft whose published manufacturer's specifications state they can be operated from an airport of a size less than the state minimum standards.

(3) Agstrips need not be licensed, registered, or have site approval if the use of that strip is to be of an occasional nature only. However, the use of an agstrip shall be the sole responsibility of the person operating it. He shall be responsible not only for his own safety, but for the safety of persons and property on the ground. Conflict with traffic patterns of an existing airport must be avoided or coordinated and resolved. Such strip shall not be used by aircraft not under the agstrip operator's control.

Stat. Auth.: ORS 825 & ORS 826

Stats. Implemented: ORS 836.105

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; 1AD 3-1984, f. & ef. 7-31-84; AERO 2-1989, f. & cert. ef. 9-20-89; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-020-0040

Revocation of Site Approval or License

(1) The Department may, after notice and opportunity for hearing, revoke a site approval upon determining (ORS 836.100):

(a) That there has been an abandonment of the site as an airport site;

or

(b) That there has been a failure within the time prescribed, or if no time was prescribed, within two years' time, to develop the site as an airport or to comply with the conditions of the approval; or

(c) That control of necessary approach and departure zones has not been obtained within a specified time or obstructions exist at the end of the runway so as to create a hazard to aircraft.

(2) The Department may, after notice and opportunity for hearing, revoke a license or refuse renewal thereof upon determining (ORS 836.110):

(a) That there has been an abandonment of the airport as such; or

(b) That there has been a failure to comply with the conditions of the license or renewal thereof; or

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(c) That because of change of physical or legal conditions or circumstances the airport has become either unsafe or unusable for the aeronautical purposes for which the license or renewal was issued;

(d) When an airport is no longer used as an airport, it shall be appropriately marked as a closed airport for a period of at least six months following closure.

Stat. Auth.: ORS 835 & ORS 836
Stats. Implemented: ORS 836.100 & ORS 836.110
Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; AERO 2-1989, f. & cert. ef. 9-20-89; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-020-0045

Hearings

The procedure for hearings and appeals in connection with the grant, denial, or revocation of a site approval or license shall be as provided in The Attorney General's Model Rules of Practice and Procedure under the Administrative Procedure Act, and ORS Chapter 183.

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

Stat. Auth.: ORS 184.616, ORS 184.619, ORS 835.035, ORS 836.100, ORS 836.110 & ORS 836.115
Stats. Implemented: ORS 183.430, ORS 183.435, ORS 836.100, ORS 836.110 & ORS 836.115
Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; 1AD 1-1984, f. & ef. 1-5-84; 1AD 1-1986, f. & ef. 4-28-86; AERO 1-1988, f. & cert. ef. 8-22-88; AERO 2-1989, f. & cert. ef. 9-20-89; AERO 4-1990, f. & cert. ef. 8-14-90; AERO 1-1992, f. & cert. ef. 5-12-92; AERO 1-1998, f. & cert. ef. 2-25-98; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-030-0015

Prohibition

No person shall engage in any commercial activity, permanently or temporarily, upon state-owned or operated property or which utilizes a state-financed facility, at any airport owned by the State of Oregon, Department of Aviation, without first having obtained the consent of the Department, or having entered into an agreement under which the Department has authorized the conduct of that activity.

Stat. Auth.: ORS 184, ORS 835 & ORS 836
Stats. Implemented: ORS 836.055
Hist.: 1 OTC 12-1980(Temp), f. & ef. 6-17-80; 1AD 1-1981, f. & ef. 1-29-81; AERO 1-1987(Temp), f. & ef. 9-17-87; AERO 2-1987, f. & ef. 12-15-87; AVIA 2-2002, f. & cert. ef. 9-3-02

738-030-0020

Duty to Report: Enforcement

(1) In questionable cases, it shall be the duty of the person arguably engaging in a commercial activity at a state airport to contact the Department for a determination of that person's status. The person shall report to: Oregon Department of Aviation, 3040 25th Street S.E., Salem, OR 97302-1125, Phone: (503) 378-4880 or (800) 874-0102.

(2) If any person is dissatisfied with the Department's determination, that person may request a hearing before the Department by mailing a written request to the above address. Such hearings will be held in accordance with the Administrative Procedures Act (ORS 183.413-183.470) and the procedural rules of the Oregon Department of Aviation. The person requesting the hearing shall have the burden of proving that his activity is not a commercial activity as defined herein.

(3) It is the policy of the Department not to institute formal enforcement proceedings against persons that may be in violation of this rule until such person has been notified of the problem and has refused or failed, after 15 days from such notice, to report to the Department with the information necessary to determine the status of the person's operation.

Stat. Auth.: ORS 835
Stats. Implemented: ORS 836.055
Hist.: 1AD 1-1981, f. & ef. 1-29-81; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-030-0025

Oregon Department of Aviation Authority

(1) When the Department has determined that a person is engaged or proposes to engage in commercial activity at a state-owned airport, the Department may grant that person permission to do so, may issue that person a permit with restrictions or conditions, may require the person to enter into an agreement with the Department, or may deny permission.

(2) In determining whether, and under what conditions, the activity will be permitted, the Department will consider the following criteria:

(a) The eligibility criteria set forth in the Department's Rates and Fees rule;

(b) The terms and conditions under which any pre-existing permitted activity at the airport which the new activity would compete with is operating; in order to avoid creation of artificial competitive advantages, the Department will ensure as nearly as possible that competitors compete on the same terms and conditions;

(c) The impact of the activity on public safety and convenience; the Department will impose such conditions and restrictions as are necessary to ensure safety in the air and on the ground, and to preserve unobstructed traffic patterns;

(d) The amount of space available at the airport, the consistency of the activity with the customary uses of an airport and with present and planned development at the airport;

(e) The extent to which the activity threatens unjustified devotion of public property and resources to a private use;

(f) Consistency of the activity and the manner in which it is conducted with state, local and federal laws and regulations, including land use provisions;

(g) Whether the activity is carried on for profit, or is a non-profit activity reasonably related to the promotion of aeronautics or aviation safety or education.

(3) Nothing in the rule shall be construed as detracting from the Department's rights as a landowner at a state-owned airport.

(4) Nothing in this rule shall derogate from any rights, granted under the terms of its agreement with the Department, of a fixed base operator to regulate and control the use of properties and facilities placed in its custody under agreement with the Department.

(5) The Department shall take no action under this rule which amounts to the granting of an "exclusive right" for the use of any landing area or air navigation facility as forbidden by Section 308(a) of the Federal Aviation Act of 1958 (codified as 49 U.S.C. Section 1349(a)).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184, ORS 835 & ORS 836
Stats. Implemented: ORS 836.055
Hist.: 1AD 1-1981, f. & ef. 1-29-81; AERO 1-1987(Temp), f. & ef. 9-17-87; AERO 2-1987, f. & ef. 12-15-87; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-040-0010

Purpose and Statutory Authority

To regulate seaplane operations on certain waters of this state to ensure the safe operation of such aircraft in relation to marine craft and persons using the same waters:

(1) ORS 184.619 pertaining to rulemaking authority.

(2) ORS 835.035 pertaining to the general public interest, safety and the development and promotion of aeronautics.

(3) ORS 835.080 directing the State Aviation Board to adopt rules governing seaplane safety and operations on state waters.

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080
Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 835.085

Hist.: 1AD 3-1981, f. 7-23-81, ef. 8-1-81; 1AD 5-1981, f. & ef. 11-18-81; AERO 1-1997, f. & cert. ef. 2-28-97; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-040-0020

Interagency Coordination

(1) Seaplane operations on those federally navigable waters defined under 33 Code of Federal Regulations §§ 2.05-25(a)(1995), are subject to regulation by the United States Coast Guard and, for impoundments behind Corps of Engineer dams, by the Army Corps of Engineers. Seaplane operators should ascertain the federal regulations before conducting seaplane operations on these waters:

(a) For informational purposes, a list of significant Oregon river segments that have been determined as of 1995 to be federally navigable waters is provided as section (3) to this rule. These waters are subject to Coast Guard regulation. Impoundments under Corps of Engineer jurisdiction are not listed, however, the Corps of Engineers has adopted regulations for seaplane operations at lakes under Corps of Engineer jurisdiction. These regulations and the waters effected are listed in the Corps pamphlet, "Seaplane Operations at Corps of Engineers Lakes" (1982). A copy may be obtained from the Portland District Office of the Army Corps of Engineers or from the Department.

(b) Sources of information on federal seaplane regulations include:

(A) 14 Code of Federal Regulations Part 91 (1996) (FAA);

(B) 33 Code of Federal Regulations Part 81, Appendix A, and 33 USC §§ 2001 - 2073 (1995) (U.S. Coast Guard);

(C) 36 Code of Federal Regulations Part 327.4 (1995) (U.S. Army Corps of Engineers); and

(D) Advisory Circular 91-69 "Seaplane Safety" (1992) (FAA).

(2) The governing body of a political subdivision of this state wishing to apply for special regulations affecting seaplane operations on waters within the territorial limits of the political subdivision shall submit an application to the State Aviation Board through the Department, as provided for in OAR 738-040-0040. It shall be the policy of the Department to investigate and analyze each request for special regulations in a timely manner and to cooperate with such governmental agencies to develop con-

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sistent regulations necessary to promote safe seaplane operation and to adopt these regulations as part of these rules.

(3) Navigable waters of the United States where Federal Regulations apply, include but are not limited to, the significant river segments listed in subsections (a) through (v) of this section. This list of waters is meant to be informational only. Determinations of navigability are made by the U.S. Coast Guard and are subject to change. (See 33 CFR § 2.10-5 for the latest determinations and other waters not noted here.) The distance shown in the column headed "Miles" refers to the distance up-stream from the river's entrance at the ocean, or its confluence other body of water): Name — Miles

- (a) Alsea Bay and River — 13;
- (b) Chetco River — 3.5;
- (c) Columbia River — Entire Length in Oregon;
- (d) Coos River (above Coos Bay) — 6;
- (e) Coos River (South Fork) — 9;
- (f) Coquille River — 35;
- (g) Coquille River (North Fork) — 2;
- (h) Coquille River (East Fork of North Fork) — 2;
- (i) Coquille River (South Fork) — 2;
- (j) Little Nestucca River — 2;
- (k) Millicoma River — 9;
- (l) Nehalem Bay and River — 8;
- (m) Nehalem River (North Fork) — 5;
- (n) Nehalem River (South Fork) — 5;
- (o) Nestucca Bay and River — 9;
- (p) Netarts Bay — 5;
- (q) Rogue River — 33;
- (r) Salmon River — 3;
- (s) Siletz Bay and River — 22;
- (t) Siuslaw River — 19;
- (u) Siuslaw River (North Fork) — 2;
- (v) Smith River — 20;
- (w) Smith River (North Fork) — 1;
- (x) Snake River (along boundary) — 54;
- (y) Tillamook Bay and River — 16;
- (z) Trask River — 2;
- (aa) Umpqua River — 25;
- (bb) Willamette River (to Eugene) — 185;
- (cc) Wilson River — 3;
- (dd) Yamhill River — 7;
- (ee) Yaquina Bay and River — 23;
- (ff) Youngs Bay and River — 10.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080
Stats. Implemented: ORS 835.035, ORS 835.040 & ORS 835.080
Hist.: IAD 3-1981, f. 7-23-81, ef. 8-1-81; IAD 5-1981, f. & ef. 11-18-81; AERO 1-1997, f. & cert. ef. 2-28-97; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-040-0040

Application for Special Regulations

(1) The governing body of a political subdivision of this state may apply to the State Aviation Board for special regulations relating to the operations of seaplanes on waters within the territorial limits of the political subdivision. These regulations may include, but are not limited to, the establishment of limits on the areas of operations, hours and time of operations and the prohibition of seaplane landings and take offs.

(2) Written application for special regulations shall be made through the Department for review and processing. The application shall clearly state the nature and scope of the existing conflict that requires the restriction of seaplane operations, and the seaplane restrictions requested. A description of the use patterns, existing boating regulations and history of the body of water shall be included as part of the application.

(3) Within a reasonable time after receiving such application, the Department Director will investigate and analyze the proposal for the appropriateness and effectiveness of the proposed regulations. In evaluating the request, the Department may conduct an inspection of the site to document its physical attributes, and to collect other pertinent data. The Director will consider the following aspects (among others) of the proposal in arriving at a finding:

- (a) The general suitability and safety of the body of water for seaplane use, such as the physical layout and dimensions of the body of water, surrounding obstructions and hazards;
 - (b) The traditional uses of the water in question; and
 - (c) The nature and volume of others uses and seasonal use patterns.
- (4) The evaluation will be conducted in consultation with the Oregon State Marine Board.

(5) After evaluating the application, the Director shall present the application and recommendations to the Board. The Director may recommend:

- (a) Denial of the application, if the proposed regulations are not justified;
 - (b) Consideration of the application with amendments, if the requested seaplane restrictions are excessive; or
 - (c) Consideration of the application as requested.
- (6) If the Board determines that special regulations may be appropriate, formal rule making in accordance with ORS 183, will be initiated to amend these rules.

(7) In determining the appropriate regulations for seaplanes, the least restrictive solution consistent with safety will be sought. Outright seaplane prohibition will be reserved for only the most extreme situations of unusual and continuous congestion or the lack of physical suitability for seaplane operations. Normally, limits on the areas of operation or time or seasonal restrictions will be adequate to avoid conflict.

Stat. Auth.: ORS 814.619, ORS 835.035 & ORS 835.080

Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 835.085

Hist.: AERO 1-1997, f. & cert. ef. 2-28-97; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-050-0020

Landing and Take-Off

(1) Fixed-wing traffic shall land and depart from paved runway surfaces only.

(2) Landings and take-offs shall normally be made on the runway most nearly aligned with the wind indicator. If wind is calm, runway 17 is designated as the preferred runway.

(3) Mid-point intersection take-offs are prohibited. Aircraft shall not enter the runway at any point other than the end.

(4) After landing, all aircraft shall clear the runway as soon as practical with no 180 degree turns permitted on the runway.

(5) Landings and/or take-offs from opposite ends of the runway at the same time are prohibited.

(6) Side-by-side or formation take-offs shall be considered as a special event and shall require prior approval by the Director of the Oregon Department of Aviation (Department) on a case-by-case basis.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 836.505

Hist.: IAD 4-1981(Temp), f. & ef. 8-21-81; IAD 1-1982, f. & ef. 4-20-82 ; AERO 1-1989(Temp), f. & cert. ef. 2-21-89; AERO 3-1989, f. & cert. ef. 9-20-89; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-050-0060

Balloons, Parachutists

Because of normal air traffic density and congestion, balloon and parachuting activities generally are prohibited on or above the airport. Such operations may be permitted as part of special events, such as Air Fairs with prior approval of the Director of the Department.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 836.505

Hist.: IAD 4-1981(Temp), f. & ef. 8-21-81; IAD 1-1982, f. & ef. 4-20-82; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-050-0070

Ultralight Aircraft

(1) An ultralight aircraft is any of that class of lightweight aircraft either not currently certificated by the Federal Aviation Administration or, if certificated, having an empty weight of less than 220 pounds; and, not otherwise exempt from registration under the laws of this state.

(2) Until further notice, operation of an ultralight aircraft at Aurora State Airport shall be considered a special event and shall require the prior approval of the Director of the Department.

(3) In determining whether ultralight operations should be allowed at the airport, the Director of the Department will consider, but is not limited to, the following criteria:

- (a) Proposed ultralight activities and schedule;
- (b) Anticipated traditional air traffic operations;
- (c) Weather conditions;
- (d) Other special events.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 836.505

Hist.: IAD 4-1981(Temp), f. & ef. 8-21-81; IAD 1-1982, f. & ef. 4-20-82; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

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738-050-0090

Miscellaneous

(1) Motor vehicles shall not be operated on the runway or parallel taxiway without specific prior authorization by the Director of the Department.

(2) All users of the airport are requested to report any observed act by any person which is considered to be unsafe or a violation of these rules.

(3) All lessees at the airport having contracts with the Department for commercial operations (Fixed Base Operators) shall develop procedures for dealing with emergency situations involving aircraft.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 836.505

Hist.: IAD 1-1982, f. & ef. 4-20-82; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-060-0050

Dealer Responsibilities

(1) Starting the first month after receipt of the license, by the 10th of each month, the dealer shall submit a report to the Department giving the changes to those aircraft covered by the license and adding new aircraft if appropriate. This report shall include:

(a) N number and type of aircraft sold the previous month including the name, address and telephone number of the buyer;

(b) N number and type of aircraft withdrawn from the license for reasons other than sale, and including the reason for withdrawal;

(c) N number and type of aircraft added to coverage of license, including name and address of last owner.

(2) Upon the sale of any aircraft, the dealer shall:

(a) Advise the purchaser, pursuant to ORS 837.075(3), of the requirement to register aircraft with the Department in accordance with ORS 837.040 to 837.075 and furnish the purchaser with the appropriate registration application;

(b) Notify the Director of the Department, within ten days of the sale, giving the name and address of purchaser and a brief description of the aircraft sold, sufficiently detailed for identification.

Stat. Auth.: ORS 184, ORS 835 & ORS 837

Stats. Implemented: ORS 837.075

Hist.: IAD 1-1983, f. & ef. 2-14-83; AERO 3-1987, f. & ef. 12-15-87; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0010

General Information

(1) Senate Bill 47, passed by the 1981 Legislature, became law on November 1, 1981, as Chapter 553, Oregon Laws 1981 and codified as ORS 836.530. This authorizes the Director of the Department to adopt rules defining physical hazards to air navigation within Oregon and determine whether specific types or classes of objects or structures constitute hazards. It further authorizes the establishment of standards for lighting or marking objects or structures that constitute hazards to air navigation in this state.

(2) In accordance with these rules, the Director shall:

(a) Determine whether specific objects or structures constitute a hazard to air navigation;

(b) Issue orders to require that specific objects or structures determined to be hazards to air navigation be marked or lighted;

(c) Determine responsibility for installation and maintenance of lighting or marking of specific objects or structures that constitute hazards to air navigation.

(3) In conformance with the statutory provision, these rules and standards are designed to be no more restrictive than current federal norms, including, but not limited to, regulations and circulars, pertaining to objects affecting navigable airspace.

(4) Any person or entity required to comply with an order issued under these rules may contest the order as provided under ORS 183.310 to 183.500.

(5) Failure to comply with an order issued under this rule is subject to the penalties stated in ORS 837.990.

(6) Under this rule, the Director may make an independent judgment as to whether specific objects or structures constitute a hazard to air navigation in Oregon; determine whether such objects or structures shall be marked or lighted and; determine responsibility for installation and maintenance of such marking and lighting. While the rules and standards adopted herein are "limited to and shall not be more restrictive than current federal norms,..." nothing in the law or these rules shall prohibit the Director from making an independent judgment or decision that may differ from the judgment or decision made by the Federal Aviation Administration on the same object or structure using FAA regulations, circulars or other publications as a basis for such finding.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0020

Scope of Rule

(1) Establishes and adopts standards for determining obstructions in navigable airspace.

(2) Sets forth the requirements for notice to the Director of certain proposed construction or alteration.

(3) Provides for aeronautical studies of obstructions to air navigation, to determine their effect on the safe and efficient use of airspace.

(4) Provides for public hearings on the hazardous effect of proposed construction or alteration on air navigation.

(5) Establishes standards for determining requirements for marking and lighting of obstructions to navigable airspace.

(6) Establishes standard methods of marking and lighting obstructions to navigable airspace.

(7) Establishes standards for determining responsibility for installation and maintenance of marking or lighting specific objects or structures that constitute hazards to air navigation.

(8) Sets forth penalties for failure to comply with an order issued under this rule.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0040

Standards

The standards established in this rule for determining obstructions to air navigation are used by the Director in:

(1) Imposing requirements for notice of the construction or alteration of any structure when such structure can pose a hazard to air navigation in Oregon.

(2) Determining if specific objects or structures constitute a hazard to air navigation.

(3) Determining the need to light and/or mark objects or structures that may derogate safety to air navigation.

(4) Determining responsibility for installation of lighting and/or marking of appropriate objects and structures.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0060

Notice of Construction or Alteration

(1) This rule requires each person proposing any kind of construction or alteration described in OAR 738-070-0070 to give adequate notice to the Director. It specifies the locations and dimensions of the construction or alteration for which notice is required and prescribes the form and manner of the notice. It also requires supplemental notices 48 hours before the start and upon the completion of certain construction or alteration that was the subject of a notice under OAR 738-070-0070.

(2) Notices received under this rule provide a basis for:

(a) Evaluating the effect of the construction or alteration on operational procedures and proposed operational procedures;

(b) Determinations of the possible hazardous effect of the proposed construction or alteration on air navigation;

(c) Determinations for identifying the construction or alteration to be marked or lighted in accordance with the Federal Aviation Administration Advisory Circular AC 70/7460-1F entitled Obstruction Marking and Lighting and dated September 27, 1978;

(d) Determining other appropriate measures to be applied for continued safety of air navigation; and

(e) Notification to pilots of the construction or alteration.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0070

Construction or Alteration Requiring Notice

(1) Each proponent of any of the following construction or alteration shall notify the Director in the form and manner prescribed in OAR 738-070-0080.

(a) Any construction or alteration of more than 200 feet in height above the ground level at its site;

(b) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one of the following slopes:

(A) 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each airport specified in subsection (e) of

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this section with at least one runway more than 3,200 feet in actual length, excluding heliports;

(B) 50 to 1 for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each airport specified in subsection (e) of this section with its longest runway no more than 3,200 feet in actual length, excluding heliports;

(C) 25 to 1 for a horizontal distance of 5,000 feet from the nearest point of the nearest landing and take-off area of each heliport specified in subsection (e) of this section.

(c) Any highway, railroad, or other traverse way for mobile objects if of greater height than the standards of subsection (a) or (b) of this section after their height has been adjusted upward by one of the following:

(A) 17 feet for an interstate highway that is part of the National System of Military and Interstate Highways;

(B) 15 feet for any other public roadway;

(C) 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road;

(D) 23 feet for a railroad;

(E) For a waterway or any other traverse way, an amount equal to the height of the highest mobile object that would normally use it.

(d) When requested by the Department, any construction or alteration that would be in an instrument approach area (defined in the FAA standards governing instrument approach procedures) and available information indicates it might exceed a standard of OAR 738-070-0100;

(e) Any construction or alteration on any of the following airports (including heliports):

(A) An airport that is available for public use and is listed in the airport directory of the current **Airman's Information Manual** or in the **Oregon Aviation System Plan**;

(B) An airport under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration, or the Department, when it is clearly indicated that that airport will be available for public use.

(2) Each proponent of a construction or alteration that is the subject of a notice under section (1) of this rule, and is advised by the Department that a supplemental notice is required, shall submit that supplemental notice on a prescribed form to be received by the Department at least 48 hours before the start of the construction or alteration.

(3) Each proponent who undertakes construction or alteration that is the subject of a notice under section (1) of this rule, shall, within five days after that construction or alteration reaches its greatest height, submit a supplemental notice on a prescribed form to the Department, if:

(a) The construction or alteration is more than 200 feet above the surface level of its site; or

(b) The Department advises the proponent that submission of the form is required.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0080

Form and Time of Notice

(1) Each person who is required to notify the Director under OAR 738-070-0060 shall send one executed form set (four copies) of FAA Form 7460-1, Notice of Proposed Construction or Alteration, to the Oregon Department of Aviation. Copies of FAA Form 7460-1 may be obtained from the headquarters of the FAA and its regional offices or the Department.

(2) The notice required under OAR 738-070-0060 must be submitted at least 30 days before the earlier of the following dates:

(a) The date the proposed construction or alteration is to begin;

(b) The date an application for a construction permit is to be filed.

(3) A proposed structure or an alteration to an existing structure that exceeds 2,000 feet in height above the ground will be presumed to be a hazard to air navigation and to result in an inefficient utilization of airspace and the applicant has the burden of overcoming that presumption. Each notice submitted under the pertinent provisions of Federal Aviation Regulation (FAR) Part 77 proposing a structure in excess of 2,000 feet above ground, or an alteration that will make an existing structure exceed that height, must contain a detailed showing, directed to meeting this burden. Only in exceptional cases, where the Department concludes that a clear and compelling showing has been made that it would not result in an inefficient utilization of the airspace and would not result in a hazard to air navigation, will a determination of no hazard be issued.

(4) In the case of an emergency involving essential public services, public health, or public safety, that requires immediate construction or alteration, the 30 day requirement in section (2) of this rule does not apply and the notice may be sent by telephone, telegraph, or other expeditious means, with an executed FAA Form 7460-1 submitted within five days thereafter.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0100

Obstruction Standards

(1) This rule establishes standards for determining obstructions to air navigation. It applies to existing and proposed manmade objects, objects of natural growth and terrain. The standards apply to the use of navigable airspace by aircraft and to existing air navigation facilities, such as an air navigation aid, airport, federal airway, instrument approach or departure procedure, or approved off-airway route. Additionally, they apply to a planned facility or use, or a change in an existing facility or use, if a proposal therefor is on file with the Federal Aviation Administration or the Oregon Department of Aviation.

(2) At those airports having defined runways with specially prepared hard surfaces, the primary surface for each such runway extends 200 feet beyond each end of the runway. At those airports having defined strips or pathways that are used regularly for the taking-off and landing of aircraft and have been designated by appropriate authority as runways, but do not have specially prepared hard surfaces, each end of the primary surface for each such runway shall coincide with the corresponding end of the runway. At those airports, excluding seaplane bases, having a defined landing and take-off area with no defined pathways for the landing and taking-off of aircraft, a determination shall be made as to which portions of the landing and take-off area are regularly used as landing and takeoff pathways. Those pathways so determined shall be considered runways and an appropriate primary surface as defined in OAR 738-070-0120 will be considered as being longitudinally centered on each runway so determined, and each end of that primary surface shall coincide with the corresponding end of that runway.

(3) The standards in this rule apply to the effect of construction or alteration proposals upon an airport if, at the time of filing of the notice required by OAR 738-070-0060, that airport is:

(a) Available for public use and is listed in the current Federal Airport Directory or included in the State System as shown in the Oregon Aviation System Plan; or

(b) A planned or proposed airport or an airport under construction that is the subject of a notice or proposal on file with the Federal Aviation Administration, and it is clearly indicated that that airport will be available for public use.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0160

Aeronautical Studies

(1) The Director, or designee, conducts the aeronautical study of the effect of the proposal upon the operation of air navigation facilities and the safe and efficient utilization of the navigable airspace. This study may include the physical and electromagnetic radiation effect the proposal may have on the operation of an air navigation facility.

(2) To the extent considered necessary, the Director, or designee, may take any or all of the following actions:

(a) Solicit comments from all interested persons;

(b) Explore objections to the proposal and attempt to develop recommendations for adjustment of aviation requirements that would accommodate the proposed construction or alteration;

(c) Examine possible revisions of the proposal that would eliminate the exceeding of the standards in OAR 738-070-0100; and

(d) Convene a meeting with all interested persons for the purpose of gathering all facts relevant to the effect of the proposed construction or alteration on the safe and efficient utilization of the navigable airspace.

(3) The Director, or designee, issues a determination as to whether the proposed construction or alteration would be a hazard to air navigation and sends copies to all known interested persons. This determination is final unless a petition for review is granted under OAR 738-070-0170.

(4) If the sponsor revises his proposal to eliminate exceeding of obstruction standards, or withdraws it, the Director, or designee, terminates the study and notifies all known interested persons.

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(5) The FAA Handbook, **Procedures for Handling Airspace Matters**, may be used in arriving at the determination.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0170

Administrative Appeal

(1) The proponent of a construction or alteration or any person who stated a substantial aeronautical objection to it in an aeronautical study, or any person who has a substantial aeronautical objection to it but was not given an opportunity to state it, may petition the Director, within 30 days after issuance of the determination under OAR 738-070-0090 or 738-070-0160 or revision or extension of the determination under OAR 738-070-0180, for a review of the determination, revision, or extension. This section does not apply to any acknowledgment issued under OAR 738-070-0090(3)(a) that does not exceed standards and does not constitute a hazard.

(2) The petition must be in triplicate and contain a full statement of the basis upon which it is made.

(3) Except under section (4) of this rule the Director will examine each petition and decide whether a review will be made and, if so, whether it will be:

(a) A review on the basis of written materials, including a study of a report by the Department of the aeronautical study, briefs, and related submissions by any interested party, and other relevant facts. Following such review, the Director may affirm, revise, or reverse the determination issued under the provisions of this rule;

(b) A review on the basis of a hearing, conducted in accordance with the procedures prescribed in the Administrative Procedures Act for contested cases.

(4) If petitioner qualifies under section (1) of this rule and requests a contested case hearing, the review will be conducted as a contested case under the Administrative Procedures Act. (ORS Chapter 183).

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0180

Effective Period of Determination of No Hazard

(1) Unless it is otherwise extended, revised, or terminated, each final determination of no hazard made under OAR 738-070-0060, 738-070-0140 or 738-070-0170 expires 18 months after its effective date, regardless of whether the proposed construction or alteration has been started, or on the date the proposed construction or alteration is abandoned, whichever is earlier.

(2) In any case, including a determination to which section (4) of this rule applies, where the proposed construction or alteration has not been started during the applicable period by actual structural work, such as the laying of a foundation, but not including excavation, any interested person may, at least 15 days before the date the final determination expires, petition the Director to:

(a) Revise the determination based on new facts that change the basis on which it was made; or

(b) Extend its effective period.

(3) The Director will review each petition presented under section (2) of this rule and revise, extend, or affirm the determination as indicated by his findings.

(4) In any case in which a final determination made under OAR 738-070-0060 or 738-070-0140 relates to proposed construction or alteration that may not be started unless the Federal Communications Commission (FCC) issues an appropriate construction permit, the effective period of each final determination includes:

(a) The time required to apply to the FCC for a construction permit, but not more than six months after the effective date of the determination; and

(b) The time necessary for the FCC to process the application except in a case where the Director determines a shorter effective period is required by the circumstances.

(5) If the FCC issues a construction permit, the final determination is effective until the date prescribed for completion of the construction. If the FCC refuses to issue a construction permit, the final determination expires on the date of its refusal.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0210

Marking and Lighting of Obstructions to Air Navigation

(1) Certain objects and structures must be marked and/or lighted to make them more visible to pilots. ORS 836.530 states that the Director may adopt rules establishing standards for marking or lighting objects and structures that constitute hazards to air navigation.

(2) In accordance with the rules adopted under ORS 836.530, the Director shall:

(a) Issue orders to require that specific objects or structures determined to be hazards to air navigation be marked or lighted in accordance with the rules adopted;

(b) Determine responsibility for installation and maintenance of lighting or marking specific objects or structures that constitute hazards to air navigation.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0230

Objects and Structures to Be Marked and Lighted

When the Director has determined that an object or structure is a hazard to air navigation, he shall also determine whether such hazard shall be marked and lighted and shall specify the appropriate marking and lighting in accordance with the standards included in this rule. After this determination has been made, the Director shall issue an order specifying who shall be responsible for the installation and maintenance of the marking and lighting of the object or structure and specifying the type and quantity of marking and lighting:

(1) The Director may agree with the recommendations for marking and lighting contained in an FAA airspace determination for a specific object or structure or he may make a separate and different determination for marking and lighting of that object or structure based on his expertise and his knowledge of the situation.

(2) The type and quantity of marking and lighting for an object or structure shall be determined by the following characteristics of the object:

(a) Location;

(b) Size or height;

(c) Shape;

(d) Type (i.e. chimney, pole, tower, bridge, transmission lines, etc.);

(e) Permanence (temporary obstructions shall be marked and lighted when appropriate).

(3) The Director may deviate from the established marking and lighting standards, except that any deviation must not be more restrictive than current federal norms.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-080-0030

Temporary Exemption from Registration

(1) Aircraft not physically capable of operation or flight may be temporarily exempt from the requirement of annual registration by the Oregon Department of Aviation (Department):

(a) "Not physically capable of operation and flight" means any aircraft that is not capable of:

(A) Being operated in forward motion on the ground or in flight;

(B) The need for repairs to the aircraft such as flat tires, broken windows or other short term maintenance items that are normally required are not considered adequate justification for an exemption;

(C) An aircraft that is grounded merely because it has not had appropriate inspections required by the Federal Aviation Administration is not eligible for exemption;

(D) An aircraft must be incapable of physical operation or flight for a period of time that extends beyond March 1 of each calendar year to be eligible for exemption.

(b) An aircraft that is under construction, or one that is disassembled waiting reassembly, may be exempt from registration until it is physically capable of operation or flight.

(2) The Director of the Department or the Director's designee shall make the final determination as to which aircraft may be temporarily exempt from registration:

(a) The owner of any aircraft that has been assigned a Federal Aviation Administration "N" number must complete an application for registration within the prescribed time limits. (Prior to March 1 or within 60 days of entering the state or being purchased.);

(b) An aircraft owner that believes an aircraft to be not physically capable of operation or flight shall prepare a statement giving the reasons

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why it should be temporarily exempted from registration. This statement shall be signed and shall accompany the application for registration:

(A) This statement must be received by the Department 30 days before the appropriate registration deadline. This will allow time for the Director of the Department or to determine the eligibility for exemption from registration;

(B) Following the Administrator's determination, the aircraft owner will be notified as to exemption status;

(C) If the exemption is denied, the aircraft owner will be notified. The owner must then submit the appropriate registration fee to the Department by the established deadline to avoid assessment of penalty and possible citation for "failure to register";

(D) An aircraft owner may request a review of the Director of the Department or the Director's designee's decision after payment of the appropriate registration fee has been submitted. Such review may include an informal discussion with the Director of the Department or the Director's designee of the aircraft's status;

(E) Receipt of an application for registration, with accompanying exemption statement, subsequent to the appropriate deadline will result in assessment of the prescribed penalty if the request for exemption is denied.

(3) A temporary exemption from registration under this section shall only be effective for the calendar year in which the exemption is granted. A new application and statement must be submitted each year within the time frame specified in paragraph (2)(b)(A) of this rule for the original statement.

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 837.005
Stats. Implemented: ORS 837.005
Hist.: IAD 1-1985, f. & ef. 12-20-85; AERO 1-1991, f. & cert. ef. 5-21-91; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-090-0030

Airport Listings

(1) The list of airports required by ORS 836.610(1) is as follows:

(a) **Exhibit 1** lists publicly owned airports registered, licensed or otherwise recognized by the Department on or before December 31, 1994, that in 1994 were the base for three or more aircraft.

(b) **Exhibit 2** lists privately owned public use airports that:

(A) Provide important links in air traffic in this state;

(B) Provide essential safety or emergency services; or

(C) Are of economic importance to the county where the airport is located.

(2) Information to be considered in determining whether the criteria listed in subsection (1)(b) of this rule have been met are in OAR 738-090-0050.

(3) The Department will, at least every five years, review and update the listings of airports in this rule to add or remove airports from the listings as required by ORS 836.610(3). The Board will consider applications by airport sponsors for inclusion on the list, outside of the five-year review and update, as provided in OAR 738-090-0040.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 836.610
Stats. Implemented: ORS 836.610
Hist.: AERO 1-1999, f. & cert. ef. 3-25-99; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-090-0040

Procedure for Adding an Airport to Listings

(1) The procedure for adding a publicly owned airport to **Exhibit 1** is as follows:

(a) The airport sponsor shall submit a written request to the Department, to add an airport to the list;

(b) The request shall include documentation that:

(A) The airport is publicly owned;

(B) The airport was registered, licensed or otherwise recognized by the Department on or before December 31, 1994; and

(C) The airport was the base for three or more aircraft in 1994.

(c) The Department shall submit a copy of the airport sponsor's written request to the local government(s) that may be impacted by the change and request written comments on the request. If no comments are received from a local government within 60 days of mailing of the airport sponsor's request, it will be assumed that the local government has no comments on the request. Any comments received by the Department shall be forwarded to the airport sponsor;

(d) The Department shall evaluate the airport sponsor's written request and make a recommendation to the Board whether the proposed addition should be approved or denied;

(e) Upon approval of the Board, the airport shall be added to **Exhibit 1** upon filing of formal amendment to the rules; and

(f) If the Board denies the airport sponsor's application, the airport may not be considered for inclusion on the list for at least two years.

(2) The procedure for adding a privately owned airport to **Exhibit 2** is as follows:

(a) The airport sponsor shall apply to the Department for site approval as a public use airport on a site approval application form, Form 802-7611, provided by the Department;

(b) The airport sponsor shall submit an application to the FAA on an FAA Form 7480-1, with a proposal to place the airport into a public use category. If the airport currently has a public use airport status, this step is not necessary. (FAA Part 157.5, Notice of Intent);

(c) The Department shall submit a copy of the site approval application to the local government(s) that may be impacted by this change and request written comments on the application. If no comments are received from a local government within 60 days of mailing of the airport sponsor's application, it shall be assumed that the local government has no comments on the application. Any comments received by the Department shall be forwarded to the airport sponsor;

(d) The Department shall request the addresses of all affected property owners from the local governments. "Affected property owners" are those whose property is within 500 feet of an airport boundary, within an approach corridor, or whose use of their property may be directly affected, if the proposed airport is listed, by the requirements of the Land Conservation and Development's rules adopted pursuant to ORS 836.616 and 836.619. The local government shall be responsible for determining which property owners will be affected by the proposed listing of an airport. This address list shall be submitted to the Department within 21 days of a written request from the Department. Failure of the local government to provide this list within the above time lines eliminates the responsibility of the Department to provide notice under this subsection. Upon receipt of the address list, the Department shall provide notice to the affected property owners, at least 20 days but no more than 40 days before the date of the public hearing, sufficient to tell the property owners generally of the effect of including the proposed airport on the list and the opportunity for public comment. The Department shall conduct a public hearing and receive testimony in each county where an airport is located. If more than one airport in a county is proposed for listing, one hearing shall be sufficient to meet this requirement.

(e) The Department shall evaluate the proposal based upon criteria in ORS 836.610(1)(b) and comments received from the airport sponsor, local governments and testimony taken at a public hearing;

(f) The Department shall make a recommendation to the Board whether the proposed action should be approved or denied;

(g) Upon approval of the Board, the airport shall be added to **Exhibit 2** upon filing of formal amendment to the rules; and

(h) If the Board denies the airport sponsor's application, the airport may not be considered for inclusion on the list for at least two years.

(3) The Department will comply with the administrative rulemaking requirements in ORS Chapter 183 and its State Agency Coordination Program rule in OAR chapter 731, division 15 when adding airports to the lists in sections (1) and (2) of this rule.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 836.610
Stats. Implemented: ORS 836.610
Hist.: AERO 1-1999, f. & cert. ef. 3-25-99; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-090-0050

Information to be Considered in Determining Airport Listings

The Board shall consider the information listed below in determining whether an airport meets the criteria in ORS 836.610(1)(b). The Department shall provide this information to the Board.

(1) To determine whether an airport provides important links in air traffic in this state, the Board shall consider, but is not limited to, the following information:

(a) Number and type of based aircraft;

(b) Annual operations;

(c) Whether an airport is included in the National Plan of Integrated Airports System as identified by the FAA;

(d) Classification of the airport in the state aviation system plan;

(e) The location of the airport in relation to other airports in the area and whether the airport is remote due to geographic features;

(f) Whether the location of the airport is conducive to providing an efficient alternative mode of transportation and has adequate links to other modes of transportation;

(g) Whether the airport is used frequently by businesses as an origin, transfer or destination airport; and

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(h) Whether the airport relieves congestion at other airports.

(2) To determine whether an airport provides essential safety or emergency services, the Board shall consider, but is not limited to, the following information:

(a) Whether the location of the airport makes it operationally feasible for efficient use as a search and rescue base and the history of its use as a search and rescue base;

(b) Whether the airport is an emergency landing location due to its geographic location;

(c) Whether the airport provides medical evacuation support due to its proximity to significant highway and transportation corridors and its geographic location;

(d) Whether the airport may be used as a location for fire patrol and suppression aircraft and activities and the history of the airport's use for such activities; and

(e) Whether the airport is a location for law enforcement operations or law enforcement training.

(3) To determine whether an airport is of economic importance to the county where the airport is located, the Board shall consider, but is not limited to, the following information:

(a) Whether the airport supports the economy of the county by providing aviation facilities for aeronautical related activities or businesses, including, but not limited to, hangars, tie downs, maintenance and training facilities;

(b) Whether the airport provides jobs;

(c) Whether the airport provides support to local business and/or governmental agencies. Examples include, but are not limited to, agricultural operations, destination resorts, forest operations, charter flights, military operations and cargo operations;

(d) Whether the airport supports a residential airpark;

(e) Whether the airport provides a location for aeronautic recreation, including but not limited to, aircraft displays, parachuting, ultralights and tourism activities;

(f) Whether the airport provides location for educational opportunities, such as flight instruction; and

(g) Any comments by the county or others relating to the economic importance of the airport to the county.

Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 836.610

Stats. Implemented: ORS 836.610

Hist.: AERO 1-1999, f. & cert. ef. 3-25-99; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-100-0010

Purpose

(1) Except as provided in section (2) of this rule, notice of a public hearing on a land-use permit or a zone change and notice of a decision on a land-use permit pursuant to ORS 215.223, 215.416 and 227.175 shall be provided to owners of public-use airports by the respective city and county planning authorities if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation (Department) to the appropriate city or county planning authority;

(b) The property subject to the land-use permit or zone change is:

(A) Within 5,000 feet of the sides or ends of a runway determined by the Department to be a "visual airport"; or

(B) Within 10,000 feet of the sides or ends of the runway of an airport determined by the Department to be an "instrument airport".

(2) Notice of a public hearing on a land-use permit or zone change or notice of a decision on a land-use permit need not be provided as set forth in section (1) of this rule if that land-use permit or zone change would only allow a structure of less than 35 feet in height and the property is located outside the runway "approach surface", as defined by this rule, or on property controlled by the airport.

(3) The failure of an airport owner to receive notice, which was mailed, shall not invalidate any land-use permit or zone change.

(4) This rule shall define terms used in Chapter 106, Oregon Laws 1987 and specify the dimensions of the approach surfaces for the various classifications of airports.

(5) In addition to the owner of a public-use airport, a copy of any notice of a land-use action for any affected airport shall, at the same time, be sent to the Oregon Department of Aviation, 3040 25th Street S.E., Salem, OR 97302-1125.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 836.325

Hist.: AERO 4-1987, f. & ef. 12-15-87; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-100-0035

Advisory

Even though notice of hearing or decision may not be required under OAR 738-100-0020(2), the proponent of any construction may still be required to submit Federal Aviation Administration Form 7460-1 to the Northwest Mountain Region, Federal Aviation Administration (FAA), Seattle, Washington, with a copy to the Oregon Department of Aviation. Form 7460-1 can be obtained from the Federal Aviation Administration or the Oregon Department of Aviation. While this does not require city and county planning authorities to advise proponents of construction of the Federal Aviation Administration requirement, it is hoped that the planning authorities can provide such information.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 836.325

Hist.: AERO 4-1987, f. & ef. 12-15-87; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

Oregon Economic and Community Development Department Chapter 123

Adm. Order No.: EDD 17-2002

Filed with Sec. of State: 11-27-2002

Certified to be Effective: 12-2-02

Notice Publication Date: 8-1-02

Rules Adopted: 123-155-0000, 123-155-0100, 123-155-0150, 123-155-0200, 123-155-0250, 123-155-0270, 123-155-0300, 123-155-0400

Subject: These rules provide specification of procedures and criteria for implementing a certification program to approve businesses for the income and corporate excise tax exemption authorized by chapter 944, Oregon Laws 2001.

Rules Coordinator: Margie N. Druery—(503) 986-0206

123-155-0000

Purpose and Scope

The purpose of these administrative rules is to specify procedures and criteria necessary to guide the Economic and Community Development Department's duties of certification under ORS 285B.103 to 285B.108 for the exemption on qualified facilities from State of Oregon business income and corporate excise taxation, as allowed under ORS 316.778 or 317.391. These tax exemptions are intended to encourage businesses to invest in new operations with new full-time employees earning minimum compensation levels at qualifying facilities inside small cities in counties exhibiting the worst per capita income and unemployment rates statewide.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 285B.103 - 285B.108

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02

123-155-0100

Definitions

For the purposes of this division of administrative rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Boundary of a city of 10,000 or fewer residents," as used in ORS 285B.103(5), means the corporate limits of a city with a population of not more than 10,000.

(2) "Business firm" means a person operating or conducting one or more trades or businesses but does not include any governmental agency, municipal corporation or nonprofit corporation, consistent with OAR 123-065-4050.

(3) "County per capita personal income" means the most recently available average annual per capita personal income level for the county, as published by the Bureau of Economic Analysis of the United States Department of Commerce.

(4) "County unemployment rate" means the most recently available annual average unemployment rate for the county, as published by the Oregon Employment Department.

(5) "Department" means the State of Oregon Economic and Community Development Department as organized under ORS Chapter 285A.

(6) "Director" means the Director of the Department appointed under ORS 285A.070.

(7) "Highest quartile," as used in ORS 285B.103(5)(a), means the nine (9) counties with the highest annual average unemployment rate for the most recently available year and any additional county that ties for the ninth highest rate.

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(8) "Lowest quartile," as used in ORS 285B.103(5)(b), means the nine (9) counties with the lowest average annual per capita income for the most recently available year and any additional county that ties for the ninth lowest per capita personal income.

(9) "New business that the firm does not operate at another location in this state," as used in ORS 285B.105(5)(d), means that the exempted business operations at a qualifying facility are entirely in addition to any existing business operations in this state that are owned by the business firm applying for preliminary certification or any other firm under common control. For purposes of this section, an existing operation is ignored if:

(a) Located inside the corporate limits of the same city where the new qualified facility will be located;

(b) It is substantially different from the qualifying facility, including but not limited to the type of goods or services produced, or the processes or technology used; or

(c) Both of the following are true with respect to the existing operation:

(A) Significant constraints affect its expansion; and

(B) It does not diminish its employment by closing or curtailing the existing operation for more than two years at a time, between the date of the application for preliminary certification and 10 years following the date on which qualifying facility becomes operational.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075(5) & 285B.110

Stats. Implemented: ORS 285B.103

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02

123-155-0150

List of Eligible Locations

(1) Effective July 1 of each year, the Department shall determine the counties and the corresponding list of cities in those counties that meet the requirements of ORS 285B.103(5).

(2) For purposes of section (1) of this rule, the Department shall rely on the current annual unemployment and per capita income statistics for the most recently available prior year. Subject to official revisions in these statistics, this determination shall remain in effect up to and including June 30 of the immediately following next year.

(3) Applicable city populations are the most recent population estimates available from the Portland State University Center for Population Research and Census at the time of the application for preliminary certification.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 285B.103

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02

123-155-0200

Preliminary Certification Application

In terms of the application for preliminary certification under ORS 285B.105:

(1) A business firm seeking the income and corporate excise tax exemption under ORS 316.778 or 317.391 must complete the application and file it with the Department, as follows:

(a) Using a form prescribed by the Department; and

(b) Before the following:

(A) Commencement of construction or installation of property or improvements at the qualifying location; and

(B) Hiring of any employees to work at that location, who constitute the 10 or more employees required under ORS 285B.105(5)(c).

(2) A non-refundable application fee of \$500 must be submitted with the application in the form of a check or money order payable to the State of Oregon.

(3) Application materials may be obtained from Oregon Economic and Community Development, State Lands Building, Suite 200, 775 Summer Street NE, Salem OR 97301-1280.

Stat. Auth.: ORS 285A.075 (5) & 285A.110

Stats. Implemented: ORS 285B.105

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02

123-155-0250

Determination of Preliminary Certification

(1) The Department shall review the application for preliminary certification for completeness and shall determine whether the business firm and the applicant's proposed facility and employment satisfy the criteria under ORS 285B.105(5).

(2) Within 30 days of receipt of the application for preliminary certification, the Department shall do the following:

(a) Notify the applicant in writing whether the application is complete; and

(b) If it is complete, send the following items to the city and county governments where the facility is proposed to be located, in such a way that the date of sending is verifiable:

(A) A copy of the application; and

(B) A standardized form for the city and county to complete and return in response to the business firm's application.

(3) The Department shall determine whether the application meets the requirements specified under ORS 285B.105(5) after finishing its review of the application, of any additional information requested and received from the applicant, and of materials received from the city or county; this determination shall not be final sooner than 60 days from the date the copy of the application was sent to the city and county, if pending a response from the city or county.

(4) Within 30 days of determining whether the application meets the requirements for preliminary certification, the Department shall notify the applicant in writing of its decision; this notification shall include but is not limited to the following:

(a) In the event that preliminary certification is denied: A written and signed explanation of the appeals process the applicant may pursue, as well as the reason(s) for the denial, along with copies of any adopted resolution or other material information from the city or county; or

(b) In the event that preliminary certification is approved: A letter signed by the Director or the Director's designee conferring preliminary certification, and an application form for annual certification to be filed with the Department on or before 30 days after the end of the next income or corporate excise tax year of the business firm following the commencement of operations at the qualifying facility.

(5) The Department shall notify the governing bodies of the city and county and the Department of Revenue of its determination for preliminary certification of the business firm.

Stat. Auth.: ORS 285A.075 (5) & 285A.110

Stats. Implemented: ORS 285B.105

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02

123-155-0270

Local Objection and Relevant Preliminary Certification Requirements

(1) In making an effective objection to the application for preliminary certification under ORS 285B.105(4)(b), the governing body of the city or county has 60 days from the date that a copy of the application is sent to the city and county, as described in OAR 123-155-0250(2)(b).

(2) The objection under section (1) of this rule must take the form of a resolution adopted by the governing body during that 60-day period, in accordance with applicable local laws, government charter and practices, and containing a statement of the reason(s) for the objection.

(3) In addition to what the business firm declares in the application, the Department shall rely primarily on the city or county in determining the following:

(a) Under ORS 285B.105(5)(c)(B), whether proposed health insurance coverage is at least equal to that of city or county employees; and

(b) Under ORS 285B.105(5)(e), whether proposed business operations will compete with existing businesses in the city or county, which if indicated must also be formally stated as an objection in the language of the resolution adopted by the city's or county's governing body.

(4) Failure of the city or county to respond in writing within 60 days, and for its governing body to have adopted a resolution during that same period, shall be deemed agreement to the preliminary certification.

Stat. Auth.: ORS 285A.075 (5) & 285A.110

Stats. Implemented: ORS 285B.105

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02

123-155-0300

Annual Certification

For purposes of certifying a facility each year for up to ten times under ORS 285B.108:

(1) A preliminarily certified business firm seeking to be certified must file an application for annual certification with the Department on or before 30 days after the end of the income or corporate excise tax year of the business firm on a form prescribed by the Department.

(2) A non-refundable application fee of \$100 must be submitted with the application in the form of a check or money order payable to the State of Oregon.

(3) Within 30 days of determining whether the facility satisfies or continues to satisfy applicable the requirements for certification (as must be done within 30 days of the date of filing), the Department shall notify the applicant in writing of the decision, such that the notification shall include but is not limited to the following:

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(a) In the event that annual certification is denied: A written and signed explanation of the appeals process the applicant may pursue, as well as the reason(s) for the denial, along with copies of any material information received from the city or county; or

(b) In the event that annual certification is approved: A letter signed by the Director or the Director's designee conferring certification, and an application form for annual certification to be filed with the Department on or before 30 days after the end of the current income or corporate excise tax year of the business firm, unless that year will conclude 10 years or more after the qualified facility commenced business operations.

(4) At the same time it notifies the business firm, the Department shall notify the Oregon Department of Revenue of its decision to approve or disapprove annual certification. Such notification shall be in the form of a letter from the Director or the Director's designee to the Director of the Department of Revenue or such official as designated for this purpose by the Director of the Department of Revenue.

Stat. Auth.: ORS 285A.075 (5) & 285A.110
Stats. Implemented: ORS 285B.105
Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02

123-155-0400

Waivers

The Director may waive non-statutory requirements of this division of administrative rules if it can be demonstrated that such a waiver will serve to further the goals and objectives of the program and other relevant public policies.

Stat. Auth.: ORS 285A.075 (5) & 285A.110
Stats. Implemented: ORS 285B.105
Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02

Adm. Order No.: EDD 18-2002

Filed with Sec. of State: 12-10-2002

Certified to be Effective: 12-10-02

Notice Publication Date: 6-1-02

Rules Adopted: 123-135-0087

Rules Amended: 123-135-0000, 123-135-0010, 123-135-0020, 123-135-0030, 123-135-0040, 123-135-0050, 123-135-0060, 123-135-0070, 123-135-0080, 123-135-0090, 123-135-0100, 123-135-0110

Subject: To reflect and make permanent changes to the Brownfields Redevelopment (Loan) Fund as required by Chapter 96, Oregon Laws 2001, approved by the 2001 Legislature and signed by the Governor April 20, 2001. Chapter 96, Oregon Laws 2001 modified key provisions to the brownfields enabling statute. The major changes include expanding the program to be a grant as well as a loan program and expanding the eligible funded activities beyond environmental evaluation to the full range of environmental actions such as cleanup. The law also changes the name of the fund to Brownfields Redevelopment Fund. These rules will also amend the method of interest rate calculation for municipal and non-municipal loan recipients.

Rules Coordinator: Margie N. Druery—(503) 986-0206

123-135-0000

Purpose

The purpose of these rules is to implement the Brownfields Redevelopment Fund created in 1997 through Chapter 738 Oregon Laws 1997 and amended by Chapter 96 Oregon Laws 2001. The purpose of the Brownfields Redevelopment Fund is to fund environmental actions on properties that are brownfields.

Stat. Auth.: ORS 285A.75(5) & ORS 285A.110
Stats. Implemented: ORS 285A.185 & ORS 285A.188
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0010

Policy

It is the policy of the Oregon Economic and Community Development Department to promote sustainability and assist rural or distressed communities with local development priorities. Facilitating environmental cleanup consistent with a polluter-pays principle and the redevelopment of brownfields furthers this policy. The benefits of redeveloping brownfields include: promoting economic development; enabling efficient land use; minimizing the construction of new service infrastructure; faci-

tating the resolution of environmental justice issues; and protecting environmental and human health.

Stat. Auth.: ORS 285A.75(5) & ORS 285A.110
Stats. Implemented: ORS 285A.185 & ORS 285A.188
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0020

Definitions

As used in this division, the following terms shall have the following meaning unless otherwise indicated:

(1) "Applicant" means any person, combination of persons, non-profit, or municipality applying for financial assistance from the Brownfields Redevelopment Fund;

(2) "Bridge Loan" means a loan that will be repaid in full at the end of a short-term, twelve (12) to twenty four (24) months, following loan closing;

(3) "Brownfield" means real property where expansion or redevelopment is complicated by actual or perceived environmental contamination as defined in ORS 285A.185(1);

(4) "Capacity Building" means evaluating, cleaning up, or otherwise preparing a site without an identified redevelopment use to meet the buildable lands needs of a municipality;

(5) "Collateral" means property subject to a security interest or security agreement as defined in ORS 79.1050;

(6) "Commission" means the Oregon Economic and Community Development Commission;

(7) "Contribution" means cash, a reduction in land sale price, a donation of real property or personal services of value; or some other like act that offsets the benefit of receiving sums from the Fund that are conveyed on a recipient or site owner who is a potentially responsible party for a release of a hazardous substance or is potentially liable for the cost of cleanup at the site according to ORS 465.255;

(8) "Department" means the Oregon Economic and Community Development Department;

(9) "Environmental Action" means activities undertaken to:

(a) Determine if a release has occurred, if the release poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a feasibility study;

(c) Plan for remedial action or removal; or

(d) Conduct a remedial action or removal at a site.

(10) "Environmental Insurance" means a specific form of casualty insurance based on industry custom standards. Policies such as, but not limited to, cleanup cost caps, secured creditor on impaired property, or pollution legal liability are examples of environmental insurance;

(11) "Environmental Justice" means community based issues, concerns, or problems resulting from the disparate effects caused by the placement and/or proximity of facilities that negatively impact minority or low-income populations;

(12) "Environmental Service Professional" means an entity that has the necessary experience, capacity, expertise, or is otherwise certified to conduct environmental actions;

(13) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel. Facility has the meaning given in ORS 465.200;

(14) "Financial Institution" means any commercial bank, mutual savings bank, savings and loan association, credit union, insurance company, investment bank, certified development corporation or National Association of Securities Dealers (NASD) securities underwriter licensed or authorized to do business in Oregon;

(15) "Fund" means the Brownfields Redevelopment Fund;

(16) "Grant" means awards from the Fund to a Recipient to reimburse or pay eligible project expenses. When there is otherwise no specific reference to Cash Grant, or Conditional Grant the reference shall include all Grant types.

(a) "Cash Grant" means awards from the Fund that are available to pay eligible project costs;

(b) "Conditional Grant" means awards from the Fund that are repaid only as conditions allow;

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(17) "Hazardous Substance" has the meaning given in ORS 465.200;
(18) "Institutional Controls" has the meaning given in ORS 465.315 and OAR 340-122-0115(32);

(19) "Loan" means debt financing offered through the Fund. The Fund has two types of loans, bridge loan and term loan;

(20) "Municipality" means any city, county, municipal corporation or quasi-municipal corporation, special district, port, or federally recognized tribe;

(21) "Non-Profit" means an organization certified under sections 501(c)(2) through (4) and (6) through (8) and (10) of the Internal Revenue Code;

(22) "Person" means any individual, association of individuals, company, joint venture, partnership, or corporation;

(23) "Project" and "Project Description" means the resulting combination of the site, the proposed activities to be performed, the proposed or likely redevelopment use, and any other information stated in the Fund application;

(24) "Prospective Purchaser Program" refers to ORS 465.327 and associated administrative rules;

(25) "Recipient" means the person, non-profit, or municipality receiving a disbursement of sums from the Fund;

(26) "Release" (as in release of a hazardous substance) has the meaning given in ORS 465.200;

(27) "Scope of Work" means a detailed plan to perform in part or in whole an environmental action. Scopes of work shall be drafted by an environmental service professional;

(28) "Site" means the parcel or parcels of real property on which the funded activities will be performed;

(29) "Site Characterization" means determining and delineating the boundaries of the plume(s) of contamination and/or determining the status of the contamination such as whether it is migrating or crossing from one media to another, such as from soil to water, at the site. This review provides a level of detail comparable to a "preliminary assessment" (PA) as described in OAR 340-122-0072 and may be comparable to a "Phase II Environmental Site Assessment" under ASTM Standard E 1903;

(30) "Site Investigation" means a historic use investigation of the site involving, but not limited to, the analysis of aerial photos, public and private records, personal interviews, and other documents and data sources to determine the likelihood of a release of a hazardous substance at the site or facility. This review provides a level of detail comparable to a "Phase I" review under ASTM Standards E1527 and 1528 and is often a desktop review without any sampling;

(31) "Site Sampling" means systematically obtaining and analyzing representative samples from the site of relevant media such as soil and water to determine the presence of and/or the concentration of the contamination and/or identify the specific substances or compounds comprising the contamination. Sampling is a critical component of the "preliminary assessment" (PA) conducted under OAR 340-122-0072 or the ASTM "Phase II" under E-1903;

(32) "Substantial Public Benefit" includes, but is not limited to:

(a) The generation of substantial funding or other resources facilitating remedial measures at the facility in accordance with OAR chapter 123, division 135;

(b) A commitment to perform substantial remedial measures at the facility in accordance with OAR chapter 123, division 135;

(c) Productive reuse of a vacant or abandoned industrial or commercial facility; or

(d) Development of a facility by a governmental entity or nonprofit organization to address an important public purpose. Substantial Public Benefit has the meaning given in ORS 465.327(1)(d);

(e) Other meanings listed in the Fund's Program Guidelines;

(33) "Term Loan" means a loan to be paid over a period of years, usually ten (10) to fifteen (15), with a rate of interest;

(34) "Voluntary Cleanup Program" relates to ORS 465.325 and associated administrative rules.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.75(5) & ORS 285A.110

Stats. Implemented: ORS 285A.185 & ORS 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0030

Applicant Eligibility

(1) Any person, non-profit, or municipality is eligible to make application to the Department for assistance from the Fund as long as they are not subject to any exclusion within OAR 123-135-0030.

(2) A person making application to the Fund is ineligible if the person has knowingly violated applicable laws or regulations or has knowingly violated or failed to comply with an order of the Department of Environmental Quality, if such action or inaction has resulted in one or more of the following:

(a) Contribution to or exacerbation of existing contamination at the facility;

(b) Release of hazardous substance at the facility; or

(c) Interference with necessary investigation or remedial actions at the facility.

(3) Eligibility under OAR 123-135-0030 above shall be determined based on enforcement actions against the person by the Oregon Department of Environmental Quality.

(4) If the applicant is not the land owner and the site is owned by a person that is excluded by OAR 123-135-0030(2), the application will not be accepted unless the applicant provides documentation of the following in the application:

(a) The funded activities will facilitate a transfer in ownership of the site to a person not subject to the exclusion; and

(b) A demonstration of a past, present, or planned contribution by the landowner.

(5) An applicant who is a responsible party for a release of a hazardous substance or is liable for the cost of cleanup at the project site according to ORS 465.255, must provide some form of contribution to the project to be eligible.

(6) An applicant that makes willful misrepresentations regarding applicant eligibility on a Fund application may be subject to the sanctions described in OAR 123-135-0090.

(7) Applicant must have the authority and ability to enter into a contract with the Department.

(8) Other applicant eligibility requirements may be described in the Fund's Program Guidelines.

Stat. Auth.: ORS 285A.75(5) & ORS 285A.110

Stats. Implemented: ORS 285A.185 & ORS 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0040

Project Eligibility

(1) Projects may contain non-residential underground storage tanks. Superfund sites on the National Priorities List are not eligible. Reimbursable project activities include:

(a) Site investigation;

(b) Site sampling;

(c) Site characterization;

(d) The compilation of study data into a report;

(e) Feasibility study;

(f) Plan for remedial action or removal;

(g) Conduct a remedial action or removal at a site;

(h) Regulatory oversight fees;

(i) Any other activity described in the Fund's Program Guidelines.

(2) Projects on sites that contain or are proposed to contain privately owned single family residential dwelling(s) or privately owned multi-family dwelling(s) are not eligible unless the following applies: If only a portion of the site contains or will contain privately owned single family residential dwelling(s) or privately owned multi-family dwelling(s), the portion of the site that contains the eligible project(s) can receive sums from the Fund.

(3) The potential benefit to ineligible sites or project(s) must be minimal. The Department shall determine if any potential benefit to ineligible projects is minimal.

(4) Projects on sites that contain or are proposed to contain mixed use development such as a structure or structures that contain combined commercial and residential uses are eligible if:

(a) A written endorsement for the project from the local jurisdiction is included with the application;

(b) The project will provide a substantial public benefit; or

(c) The project is part of a downtown or mixed use center redevelopment.

(5) The Department's Brownfields Redevelopment Coordinator will determine if a project will have substantial public benefit.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.75(5) & ORS 285A.110

Stats. Implemented: ORS 285A.185 & ORS 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

ADMINISTRATIVE RULES

123-135-0050

Application Requirements

(1) Applications that include site sampling and/or site characterization must discuss in their project description how the funded activities will contribute or lead to cleanup and/or redevelopment of the site.

(2) Applications that include a site characterization must discuss in the project description how the funded activities will contribute or lead to a remediation plan or a No Further Action Determination by the Oregon Department of Environmental Quality.

(3) Applications that include a remedial or removal action or plan must identify the proposed redevelopment use in the project description and must discuss how the proposed redevelopment use is attainable. Demonstration of attainability can be established by providing documentation such as, but not limited to:

(a) The proposed use is consistent with the local land use plan;

(b) There exists or will exist adequate service infrastructure at the site for the proposed use; or

(c) Other documentation described in the Fund's Program Guidelines.

(4) Applications that include a remedial or removal action or plan must discuss in the application how the plan or action will contribute to the proposed redevelopment. The Department may ask the applicant to demonstrate progress towards achieving the proposed redevelopment. Demonstration of progress can be established by providing documentation such as, but not limited to:

(a) Evidence of financing negotiations for the proposed redevelopment;

(b) Copies of pending permit applications required by the proposed redevelopment;

(c) Evidence of contracts or negotiations for the transfer in ownership of the site;

(d) Copies of a business plan or articles of incorporation;

(e) Site drawings or engineering plans; or

(f) Other documentation described in the Fund's Program Guidelines.

(5) Applications that include a remedial or removal action but do not identify a redevelopment use as described in OAR 123-135-0050(4) are eligible if the project is for capacity building. Written endorsement for the capacity building project must be obtained from the local jurisdiction and included in the application if the applicant is not a municipality.

(6) Applications that include any remedial or removal action must include the following:

(a) A description of how the remedial or removal action will comply with state cleanup law;

(b) Any other documentation required by the Fund's Program Guidelines.

(7) The sum of funding requested in the Fund application must be consistent with the scope and scale of work in the project description compared with an industry custom standard. If the amount requested is inconsistent with the project description, the application may be rejected.

(8) If OAR 123-135-0030(4) or (5) applies, the necessary information regarding property transfer and/or contribution must also be included in the application.

Stat. Auth.: ORS 285A.75(5) & ORS 285A.110

Stats. Implemented: ORS 285A.185 & ORS 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0060

Application Processing

(1) Applications may be submitted to the Department at any time. The Department shall not process an incomplete Fund application. Applications are complete when the requirements of this Division and the Fund's Program Guidelines are met.

(2) The Department can waive application requirements in order to make an application completion determination if it is demonstrated that such a waiver would serve to further the goals and objectives of the Fund and would not violate any statutory requirements.

(3) The Department may request additional information not listed in this division or the Fund's Program Guidelines to facilitate application processing.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.75(5) & ORS 285A.110

Stats. Implemented: ORS 285A.185 & ORS 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0070

Application Approval

(1) When evaluating an application, the Department shall consider the following:

(a) The extent to which real or perceived contamination prevents the property from being fully utilized;

(b) The need for providing public assistance, after considering the difficulty of obtaining financing from other sources or of obtaining financing at reasonable rates and terms;

(c) The degree to which redevelopment of the property provides opportunity for achieving protection of human health or the environment by reducing or eliminating the contamination of the property and for contributing to the economic health and diversity of the area;

(d) The probability of the success of the intended use or the degree to which redevelopment of the property provides a public purpose following remediation of the property;

(e) Compliance with the land use plan of the local government with jurisdiction over the property;

(f) Endorsement from the local government with jurisdiction over the property; and

(g) Other criteria described in the Fund's Program Guidelines.

(2) Applications are received on a first come, first served basis. In the event of a shortage of funds, priority will be given to projects that meet one or more of the following:

(a) The site is located in a distressed area as defined by OAR chapter 123, division 24;

(b) The site is located within a state or federal empowerment or enterprise zone or community or otherwise designated under those programs;

(c) The site is enrolled in the Department of Environmental Quality's Voluntary Cleanup Program, Prospective Purchaser Program, Independent Cleanup Pathway, Site Response Section, or any other program that demonstrates active involvement or oversight by that agency;

(d) The site is located in or is participating in any Environmental Protection Agency brownfield initiative including, but not limited to: Brownfield Assessment Demonstration Pilots, Supplemental Pilots, Targeted Brownfield Assessments, or Brownfields Cleanup Revolving Loan Fund;

(e) The project will likely create above average income jobs in the manufacturing or traded sectors;

(f) The project will assist in the resolution of environmental justice concerns of the local community;

(g) The project has significant community involvement and participation;

(h) The project will result in a substantial public benefit;

(i) The project includes or is relatively certain to leverage other public or private funding; or

(j) Other criteria described in the Fund's Program Guidelines.

(3) The Department may conditionally approve funding of an application. Possible conditions include, but are not limited to:

(a) Requiring collateral or other security;

(b) Requiring a co-signer or guarantor;

(c) Enrolling in a Department of Environmental Quality oversight program or obtaining scope of work review from that agency;

(d) Obtaining an environmental insurance policy;

(e) Requiring some event to occur such as, but not limited to, a transfer of ownership of the site or approval of other funding; or

(f) Other conditions described in the Fund's Program Guidelines.

(4) If application approval is conditioned, the conditions will become part of the award contract. If appropriate, the Department may require the recipient to demonstrate or document how the conditions have or will be met before funds are disbursed in whole or in part.

(5) Complete applications will be reviewed by the Department for credit worthiness according to prudent lending practices.

(6) When making a grant to a municipality, the Department shall give priority to municipalities that provide matching funds from a loan under OAR chapter 123, division 135, from another source or from both.

(7) When making a grant to an entity that is not a municipality, the department shall require that:

(a) The recipient is not liable for the subject property under ORS 465.255, is a qualified non-profit organization, or has a valid Prospective Purchaser Agreement under ORS 465.327;

(b) The environmental action provides a substantial public benefit; and

(c) The recipient provides matching funds from a loan under OAR chapter, division 135, from another source or from both.

ADMINISTRATIVE RULES

(8) The Department may request additional information from the applicant to facilitate a funding decision.

(9) The Department shall make a funding decision on a complete application in a timely manner.

(10) No more than forty percent (40%) of the total amount disbursed from the Fund in any biennium shall be awarded to persons who are liable with respect to the site under ORS 465.200. The forty percent (40%) limitation will be calculated at the beginning of each biennium following, if applicable, the funding allocation to the Fund by the Commission. The limitation will be forty percent (40%) of the total, non-obligated, funds available after the Commission allocation. Only awards to recipients that caused or contributed to the contamination at a site shall be included in the forty percent (40%) calculation.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.75(5) & ORS 285A.110
Stats. Implemented: ORS 285A.185 & ORS 285A.188
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0080

Loan Contract Conditions

(1) Loans do not require match and are not subject to fees.

(2) The annual interest rate for non-municipal loan recipients shall be based on the equivalent Bond Buyers Index published in The Bond Buyer. For municipal loan recipients, interest rates are based on market conditions for similar debt and are set at the time of the award.

(3) The Department may adjust the interest rate through a waiver for municipal and non-municipal loan recipients at the time of award based on subsidy need, credit risk, and other appropriate considerations.

(4) Interest accrual, repayment and disbursement schedules, and other necessary conditions shall be stated in the loan contract.

(5) Bridge loans shall be repaid within one (1) year from the beginning of loan disbursement.

(6) A bridge loan recipient may request a loan period extension of up to one (1) additional year. If a bridge loan is not repaid within the maximum one (1) or two (2) year period, a rate of interest may be applied from the date of contract closing on the full amount of the loan.

(7) A bridge loan recipient may convert to a term loan. If a loan is converted, a rate of interest shall be applied from the date of closing.

(8) In general, term loans shall be repaid within ten (10) to fifteen (15) years after the date of contract.

(9) A term loan recipient may request a loan period extension. The term loan recipient may make a request for a loan period extension at any time.

(10) A term loan may convert to a bridge loan with the approval of the Department as long as the maximum bridge loan term of two (2) years has not passed from the date of contract closing.

(11) If the project includes other funding in the form of loan(s) obtained from a financial institution, the Department may subordinate the Fund loan to the financial institution loan(s) if appropriate.

(12) The Department has the discretion to establish loan terms that differ from those enumerated in OAR chapter 123, division 135 as long as it furthers the goals and objectives of the program.

(13) Awards cannot exceed the final total project cost. For loan funded projects, the total loan amount shall not exceed the final total project cost.

(14) Other loan contract conditions described in the Fund's Program Guidelines or that are necessary to fulfill the goals and objectives of the Fund may be included in the Fund contract.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.75(5) & ORS 285A.110
Stats. Implemented: ORS 285A.185 & ORS 285A.188
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0087

Grant Contract Conditions

(1) Both municipal and non-municipal applicants are eligible for grants with some exceptions based on liability considerations.

(2) Non-municipal grant applicants that are potentially liable for the contamination under ORS 465.255 at the site receiving the environmental action are not eligible for grant funding unless they qualify as a non-profit organization or have purchased the site through the Prospective Purchaser Program (ORS 465.327).

(3) Non-municipal grant applicants are eligible for a grant only if the project will result in a substantial public benefit unless the non-municipal grant applicant is a qualified non-profit organization.

(4) Municipal grant applicants that are potentially liable for the contamination under ORS 465.255 at the site receiving the environmental action are eligible for grant funding. However, depending on the manner in which liability attached to the municipal grant applicant, an increase in grant match may be required.

(5) Qualifying non-profit organizations may apply for grants. Non-profit applicants that caused or contributed to the contamination at the site receiving the environmental action are not eligible for grants.

(6) All grant awards require some level of match.

(7) For municipal grant recipients, acceptable grant match includes cash, in-kind services, or other contributions of measurable value. For non-municipal grant applicants, match must be cash from funding sources other than grant awards from the Department unless otherwise indicated.

(8) For municipal grant recipients and projects located in or that benefit a designated economically distressed community, the grant match is ten percent (10%) of the total award. For municipal grant recipients and projects not located in or that do not benefit a designated economically distressed community, the grant match is twenty percent (20%) of the total award.

(9) Municipal applicants that are potentially liable because the municipality's conduct lead or contributed to the release of contamination at the site receiving the environmental action are subject to a one to one (1:1) or 100% of award match requirement.

(10) For qualifying non-profit organization grant recipients and projects located in or that benefit a designated economically distressed community, the grant match is ten percent (10%) of the total award. For qualifying non-profit organization grant recipients and projects not located in or that do not benefit a designated economically distressed community, the grant match is twenty percent (20%) of the total award. In addition to the other provisions of this division and the Fund's Program Guidelines that may apply, non-profit organization grant recipients may provide in-kind match.

(11) With exception to qualifying non-profit organization applicants, the match ratio for non-municipal grant recipients is one to one (1:1) or 100% of the total award. Match must be cash.

(12) Awards cannot exceed the final total project cost. For grant funded projects with a match ratio of one to one (1:1), the final grant award shall not exceed fifty percent (50%) of the total final project cost. For other grant funded projects, the final grant award may be reduced according to the Funds' Program Guidelines.

(13) Conditional grant awards may have conditions not listed in this Division or the Fund's Program Guidelines.

(14) If the environmental action at the site was funded with a grant other than a technical assistance grant as defined in the Fund's Program Guidelines, the grant award must be repaid with any net profits generated from the resale of the site if that sale occurs within five (5) years after the completion of the environmental action. The repayment amount is the lesser of either the net profits or the amount of the grant award. Net profits equal the difference between purchase price and resale price. In the case of properties resold by a county after property tax foreclosure, net profits equal the sale price minus any outstanding property taxes.

(15) Notwithstanding applicant and project eligibility, the amount of a grant award shall be based on the availability of grant funds at the time of the award. The grant capacity of the Fund is determined by the Department based on a percentage of biennial allocations. The Department has the discretion to make grant awards less than the amount requested in the application if it is necessary to ensure grant capacity until the next allocation to the Fund by the Commission.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.75(5) & ORS 285A.110
Stats. Implemented: ORS 285A.185 & ORS 285A.188
Hist.: EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0090

Sanctions

(1) If, at any time, it is discovered that the applicant or the project violates the applicant eligibility exclusions in OAR 123-135-0030 or the project eligibility exclusions in OAR 123-135-0040, the Department may impose sanctions.

(2) One or more of the following sanctions may be imposed by the Department:

- (a) Bar a recipient from applying for future Fund assistance;
- (b) Revoke an existing Fund award;

ADMINISTRATIVE RULES

- (c) Withhold unexpended Fund funds;
- (d) Require return of unexpended funds;
- (e) Demand immediate repayment of expended funds at a market based rate of interest;
- (f) Withhold other state funds;
- (g) Other remedies listed in the Fund contract or described in the Fund's Program Guidelines.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.75(5) & ORS 285A.110
Stats. Implemented: ORS 285A.185 & ORS 285A.188
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0100

Subsidies and Waivers

(1) The Department shall make available subsidies and waivers based on the following considerations which include, but are not limited to:

- (a) The relationship between the project and the needs of the local community;
 - (b) The availability and/or the leveraging of other sources of funding;
 - (c) The incentive will result in a substantial public benefit;
 - (d) The recipient is a municipality;
 - (e) Recommendation of Department staff; or
 - (e) Other considerations described in the Fund's Program Guidelines.
- (2) The Department has the discretion to waive interest charges or provide interest rate subsidies in the form of rate reductions and may grant any other form of waiver or subsidy within its authority.
- (3) The department shall waive interest for all bridge loans. The department shall set an interest rate for a bridge loan at the time of application approval in the event the bridge loan becomes a term loan or is not repaid within the allowed time period.
- (4) Applicants may request consideration for incentives in the Fund application. The Department shall rule on all incentive requests made in the Fund application at the time of application approval.

(5) Recipients may request consideration for incentives after application approval subject to any requirements described in the Fund's Program Guidelines.

(6) Determination of whether or not a project will result in a substantial public benefit will be made on a case-by-case basis by the Department's Brownfields Redevelopment Coordinator.

(7) The Department shall make available technical assistance grants. Technical assistance grants shall not be subject to financial review and are subject to the grant eligibility requirements of this Division. Any additional eligibility and processing requirements for technical assistance grants shall be described in the Fund's Program Guidelines.

(8) The Department may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.75(5) & ORS 285A.110
Stats. Implemented: ORS 285A.185 & ORS 285A.188
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0110

Consultation with Department of Environmental Quality

(1) In accordance with ORS 285A.188(4), the Department shall consult with the Department of Environmental Quality prior to the decision to approve an application.

(2) Once the application is determined complete, the Department shall provide to the Department of Environmental Quality the following information within fourteen (14) days:

- (a) Applicant identification;
- (b) Site location;
- (c) Site owner;
- (d) Project description;
- (e) Environmental service professional identification if applicable;
- (f) Amount requested;
- (g) A request for verification of applicant is not eligibility in accordance with ORS 285A.188(2) and OAR 123-135-0030(2) & (3); and
- (h) Any other information described in the Fund's Program Guidelines.

(3) The Department expects the Department of Environmental Quality to return the requested verification within fourteen (14) business days, excluding public holidays. If the Department has not received verification within fourteen (14) days and has good-faith reasons to believe that the applicant is not ineligible, the Department may proceed with the processing of the application as long as it notifies the Department of Environmental Quality of its intent to proceed.

(4) Any recommendations or relevant comments from the Department of Environmental Quality that are submitted to the Department within a reasonable period of time shall be included as part of the application for consideration.

(5) Verification listed in OAR 123-135-0110(2)(g) will not be required if the property was purchased through the Prospective Purchaser Program (ORS 465.327).

Stat. Auth.: ORS 285A.75(5) & 285A.110
Stats. Implemented: ORS 285A.185 & 285A.188
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

Oregon Housing and Community Services Chapter 813

Adm. Order No.: OHCS 14-2002(Temp)

Filed with Sec. of State: 11-20-2002

Certified to be Effective: 11-20-02 thru 5-17-03

Notice Publication Date:

Rules Adopted: 813-047-0006

Rules Amended: 813-047-0001, 813-047-0005, 813-047-0010, 813-047-0015, 813-047-0020, 813-047-0025

Subject: These rules implement the Community Development Corporation Program. The objective of this Program is to assist qualified nonprofit Community-Based Organizations (CBOs) to establish Community Development Corporations (CDCs). This objective expands the capacity of Community-Based Organizations to meet the housing and community development needs of their respective service areas by building, rehabilitating and managing low and moderate income housing and, provides Community-Based Social Services which provide training and/or employment for low and moderate income residents within targeted areas.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-047-0001

Purpose and Objectives

OAR chapter 813, division 47, is promulgated to accomplish the general purpose of ORS 456.515 to 456.725 and 458.210 to 458.240, specifically ORS 458.210 through 458.240, which authorize the Department to establish the Community Development Corporation Program. The objective of this Program is to assist qualified nonprofit Community-Based Organizations (CBOs) to establish Community Development Corporations (CDCs). This objective:

(1) Expands the capacity of Community-Based Organizations to meet the housing and community development needs of their respective service areas by building, rehabilitating and managing low- and moderate- income housing, and

(2) Provides Community-Based Social Services which provide training and/or employment for low- and moderate- income residents within targeted areas.

Stat. Auth.: ORS 458.210 - ORS 458.240
Stats. Implemented: ORS 458.210 - ORS 458.240
Hist.: HSG 2-1990, f. & cert. ef. 2-5-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 3-1991, f. & cert. ef. 9-4-91; HSG 2-1992(Temp), f. & cert. ef. 1-9-92; HSG 7-1992, f. & cert. ef. 6-16-92; OHCS 14-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-047-0005

Definitions

All words and terms used in OAR chapter 813, division 047 are defined in the Act, in OAR 813-005-0005 and below. As used in OAR chapter 813, division 047, unless the context indicates otherwise:

(1) "Capacity Building Grant" means a grant that is used to increase or broaden a Community Development Corporation's Local Capacity to meet the housing needs of the service area.

(2) "Community-Based Organization" or "CBO" means a nonprofit corporation organized under ORS Chapter 65, a housing authority established under ORS 456.055 to 456.235, a Community Action Agency, a Community Development Corporation, or other nonprofit or governmental entity representing or seeking to serve the housing, human services and/or Community Economic Revitalization needs of a clearly-defined population and area.

(3) "Community-Based Social Services" means comprehensive client-centered services delivered within a Targeted Area that promotes Community Economic Revitalization. The purpose of these services is to assist individuals and families to become more functional and self-reliant.

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(4) "Community Development Corporation" or "CDC" means a non-profit 501(c)(3) corporation organized under ORS Chapter 65 which has as its purpose, as stated in its articles of incorporation, to serve the needs of low and moderate income people for community development and self-help; is governed by a board of directors that has no fewer than five members, 51 percent of which are from the CDC's Service Area; and which has a clearly defined geographic Service Area.

(5) "Community Economic Revitalization" means community-oriented strategy that targets resources in order to address problems in a Targeted Area, that is controlled by residents of the Targeted Area, and that uses tangible development activities to increase the amount of investments made and retained in the Targeted Area.

(6) "Service Area" means the specific area or region which the non-profit Community-Based Organization or Community Development Corporation has identified and/or targeted to receive development activity.

(7) "Human Investment Strategies Grant" means a grant that is used to increase or broaden a Community Development Corporation's Local Capacity to deliver Community-Based Social Services through the training and/or employment of residents of a Targeted Area.

(8) "Initial Planning Grant" means a grant that is used to incorporate and establish a Community Development Corporation.

(9) "In-Kind Contribution" means a contribution to a project other than cash, including, but not limited to, office equipment, working space, office supplies, staff time, telephone and automobile use, donated project materials or labor, and non-board volunteer time.

(10) "Local Capacity" means the ability or competency of organizations in an identified geographic area to address a housing, human services, or Community Economic Revitalization issues or problems.

(11) "Low Income" means an adjusted annual household income, as defined in **24 CFR, Part 91.5**, which exceeds 50 percent but does not exceed 80 percent of the median household income for the area, as determined by the U.S. Department of Housing and Urban Development, with allowances for family size.

(12) "Moderate Income" means an adjusted annual household income, as defined in **24 CFR, Part 91.5**, which is between 81 and 95 percent of the median household income for the area, as determined by the U.S. Department of Housing and Urban Development, with allowances for family size.

(13) "Program" means the Community Development Corporation Program.

(14) "Targeted Area" means a defined county or multi-county area, a town or city, or neighborhoods that receives public program services.

(15) "Very Low Income" means an adjusted annual household income, as defined in **24 CFR, Part 91.5**, which does not exceed 50 percent of the median household income for the area, as determined by the U.S. Department of Housing and Urban Development, with allowances for family size.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 458.210 - ORS 458.240

Stats. Implemented: ORS 458.210 - ORS 458.240

Hist.: HSG 2-1990, f. & cert. ef. 2-5-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 3-1991, f. & cert. ef. 9-4-91; HSG 2-1992(Temp), f. & cert. ef. 1-9-92; HSG 7-1992, f. & cert. ef. 6-16-92; OHCS 14-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-047-0006

Administration

(1) The Department may provide Initial Planning Grants, Capacity Building Grants and/or Human Investment Strategies Grants. The Department may restrict the availability of Program funds for each grant category at the time it solicits applications.

(a) Initial Planning Grants. The maximum award for an Initial Planning Grant shall be \$5,000.

(b) Capacity Building Grants. The Department shall not award Capacity Building Grants to cover 100 percent of the costs of the activities funded by the grant. The maximum award for a Capacity Building Grant shall be \$50,000.

(c) Human Investment Strategies Grants. The Department shall not award grants to cover 100 percent of the costs of the activities funded by the grant. The maximum award shall be \$50,000.

(2) The Department may further restrict the use of available funds for specific Local Capacity building activities related to housing needs or for specific Human Investment Strategies Grant activities in the Service Area of a CBO, restrict the amount and/or type of assistance available, or restrict the type of applicant eligible for assistance.

(3) A CBO may not receive more than one grant per biennium under each category of grant.

Stat. Auth.: ORS 458.210 - ORS 458.240

Stats Implemented: ORS 458.210 - ORS 458.240

Hist.: OHCS 14-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-047-0010

Application Procedure and Requirements

(1) The Department shall as Program funds are available, support or solicit applications for Program grants and shall consider only applications received in response to such solicitations.

(2) All applications for Program grants shall be submitted in writing to the Department, and shall contain at a minimum the following information:

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

(b) Amount and type of assistance requested;

(c) A description of how the assistance will be used including whether the funds are:

(A) For an Initial Planning Grant to start up a Community Development Corporation; or

(B) For a Capacity Building Grant to expand an existing Community Development Corporation; or

(C) For a Human Investment Strategies Grant to expand an existing Community Development Corporation's Local Capacity to provide Community-Based Social Services within a Targeted Area; and

(d) A description of the desired outcomes and how the applicant will achieve those outcomes:

(A) In the case of a Capacity Building Grant, a CDC applicant shall demonstrate the usefulness and supportive effect such a grant provides to the realization of overall objectives of the anticipated project/activity;

(B) In the case of a Human Investment Strategies Grant, a CDC applicant shall demonstrate how the proposed project supports the needs of individuals and families residing in a Targeted Area; how the proposed project will promote Community Economic Revitalization through the delivery of Community-Based Social Services within the Targeted Area; and how the Community-Based Social Services funded by such a grant will provide training and/or employment programs to Low- and Moderate- Income residents of the Targeted Area;

(e) A description of the Community Development Corporation's present or proposed Service Area and/or a description of the Targeted Area as it applies to a Human Investment Strategies Grant; and

(f) In the case of an Initial Planning Grant, evidence of matching funds or In-Kind Contributions in a minimum amount (expressed as a percentage of a grant request) that shall be specified in the applicable Program solicitation, which minimum amount shall not exceed 50 percent of a grant request. However, a CBO may indicate greater In-Kind Contributions in support of its application.

Stat. Auth.: ORS 458.210 - ORS 458.240

Stats. Implemented: ORS 458.210 - ORS 458.240

Hist.: HSG 2-1990, f. & cert. ef. 2-5-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 3-1991, f. & cert. ef. 9-4-91; HSG 2-1992(Temp), f. & cert. ef. 1-9-92; HSG 7-1992, f. & cert. ef. 6-16-92; OHCS 14-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-047-0015

Application Review

(1) The Department may, within 30 calendar days of receipt of an application, approve the application or request additional information from the applicant. If within this 30-day period, the Department takes no formal action on the application or has not requested additional information, the application shall be deemed denied.

(2) In reviewing applications, the Department may consider, in addition to any special evaluation criteria described in the applicable solicitation, the following (as appropriate or required):

(a) Amount of available funds in the Program;

(b) Availability of other sources of assistance, including In-Kind Contributions, in excess of the minimum required;

(c) An applicant's ability to leverage public or private funds;

(d) Compliance with any statutorily-required geographic preferences;

(e) In the case of the Human Investment Strategies Grants, the appropriateness and effectiveness of the proposed activities for the Targeted Area;

(f) Appropriateness of the organizational development proposed;

(g) Appropriateness of the proposed activities to meet the housing, human services, and/or Community Economic Revitalization needs of residents within the Service Area;

(h) The number of Low and Moderate Income persons to be assisted;

(i) Documentation of local coordination efforts focused at avoiding duplication of existing services and meeting the unmet needs; and

(j) In the case of the Human Investment Strategies Grants, documentation of coordination with local housing interests including, but not limit-

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ed to, Community Action Agencies, Community Development Corporations, housing development corporations, and the local governing jurisdiction or jurisdictions.

(3) The Department shall select those applications which, in the judgment of the Department, comply with the requirements and best achieve the purposes of the Program, the Act, OAR chapter 813, division 047, and any evaluation criteria outlined in the applicable program solicitation.

(4) The Department shall give preference to a Community Development Corporation that:

(a) Has a defined geographic service area in Multnomah, Washington, Clackamas, Lane, Linn, Douglas, Jackson or Marion Counties which does not include more than 50,000 people; or

(b) Has a defined geographic service area in any other county which does not include more than 75,000 people; and

(c) Can demonstrate support from the community. Acceptable demonstrations of support must be in writing and may include, but are not limited to, organizational letters, personal statements, or written commitments of project contributions.

Stat. Auth.: ORS 458.210 - ORS 458.240

Stats. Implemented: ORS 458.210 - ORS 458.240

Hist.: HSG 2-1990, f. & cert. ef. 2-5-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 3-1991, f. & cert. ef. 9-4-91; HSG 2-1992(Temp), f. & cert. ef. 1-9-92; HSG 7-1992, f. & cert. ef. 6-16-92; OHCS 14-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03; OHCS 14-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-047-0020

Grant

(1) The Department shall confirm to the applicant in writing the amount of assistance, if any, to be provided from the Program. In the grant award letter, the Department shall inform grant recipients of their eligibility to apply for additional grant funding from the Program within the same biennium. A grant is awarded subject to execution by the grant recipient and the Department of a grant award contract in form and substance satisfactory to the Department and such other documents as the Department considers appropriate or necessary to evidence the type and amount of assistance provided.

(2) Grant funds shall be used:

(a) In the case of Initial Planning Grants, to provide funds for the purpose of payment of rent, staff salaries and benefits, office supplies and expenses, legal fees, filing fees and other such expenses incurred by or on behalf of a CBO during its initial planning phase;

(b) In the case of Capacity Building Grants, to provide funds for the purpose of payment of expenses incurred by or on behalf of a CBO for development or expansion of projects or programs, or expanding the organizational capacity of a CBO, such as expenses for additional staff, training, or capital outlay; and

(c) In the case of Human Investment Strategies Grants, to provide funds for training and employment programs directly involved with the delivery of Community-Based Social Services (including, but not limited to, early childhood development, health care, services for the elderly, services for youth, services for substances abuse, and services for the developmentally disabled) to residents of a Targeted Area; additional staff for the development of a Human Investment Strategies Grant project; expanding a CBO's organizational capacity to administer a Human Investment Strategies Grant; and overhead, training, or capital outlay costs associated with the development of a Human Investment Strategies Grant project.

(3) The Department may establish such performance criteria, reporting requirements, termination provisions and remedies, including but not limited to suspension or termination of funding, and any other terms and conditions as the Department considers appropriate or necessary for the type and use of assistance provided.

Stat. Auth.: ORS 458.210 - ORS 458.240

Stats. Implemented: ORS 458.210 - ORS 458.240

Hist.: HSG 2-1990, f. & cert. ef. 2-5-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 3-1991, f. & cert. ef. 9-4-91; HSG 2-1992(Temp), f. & cert. ef. 1-9-92; HSG 7-1992, f. & cert. ef. 6-16-92; OHCS 14-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-047-0025

Waiver

The Director may waive or modify any requirements of OAR chapter 813, division 047, including any waiver or modification as may be necessary or convenient to comply with the rules, regulations or procedures prescribed by any source of funds for the Program, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 458.210 - ORS 458.240

Stats. Implemented: ORS 458.210 - ORS 458.240

Hist.: HSG 2-1990, f. & cert. ef. 2-5-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 3-1991, f. & cert. ef. 9-4-91; HSG 2-1992(Temp), f. & cert. ef. 1-9-92; OHCS 14-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

Adm. Order No.: OHCS 15-2002(Temp)

Filed with Sec. of State: 11-20-2002

Certified to be Effective: 11-20-02 thru 5-17-03

Notice Publication Date:

Rules Adopted: 813-200-0001

Rules Amended: 813-200-0010, 813-200-0020, 813-200-0030, 813-200-0040, 813-200-0050, 813-200-0060

Rules Transferred: 813-200-0000 to 813-200-0005

Subject: Implements the Low Income Energy Assistance Program which operates through a network of service agencies at the local level. The objective of the Program is to assist low-income persons with their energy needs through a variety of means, including assistance payments, client education and weatherization activities.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-200-0001

Purpose and Objectives

OAR chapter 813, division 200, is promulgated to accomplish the general purpose of ORS 458.505 to 458.545, specifically ORS 458.505 to 458.515, which designates the Housing and Community Services Department as the state agency responsible for administering state and federal antipoverty programs in Oregon. The Department has been designated as the state agency responsible for implementing the Low Income Home Energy Assistance Act in Oregon. OAR chapter 813, division 200, describes the Low-Income Energy Assistance Program (LIEAP), which operates through a network of service agencies at the local level. The objective of the Program is to assist low-income persons with their energy needs through a variety of means, including assistance payments, client education and weatherization activities.

Stat. Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.545

Hist.: OHCS 15-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-200-0005

Definitions

All terms are used in OAR chapter 813, division 200, are defined in the Act, in OAR 813-005-0005 and below. As used in OAR 813, chapter 200, unless otherwise indicated by the context:

(1) "Crisis Assistance" means the assistance provided to help Low-Income Households to meet crisis situations such as supply shortages, loss of Household heat, minor fuel source repairs, furnace repairs and other situations approved by the Department as described in the state plan.

(2) "Eligible Services" means the services described in OAR 813-200-0040.

(3) "Energy Assistance Payment" means a payment made under this Program to or on behalf of an eligible Household.

(4) "Funding Application" means a Subgrantee Agency's application to the Department for Program funds.

(5) "Home Energy" means the energy or fuel, including but not limited to fuel oil, natural gas, electricity, wood or propane, supplying a major portion of a Household's heat.

(6) "Home Energy Supplier" means a supplier who either delivers Home Energy in bulk to Households or provides Home Energy continuously to Households via wire or pipe.

(7) "Household" means any individual residing alone or group of individuals who are living together as one economic unit and purchase residential energy in common.

(8) "Household Income" means the total Household receipts before taxes from all sources. Income may be reduced by deductions allowed by the Department. Income does not include assets or funds over which the members of the Household have no control.

(9) "Incidental Fees" means charges imposed by Home Energy Suppliers other than the actual cost of energy or fuel and includes reconnection charges and deposits.

(10) "Indirect Heaters" means renters whose heating costs are included as an undifferentiated part of their rent payments.

(11) "Poverty Line" means the official standard established by the Secretary of the U.S. Department of Health and Human Services.

(12) "LIEAP" or the "Program" means the Low-Income Energy Assistance Program.

(13) "Low-Income Household" means a Household whose gross annual income is at or less than 60% of statewide median income as defined by Health and Human Services for the state of Oregon.

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(14) "Service Area" means the specific geographic area or region within which a Subgrantee Agency provides Program services directly or by contract.

(15) "Subgrantee Agency" means a private, nonprofit corporation organized under ORS Chapter 65, a housing authority established under ORS 456.055 to 456.235, or a local government as defined in ORS 197.015 with whom the Department has contracted to administer Program activities and services at the local level.

(16) "Work Plan" or "Plan" means the Subgrantee Agency's plan for the use of Program funds which is part of its Funding Application and which has been approved by the Department and included in its contract with the Department.

Stat. Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.545

Hist.: HR 1-1982, f. & ef. 1-11-82; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-050-0000; HSG 2-1993, f. & cert. ef. 4-2-93; OHCS 15-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03, Renumbered from 813-200-0000

813-200-0010

Administration

(1) The Department may contract with a Subgrantee Agency to provide Program services and activities at the local level.

(a) In order to be eligible to administer the Program at the local level, a Subgrantee Agency shall submit, on a biennial basis, a Funding Application (including a Work Plan) which the Department must approve. The Work Plan shall outline how the Subgrantee Agency determines its community's needs, including what forum the Subgrantee Agency uses to solicit input and who participates; summarizes the needs of the Service Area and the goals and outcome-based objectives of the Program administered by the Subgrantee Agency; and requires quarterly reporting. The approved Funding Application shall be on file with the Department.

(b) A Subgrantee Agency may subcontract with another organization to provide a Program service or activity in its Service Area.

(2) The Department may conduct a periodic evaluation of a Subgrantee Agency's Program performance. Factors that the Department may consider in this evaluation include, but are not limited to, the level of Eligible Service provided by the Subgrantee Agency, ease of access to Eligible Services for eligible Households, error rate, and compatibility with other community service programs.

(3) If the Department deems the performance of a Subgrantee Agency to be deficient and the Subgrantee Agency does not give the Department adequate assurance of satisfactory future performance, the Department may terminate its contract with the non-performing Subgrantee Agency and contract with another Subgrantee Agency to provide the Program's Eligible Services going forward.

(4) A Subgrantee Agency shall take applications, verify Household eligibility, and contract with and monitor local Home Energy Suppliers to determine that clients are receiving proper benefits and services.

(5) A Subgrantee Agency shall follow the procedures outlined in the LIEAP Operations Manual. These procedures govern accurate completion of intake documentation and entry of the resultant data into a Department-approved system, authorizing payments, writing checks to Home Energy Suppliers and clients, and requirements for reports of request draws and end-of-year Program reports to the Department.

(6) A Subgrantee Agency shall make good faith attempts to recover any overpayment made to an applicant or Home Energy Suppliers. When recovery from an applicant is not commercially reasonable, the Subgrantee Agency shall promptly give the name and social security number of the applicant to the Department for submission to the Department of Revenue and recovery through the Department of Revenue's S.O.I.L. Program.

Stat. Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.545

Hist.: HR 1-1982, f. & ef. 1-11-82; HR 4-1983, f. & ef. 11-25-83; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-050-0005; HSG 2-1993, f. & cert. ef. 4-2-93; OHCS 15-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-200-0020

Eligibility

To be eligible to receive Eligible Services under the Program, a Household shall meet the requirements outlined in the LIEAP Operations Manual.

(1) These requirements include, but are not limited to:

(a) Meeting income guidelines for the Program; and

(b) A demonstrated utility cost.

(2) The period for determining a Household's eligibility shall be no more than the 12 months or less than the 30 days immediately preceding the date of application, unless the Department gives prior approval.

(3) A client of the Oregon Department of Human Services may use an income verification notification sent by that agency as verification of the applicant's Household Income for the Program.

(4) An eligible Household may apply for assistance with the Subgrantee Agency in the Service Area in which the Household resides.

(5) Households in similar circumstances shall receive similar benefits.

(a) Both renters and homeowners may be eligible under the Program.

(b) An applicant living in an institution is not eligible for assistance under the Program. Institutions include hospitals, licensed domiciliary care facilities, intermediate care facilities, skilled nursing facilities or homes, alcohol and drug rehabilitation centers or treatment programs, dormitories, fraternities, sororities, and temporary protective facilities such as domestic violence shelters and homeless shelters.

(c) Residents of government subsidized housing may be eligible for up to 50 percent of a regular Energy Assistance Payment depending on Household size and Household Income and may be eligible for a crisis payment under Crisis Assistance guidelines in the LIEAP State Plan or the LIEAP Operations Manual.

Stat. Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.545

Hist.: HR 1-1982, f. & ef. 1-11-82; HR 4-1983, f. & ef. 11-25-83; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-050-0010; HSG 2-1993, f. & cert. ef. 4-2-93; OHCS 15-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-200-0030

Eligible Services

One or more of the following services may be provided to an eligible Household. A Subgrantee Agency shall help an applicant determine which service(s) is most beneficial to the Household:

(1) Heating assistance, including:

(a) Payments to Home Energy Suppliers for a Household's Home Energy costs and for services which relate to the heating of the Household's dwelling unit. Payments to Home Energy Suppliers may include payments for Incidental Fees and for pre-enrollment or post-enrollment charges. Pre-enrollment charges are charges incurred by a Household for Eligible Services delivered before the Household is determined to be eligible for LIEAP benefits. Post-enrollment charges are those charges incurred by a Household for Eligible Services after the Household is determined to be eligible for LIEAP benefits; and

(b) The following direct payments to an eligible Household:

(A) Payments to an Indirect Heater equal to Energy Assistance Payments made to or on behalf of homeowners in similar circumstances;

(B) Payments to a Household if the Household's Home Energy Supplier has not signed a contract with the Subgrantee Agency in the Service Area; and

(C) Reimbursement of prepayment for Home Energy costs, as in the case of bulk oil or wood deliveries, up to the amount for which the Household is eligible. A Household must provide the applicable receipts prior to reimbursement.

(2) Weatherization assistance, including, but not limited to, insulation, water pipe wrap, air sealing and storm windows.

(3) Crisis Assistance. In order to qualify for Crisis Assistance under the Program, a Household shall:

(a) Have been evaluated for, and received, an Energy Assistance Payment (regular or subsidized in the same program year) other than for Crisis Assistance; and

(b) Meet the guidelines for Crisis Assistance outlined in the LIEAP Operations Manual. The following are examples of Households that are eligible for Crisis Assistance: a Household whose annual heating cost exceeds 20 percent of annual Household Income; a Household that needs energy-related repairs; and a Household (including a resident of government subsidized housing) that suffers a serious, unexpected hardship

(4) Client Education. All eligible Households shall be offered information designed to help them make appropriate decisions and life-style choices that will effectively reduce energy consumption.

(5) Leveraging Incentive Fund assistance. Leveraging Incentive Fund assistance is subject to the Department receiving funds under the LIEAP Leveraging Incentive Program and obtaining Legislative approval to accept and spend such funds.

(a) Leveraging Incentive Funds may be used to increase or maintain heating, crisis and/or weatherization assistance benefits in conjunction with the LIEAP or to provide a benefit after LIEAP funds have been depleted.

(b) Leveraging Incentive Funds provided by the Department under the Program to a Subgrantee Agency shall be subject to the rules, regulations or procedures prescribed by the source of such funds.

Stat. Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.545

ADMINISTRATIVE RULES

Hist.: HR 1-1982, f. & ef. 1-11-82; HR 4-1983, f. & ef. 11-25-83; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-050-0015; HSG 2-1993, f. & cert. ef. 4-2-93; OHCS 15-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-200-0040

Assistance Levels

Energy Assistance Payments made under this Program shall not exceed the amount of funds made available to the Department under the Omnibus Reconciliation Act of 1981, Public Law 97-35, Sections 2601-11, as amended.

Stat. Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.545

Hist.: HR 1-1982, f. & ef. 1-11-82; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-050-0020; HSG 2-1993, f. & cert. ef. 4-2-93; OHCS 15-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-200-0050

Coordination with Home Energy Suppliers

(1) In order to be eligible to receive Energy Assistance Payments, a Home Energy Supplier must execute a contract with a Subgrantee Agency.

(2) This contract shall provide, among other things, that the Home Energy Supplier agrees that:

(a) It shall not discriminate against an eligible Household;

(b) It shall not treat a Household receiving LIEAP benefits differently than any other similarly situated Household;

(c) It shall not charge a Household receiving LIEAP benefits the difference between the actual cost of the Home Energy and the amount of the LIEAP payment for such Home Energy;

(d) It shall not make payment arrangements for any balances owing after LIEAP payments are applied to past due bills; and

(e) It shall refund to the Subgrantee Agency any Energy Assistance Payments for services that cannot be delivered because of death or because Home Energy services are discontinued and the client cannot be located. The refund is the property of the client first.

Stat. Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.545

Hist.: HR 1-1982, f. & ef. 1-11-82; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-050-0025; HSG 2-1993, f. & cert. ef. 4-2-93; OHCS 15-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

813-200-0060

Administrative Review

A Subgrantee Agency shall provide an administrative review process, which shall include an administrative hearing, to individuals whose claims for assistance under the Program are denied or deemed denied because of the failure of the Subgrantee Agency to process a request for assistance.

Stat. Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.545

Hist.: HR 1-1982, f. & ef. 1-11-82; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-050-0030; HSG 2-1993, f. & cert. ef. 4-2-93; OHCS 15-2002(Temp), f. & cert. ef. 11-20-02 thru 5-17-03

Adm. Order No.: OHCS 16-2002

Filed with Sec. of State: 11-25-2002

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Rules Adopted: 813-140-0000, 813-140-0010, 813-140-0020, 813-140-0030, 813-140-0040, 813-140-0050, 813-140-0060, 813-140-0070, 813-140-0080, 813-140-0090, 813-140-0100, 813-140-0110

Rules Repealed: 813-140-0000(T), 813-140-0010(T), 813-140-0020(T), 813-140-0030(T), 813-140-0040(T), 813-140-0050(T), 813-140-0060(T), 813-140-0070(T), 813-140-0080(T), 813-140-0090(T), 813-140-0100(T), 813-140-0110(T)

Subject: These rules implement the Community Development Incentive Project Fund administered by Oregon Housing and Community Services Department. The Fund holds the proceeds of lottery bonds issued to make grants to loans to Oregon municipalities, businesses and individuals; provides credit enhancements to commercial banks and private lenders in order to encourage real estate development that promotes downtown and community center areas; provides affordable housing and other infill developments; or funds projects that promote business opportunities in Oregon's distressed areas and rural communities.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-140-0000

Purpose and Objectives

OAR chapter 813, division 140, is promulgated to accomplish the purpose of ORS 458.705 through 458.740, specifically ORS 458.720 through 458.740, which implement the Community Development Incentive Project Fund. The Community Development Incentive Project Fund holds the proceeds of lottery bonds issued to make grants or loans to Oregon municipalities, businesses and individuals; provides credit enhancements to commercial banks and private lenders in order to encourage real estate development that promotes downtown and community center areas; provides affordable housing and other infill developments; or funds projects that promote business opportunities in Oregon's distressed areas and rural communities.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

813-140-0010

Definitions

All terms used in OAR chapter 813, division 140, are defined in the Act, in OAR 813-005-0005, and as provided herein. As used in OAR chapter 813, division 140, unless the context indicates otherwise:

(1) "Board" means the Community Development Incentive Advisory Board established pursuant to ORS 458.710.

(2) "Fund" or "Incentive Fund" means the Community Development Incentive Project Fund.

(3) "Gap Financing" means financing provided by the Fund when other state or private financing sources are inadequate or unavailable to finance a development project.

(4) "Governor's Quality Development Objectives", as articulated in Executive Order 00-23, means a set of principles designed to guide the investment of state resources in a manner that will result in better use of state funds and lead to quality communities. These principles are:

(a) Less sprawl;

(b) The right mix of development;

(c) Energy efficient development with greater choice in modes of transport;

(d) Adequate public service;

(e) Protection of the environment;

(f) Balance between jobs and housing in proximity to one another; and

(g) Promote sustainability.

(5) "Oregon Livability Initiative" means the effort by the State through its Community Solutions Team to complement land use tools with economic incentives, to build a stronger partnership between state and local governments to better manage how and where Oregon grows, and to protect the quality of life in Oregon.

(6) "Regional Community Solutions Team" means a regional team of five state agencies listed in ORS 458.710(1)(a) through (e) that administer programs directly affecting the livability of Oregon communities. These five agencies are Economic and Community Development Department, Department of Environmental Quality, Oregon Housing and Community Services Department, Department of Land Conservation and Development, and Oregon Department of Transportation.

(7) "Rural Community" and "Rural Service Center," as defined in OAR 660-022-0010, mean an unincorporated community which consists of permanent residential dwellings, and commercial, industrial or (in the case of a Rural Community) public uses to the community, the surrounding rural area, or to persons traveling through the area.

(8) "Small Community Incentive Fund" means a program that provides loans and grants of \$50,000 or less for development projects, which loans and grants meet the criteria of the Incentive Fund program except as described in OAR 813-140-0110.

(9) "Urban Unincorporated Community," as defined in OAR 660-022-0010, means an unincorporated community which has at least 150 permanent residential dwelling units, contains a mixture of land uses, and includes areas served by a community sewer system and water system.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 11-2002(Temp), f. & cert. ef. 9-5-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

ADMINISTRATIVE RULES

813-140-0020

Fund Purposes

(1) The primary purpose of the Fund is to provide Gap Financing to help local communities meet the Oregon Livability Initiative or to use as an incentive to obtain additional funding commitments from other sources.

(2) The Fund is not intended to provide financing to replace other financing from private or public sources that could be available within 12 months of the date of the award to fund a proposed development project. Rather it is intended to be a flexible resource that promotes worthy projects by bridging funding gaps which prevent a project either from moving forward or from moving forward in a manner which achieves the objectives of the Oregon Livability Initiative.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

813-140-0030

Fund Administration

(1) The Board will develop program guidelines, including specific project criteria and financing mechanisms.

(2) The Department will administer the Fund in accordance with ORS 458.735. The Department's Administration of the Fund is not subject to State Housing Council policy, rules or standards.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740; OHCS 16-2002, f. & cert. ef. 11-25-02

813-140-0040

Eligible Uses of the Fund

(1) The Fund may make grants and loans for the purpose of financing capitalized project costs (including but not limited to project management or consultant fees that are related to project development) but not for the purpose of financing planning or technical assistance or other administrative or operating costs.

(2) The Fund may make a grant for a project which otherwise complies with the requirements of this OAR chapter 813, division 140 where repayment of the amount disbursed by the Fund for the project is inappropriate or the recipient would have insufficient capacity to repay an equivalent loan.

(3) The Fund may pay for the costs and expenses of the Department necessary for the administration of the Fund and the grants and loans made by the Fund. These costs and expenses also include the amounts necessary for the administration of the Fund through the Small Community Incentive Fund or the servicing of loans and grants made by the Fund, pursuant to a contract with the Department.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 11-2002(Temp), f. & cert. ef. 9-5-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

813-140-0050

Eligible Applicants and Eligible Projects

(1) Eligible applicants include local governments and nonprofit and for-profit organizations.

(2) To be eligible for funding, a proposed project must meet the following criteria:

(a) The project must be located within the urban growth boundary of an incorporated Oregon city, or in an Urban Unincorporated Community, Rural Community, or Rural Service Center that is served by a community sewer system and water system.

(b) The project must achieve at least two of the following four main objectives of the Oregon Livability Initiative:

(A) To revitalize a downtown or mainstreet area,

(B) To facilitate affordable housing near jobs or transit,

(C) To encourage efficient use of land and mitigate sprawling development patterns, and/or

(D) To create jobs in an economically distressed community or Rural Community in a manner consistent with the other objectives contained in the Oregon Livability Initiative.

(c) The project must demonstrate financial feasibility and soundness.

(d) The project must promote achievement of the Governor's Quality Development Objectives.

(e) The project must comply with local comprehensive plans and land use ordinances or other regional or local plans.

(f) The project sponsor must demonstrate capacity to fully implement the project. Capacity may be provided by outside consultants or developers.

(g) The project must be locally supported and serve to further the community's goals related to livability and growth.

(h) The for-profit developer that is or will be the owner of the project must demonstrate investment or equity in the project.

(3) Eligible projects include but are not limited to:

(a) A development project that has joint public and private sponsorship and/or ownership; and

(b) A project listed on the Oregon Economic and Community Development Department's "Needs and Issues Inventory."

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

813-140-0060

Funding Preferences

Among proposed projects that meet the requirements of OAR 813-140-0050, preference will be given to projects that:

(1) Are designed in a manner that maximizes long-term sustainability through use of recycled materials, attention to energy efficiency, and long term economic viability of the project;

(2) Facilitate pedestrian and other non-automobile travel;

(3) Serve to further the economic vitality of the local community;

(4) Address a specific unmet need for affordable housing;

(5) Leverage, to the maximum extent, public and private funding sources (including tax incentives), as demonstrated by local and/or private commitment and investment;

(6) Are designed in a manner to be consistent with or complementary to the character of the surrounding community or neighborhood; and/or

(7) Demonstrate ability to expend Incentive Fund resources within 12 months after award.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

813-140-0070

Application Process

(1) The application process for obtaining a grant or loan from the Fund may involve, but is not limited to, a competitive review process, a first come-first reviewed process, or such expedited process as is necessary or appropriate to further the goals of the Fund.

(2) An applicant must contact the appropriate Department Regional Advisor to the Director to discuss its proposal. The Regional Advisor to the Director will provide technical assistance; input on the viability of the project; and will work with the applicants to analyze and project the financial needs to determine the appropriate mix of grants and/or loans.

(3) An applicant must submit its application in a manner satisfactory to the Department. The Regional Community Solutions Team in consultation with regional partnerships (in areas where partnerships exist), Regional Community Solutions Team Coordinators and Department/Oregon Economic and Community Development Department financial reviewers will review the applications. This review may include a prescreening, as well as an in-depth review.

(4) The applications that, in the judgement of the Regional Community Solutions Team, best meet Fund thresholds and preferences will be submitted to the Department along with comments from the reviewers in the Regional Community Solutions Team. The number of applications submitted to the Department may be limited at the discretion of the Director.

(5) The Department will forward a description of these projects, along with comments from the Regional Community Solutions Team, to the Board for their consideration. At the same time, a committee of representatives from the Regional Community Solutions Teams, in conjunction with the Department's senior management, will develop a funding proposal. A finalized funding proposal will be presented to the Director and the Board for their review and recommendations.

(6) Projects will be selected for financing which, in the judgement of the Board, as evidenced by its recommendation to the Director, and the Director, best achieve the purposes of the Incentive Fund, based on the criteria outlined in OAR chapter 813, division 140.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

ADMINISTRATIVE RULES

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

813-140-0080

Rating Criteria

In addition to evaluation of a proposed project's compliance with the requirements of OAR 813-140-0050 and taking into consideration the preferences set forth in OAR 813-140-0060, the evaluation of a proposed project may include, but is not limited to, consideration of the following:

- (1) Any conditional or firm funding commitments or efforts to work with other funders to leverage all available resources;
- (2) The readiness of the project to proceed once financing has been committed by the Department;
- (3) In comparison with other proposed projects, the greatest impact on communities;
- (4) Demonstration of realistic financial assumptions, including the need for a loan guarantee or grant funds, and the ability to repay loans;
- (5) The strength of the development team as it relates to the scope of the project;
- (6) Community support for the project as demonstrated by funding or fee waivers, resolution of support, or participation of community groups; and

(7) Appropriateness and uniqueness of the design of the project.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

813-140-0090

Lending Criteria

(1) The Department's lending criteria allows the Fund to create quality development patterns, produce a sound loan portfolio and create a sustainable loan fund.

(2) The Department shall permit the assumption of an appropriate level of risk, maintain a reserve for losses, and provide for the periodic monitoring of reserve adequacy as follows:

(a) An applicant for a loan shall demonstrate an ability to repay the debt. When applicable, the Department may offer a combination of grants and loans as well as a combination of loan products and terms, as it, in its sole discretion, deems appropriate.

(b) A loan may be for an income-producing project or for a project in an urban renewal district with available tax increment financing.

(c) A loan may be subordinate to other loans both in terms of payment and lien securing repayment.

(3) The Department may make the following types of loans:

(a) Predevelopment loans for projects that are in the early stage. The purpose of these loans is to finance eligible predevelopment expenses as determined by the Department. A predevelopment loan shall have maximum term of 12 months and shall be 100% secured by collateral acceptable to the Department. The borrower shall pay a loan fee of 1% of the principal amount of the loan.

(b) Short-term loans having terms not to exceed 5 years. These loans shall accrue interest at the rate of 1% per annum and shall require minimum annual interest payments.

(c) Long-term loans having terms exceeding 5 years but not exceeding 15 years. These loans shall accrue interest at a rate of 3% per annum and shall require minimum annual interest payments.

(4) A borrower shall execute such agreements, instruments and other documents that are required by the Department and that are in form and substance satisfactory to the Department. These documents may contain terms and provisions regarding required insurance coverage, loss reserve and periodic reporting requirement, financial ratios, escrow payments, late charges, defaults, priority of liens, and such other matters as the Department deems prudent or appropriate.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

Hist.: OHCS 7-2002(Temp), f. & cert. ef. 5-30-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

813-140-0100

Award

(1) The Director shall announce the applicants receiving Fund awards. An applicant who receives a Fund award will be issued a reservation and conditional award.

(2) Except upon the written approval of the Department, no moneys will be disbursed from the Fund until all conditions of the reservation and conditional award (including submission of the required documents) have been met to the satisfaction of the Department.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

813-140-0110

Small Community Incentive Fund

(1) The Small Community Incentive Fund may provide loans and grants to eligible projects which require a financial incentive or gap financing. The maximum amount of financing that may be provided by the Small Community Incentive Fund for a project, whether in the form of a grant or loan or a combination of both, is \$50,000.

(2) In order to be eligible for financing by the Small Community Incentive Fund, a project must meet the parameters of OAR 813-140 with the following exceptions:

(a) The project must be located within the urban growth boundary of an incorporated Oregon city, or in an Urban Unincorporated Community, Rural Community, or Rural Service Center that is served by a community sewer system and/or a community water system.

(b) The project must achieve at least one of the four main objectives of the Oregon Livability Initiative.

(3) The Department may make the following types of loans:

(a) Predevelopment loans which shall be fully secured with collateral acceptable to the Department and shall:

(A) Accrue interest at the rate of 0% per annum and have a term not to exceed 6 months or

(B) Accrue interest at the rate of 1% per annum and have a term of more than 6 months but not to exceed 12 months.

(b) Short-term 1-5 year loans which shall accrue interest at the rate of 3% per annum, have a term not to exceed five years, and require a minimum annual payment of interest.

(4) The Regional Community Solutions Team for the region in which a project is located and other experts (representatives from the Regional Partnerships where Partnerships exist), as appropriate will review the funding requests for projects in its region. The Regional Community Solutions Teams will determine if other Community Solutions Team agency resources are available to fund a project and if so, will direct the applicant to the appropriate agency. The Regional Community Solution Team will, in evaluating the project, consider factors such as how well a project meets the Fund's threshold criteria, the Fund's preferences, and the financial feasibility of the project. Projects selected by the Regional Community Solutions Team will be forwarded to the Department, along with the Regional Community Solutions Team's comments and recommended conditions of award. The forwarded projects will be submitted to the Board. The Board will provide comments to the OHCS director before funding approval is made. The Director, or his designee, shall make all final funding determinations and announce conditional awards.

Stat. Auth.: ORS 458.705 - ORS 458.740

Stats. Implemented: ORS 458.705 - ORS 458.740

Hist.: OHCS 11-2002(Temp), f. & cert. ef. 9-5-02 thru 11-25-02; OHCS 16-2002, f. & cert. ef. 11-25-02

Adm. Order No.: OHCS 17-2002

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Rules Adopted: 813-008-0040

Rules Amended: 813-008-0005, 813-008-0010, 813-008-0015, 813-008-0020, 813-008-0025, 813-008-0030

Subject: These rules describe the process for the termination of a rental agreement due to a manufactured dwelling or floating home facility closure.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-008-0005

General Purpose

OAR chapter 813, division 008 is promulgated to accomplish the general purpose of ORS 90.630 and specifically ORS 90.630 (5), (6), (7) and (8), and with ORS 90.630(7) requiring the Housing and Community Services Department to adopt rules to implement the provisions of ORS 90.630(5).

Stat. Auth.: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650

Stats. Implemented: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650

Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 7-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02

ADMINISTRATIVE RULES

813-008-0010

Definitions

Words and terms used in OAR chapter 813, division 008 are consistent with the definitions in ORS 90.100.

Stat. Auth.: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Stats. Implemented: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 7-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02

813-008-0015

Closure Notice

(1) Any written notice by the landlord of termination of a rental agreement because of facility closure and the land or leasehold being converted to a different use shall conform with the requirements of ORS 90.630 and provide at least the following information:

(a) The landlord's or representative agent's address for contact and communications;

(b) The firm date set for the closure of the facility or of the relevant portion of the facility;

(c) The actions and activities the landlord plans to take in the facility closure that may affect the facility tenants;

(d) The landlord's obligations under ORS 90.630(5), (6), (7) and (8);

(e) The tenant's rights under ORS 90.630(4) for a 365-day closure notice or 180-day closure notice, as applicable, including the right, if any, for payment of moving expenses under OAR 813-008-0030 and the eligible moving expenses defined under OAR 813-008-0025;

(f) The voluntary benefits, if any, to be provided to the tenant by the landlord or contracted between the parties, together with any shortened period between notice and termination of the rental agreement arising therefrom;

(g) A copy of the statute ORS 90.630 and of this OAR chapter 813, division 008;

(h) Any definitions referenced within these rules applicable to the tenant's rights under these rules; and

(i) A description of any city or county regulations, laws, or ordinances that apply to tenant interests in facility closures.

(2) Notices required by ORS 90.630 or by these rules shall be delivered personally or by first class mail to each affected tenant. If served by mail, the minimum period before facility closure shall be extended by three days, and the notice shall recite the fact and extent of the extension. The notice shall be delivered to the tenant at the address specified in the lease or rental agreement between the tenant and the landlord. In any sublet unit, the notice shall be delivered to the tenant at his or her current address and to the subtenant in possession. If the tenant's address is unknown and not reasonably discoverable, his or her copy shall be delivered to the subtenant with written instructions to forward it to the tenant. Failure of the subtenant to deliver such copy to the tenant shall not limit the landlord's right to terminate the rental agreement because of facility closure.

(3) For 365-day closure notices as provided in ORS 90.630(5)(a), the provisions of OAR 813-008-0020 through 813-008-0030 do not apply.

(4) For 180-day closure notices as provided in ORS 90.630(5)(b), the landlord shall comply with the provisions of OAR 813-008-0020 through 813-008-0030.

Stat. Auth.: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Stats. Implemented: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 7-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02

813-008-0020

Alternate Manufactured Dwelling or Floating Home Space

(1) The landlord shall notify the tenant, in writing, of alternate space to which the tenant can move the manufactured dwelling or floating home at least 45 days before delivering a 180-day notice of termination.

(2) The tenant shall determine, solely at the judgment and discretion of the tenant, if the alternate space identified in the 45-day notice described above is acceptable and shall notify the landlord in writing of his or her decision within 20 days of receiving the notice of the alternative space.

(3) The landlord shall secure the space acceptable to the tenant from the time of acceptance until the date the relocated manufactured dwelling or floating home is approved for the tenant's occupancy. Costs to secure the space for this period shall be included in the landlord-paid moving expenses.

Stat. Auth.: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Stats. Implemented: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 7-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02

813-008-0025

Moving and Set Up Expenses

(1) Actual moving and set-up expenses shall be paid or reimbursed by the landlord, as agreed by the parties, for moving the tenant's manufactured dwelling or floating home, together with all possessions, to another acceptable location. Eligible expenses include, but are not limited to:

(a) Costs for removing and reinstalling skirting;

(b) Costs for disconnecting and reconnecting utilities, including fees related thereto;

(c) Costs for disconnecting and reinstalling awning(s) and deck(s);

(d) Trip permit and public inspection fees;

(e) Transportation costs;

(f) Set-up charges;

(g) Costs for manufactured dwelling or floating home improvements necessary to meet destination facility space standards;

(h) Costs for packing and unpacking manufactured dwelling or floating home contents as necessary for unit relocation for elderly and disabled persons, as those persons are defined in this Chapter;

(i) Costs for temporary housing and meals for the tenant during unit relocation and set up; and

(j) Landlord expenses to secure the relocation space acceptable to the tenant from the time of tenant acceptance until the date the relocated manufactured dwelling or floating home is approved for occupancy.

(2) Notwithstanding the foregoing, the amount of moving and set-up expenses required to be paid by the landlord under these rules shall not exceed actual costs or \$3,500, whichever is less, unless otherwise agreed to by the landlord.

Stat. Auth.: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Stats. Implemented: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 7-1989, f. & cert. ef. 11-3-89; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02

813-008-0030

Payment of Expenses

(1) The tenant and landlord shall agree in writing upon the moving and set-up method and source of services to be provided for same not less than 20 days before the tenant's required moving date.

(2) The tenant shall submit billings or paid receipts for expenses eligible for reimbursement to the landlord within ten days of receipt of same. The landlord shall timely pay unpaid billings directly to the vendor and shall reimburse the tenant for appropriate expenses paid directly by the tenant. The landlord shall make payment for or reimbursement of appropriate expenses not later than 20 days following receipt of any such billings or paid receipts.

(3) Based upon written agreement with the tenant, the landlord may contract directly with vendors as may be cost advantageous in accomplishing the tenant's move so long as such services are mutually agreed upon by landlord and tenant and performed by appropriately registered or licensed and bonded tradesmen or agents.

(4) If no agreement is timely reached between landlord and tenant prior to a tenant's required moving date, the landlord shall timely reimburse the tenant for appropriate moving and set-up expenses consistent with these rules.

Stat. Auth.: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Stats. Implemented: ORS 90.630, ORS 90.800 - ORS 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Hist.: HSG 4-1988, f. & ef. 10-19-88; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 8-1991, f. & cert. ef. 12-23-91; HSG 2-1997, f. & cert. ef. 10-6-97; OHCS 17-2002, f. & cert. ef. 12-5-02

813-008-0040

Waiver

The Director may waive or modify any requirements of OAR 813, division 008, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 90.800 - 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Stats. Implemented: ORS 90.800 - 90.840, ORS 183, ORS 456.515 - ORS 456.723 & ORS 458.210 - ORS 458.650
Hist.: OHCS 17-2002, f. & cert. ef. 12-5-02

ADMINISTRATIVE RULES

Adm. Order No.: OHCS 18-2002

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Rules Adopted: 813-280-0000, 813-280-0010, 813-280-0020, 813-280-0030, 813-280-0040, 813-280-0050, 813-280-0060, 813-280-0070

Rules Repealed: 813-280-0000(T), 813-280-0010(T), 813-280-0020(T), 813-280-0030(T), 813-280-0040(T), 813-280-0050(T), 813-280-0060(T), 813-280-0070(T)

Subject: Implements the Energy Rated Homes of Oregon Program, which provides an assessment service to existing and prospective homeowners on the relative efficiency of various components of a house that contributes to a household's utility bills.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-280-0000

Purpose and Objectives

OAR chapter 813, division 280, is promulgated to accomplish the general purpose of ORS 456.550 to 456.725, specifically 456.550, which designates the Department as the central source of information, planning, educational services and technical assistance on housing issues for persons and families of lower-income. OAR chapter 813, division 280, describes the Energy Rated Homes of Oregon Program, which provides an assessment service to existing and prospective homeowners on the relative efficiency of the various components of a house which contribute to a household's utility bills. The Program's objective is to increase a home's energy efficiency and reduce a household's consumption — and therefore cost — of energy and also provide a household that participate in the program with a more comfortable and affordable home.

Stat. Auth.: ORS 456.550 - ORS 456.725

Stats. Implemented: ORS 456.550

Hist.: OHCS 10-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 18-2002, f. & cert. ef. 12-13-02

813-280-0010

Definitions

All terms are used in OAR chapter 813, division 280, are defined in the Act, in OAR 813-005-0005 and below. As used in OAR chapter 813, division 280, unless otherwise indicated by the context:

(1) "Energy Efficient Mortgage" means a mortgage that secures repayment of a home loan that credits a home's energy efficiency or includes energy efficient upgrades.

(2) "EPA" means the U.S. Environmental Protection Agency.

(3) "FHA" means the Federal Housing Administration of the U.S. Department of Housing and Urban Development.

(4) "Home Energy Rating" means the measurement of a home's energy efficiency or its energy efficiency rating ("EER").

(5) "Home Energy Rater" means residential energy efficiency professional certified by the Department to inspect homes and measure their energy characteristics.

(6) "Household" means an individual residing alone, or a group of individuals living together as one economic unit, for all or part of the next 12 months in a dwelling (which may be single-family housing or a unit in multi-family housing) assisted with Program funds.

(7) "HUD" means the U.S. Department of Housing and Urban Development.

(8) "Service Area" means the specific geographic area or region within which a Subgrantee Agency provides Program services directly or by contract.

(9) "Subgrantee Agency" means a private, nonprofit corporation organized under ORS Chapter 65, a housing authority established under ORS 456.055 to 456.235, or a local government as defined in ORS 197.015 with whom the Department has contracted to administer Program activities and services at the local level.

(10) "VA" means the U.S. Department of Veterans Affairs.

Stat. Auth.: ORS 456.550 - ORS 456.725

Stats. Implemented: ORS 456.550

Hist.: OHCS 10-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 18-2002, f. & cert. ef. 12-13-02

813-280-0020

Program Administration

(1) As part of its mission to provide technical assistance on housing issues for lower income Households, the Department has implemented a Home Energy Rating Program designed to encourage cost effective energy

saving improvements and, as a result, decrease a Household's utility costs and increase its disposable income.

(2) Wherever feasible, the Department intends to use the existing network of community-based, service-provider agencies to conduct the Home Energy Rating assessments.

(3) The Department has entered into a Memorandum of Understanding ("MOU") with HUD and the EPA with regard to Program requirements and Home Energy Rating criteria.

Stat. Auth.: ORS 456.550 - ORS 456.725

Stats. Implemented: ORS 456.550

Hist.: OHCS 10-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 18-2002, f. & cert. ef. 12-13-02

813-280-0030

Home Energy Assessments

(1) A homeowner, prospective homeowner, builder or other individual may submit a request to the Department for a Home Energy Rating.

(2) If appropriate, the Department shall arrange for a Home Energy Rater to conduct an on-site inspection of a home and assess its energy characteristics.

(3) In conducting an assessment of a home, a Home Energy Rater shall measure its energy characteristics, including, but not limited to, the following:

(a) Insulation levels;

(b) Window efficiency;

(c) Wall-to-window ratios;

(d) Heating and cooling system efficiency;

(e) Solar orientation of the home; and

(f) Water heating system efficiency. The Home Energy Rater shall do diagnostic testing, such as blower door for air leakage and duct leakage testing.

(4) Based on the results of an assessment done on a home, the Department will assign a Home Energy Rating to the dwelling between 1 and 100 points. The dwelling's Home Energy Rating will then be equated to a star rating that ranges from 1 Star for a very inefficient home to 5 Star for a highly efficient home.

(5) Along with the rating sheet indicating a dwelling's Home Energy Rating and star rating, the homeowner, prospective homeowner, builder or other individual submitting the Home Energy Rating request will receive an estimate of the home's energy costs and a report listing cost-effective options for improving the dwelling's Home Energy Rating. If a Home Energy Rater makes recommendations on cost-effective energy improvements, the report shall also provide information on the relative economic return on the improvements.

(6) A Home Energy Rating may be requested by a the homeowner, prospective homeowner, builder or other appropriate individual to assess improvements made to a home pursuant to a Home Energy Rating report.

Stat. Auth.: ORS 456.550 - ORS 456.725

Stats. Implemented: ORS 456.550

Hist.: OHCS 10-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 18-2002, f. & cert. ef. 12-13-02

813-280-0040

Financing Cost Effective Improvements

Under programs as the mortgage energy improvement programs offered by the FHA and VA, an Energy Efficient Mortgage may be used at the time of sale or refinancing to finance cost-effective improvements recommended in a Home Energy Rating report.

(1) If the improvements recommended by a Home Energy Rater are economically feasible, the funds for such improvements may be included in the mortgage and be placed into an escrow by the lending institution, title company or other appropriate entity.

(2) The homeowner has up to 90 days after loan closing (in the case of a FHA Energy Efficient Mortgage), or 180 days after loan closing (in the case of a VA Energy Efficient Mortgage), to make the improvements.

(3) Once the improvements are made, a post-improvement Home Energy Rating shall be performed to confirm that the improvements were properly installed:

(a) If the improvements have been properly made, the escrow account funds will be released to pay for materials and contracted labor for the improvements; or

(b) If the improvements have not been made as required, the escrow funds shall be applied as a prepayment of the principal balance of the loan.

Stat. Auth.: ORS 456.550 - ORS 456.725

Stats. Implemented: ORS 456.550

Hist.: OHCS 10-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 18-2002, f. & cert. ef. 12-13-02

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813-280-0050

Home Energy Rater Certification

In order to be certified by the Department as a Home Energy Rater, an individual shall meet the following requirements:

- (1) Attend training as specified by the Department; and
- (2) Receive a satisfactory evaluation on both a field and written examination.

Stat. Auth.: ORS 456.550 - ORS 456.725
Stats. Implemented: ORS 456.550
Hist.: OHCS 10-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 18-2002, f. & cert. ef. 12-13-02

813-280-0060

Fees

The Department may establish such fees, performance criteria or reporting requirements, as the Department as the Department determines is appropriate or necessary may consider appropriate or necessary.

Stat. Auth.: ORS 456.550 - ORS 456.725
Stats. Implemented: ORS 456.550
Hist.: OHCS 10-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 18-2002, f. & cert. ef. 12-13-02

813-280-0070

Waiver

The Director may waive or modify any requirements of this OAR chapter 813, division 280, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 456.550 - ORS 456.725
Stats. Implemented: ORS 456.550
Hist.: OHCS 10-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 18-2002, f. & cert. ef. 12-13-02

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Adm. Order No.: OHCS 19-2002

Filed with Sec. of State: 12-13-2002

Certified to be Effective: 12-13-02

Notice Publication Date: 11-1-02

Rules Adopted: 813-205-0000, 813-205-0010, 813-205-0020, 813-205-0030, 813-205-0040, 813-205-0050, 813-205-0051, 813-205-0060, 813-205-0070, 813-205-0080, 813-205-0090

Rules Repealed: 813-205-0000(T), 813-205-0010(T), 813-205-0020(T), 813-205-0030(T), 813-205-0040(T), 813-205-0050(T), 813-205-0060(T), 813-205-0070(T), 813-205-0080(T), 813-205-0090(T)

Subject: Implements the Weatherization Assistance Program. The program operates at the local level through a network of service-provider agencies to provide weatherization assistance to lower-income households, with priority given to the elderly, those with disabilities and households with children under six years of age.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-205-0000

Purpose and Objectives

The rules of OAR chapter 813, division 205, are established to accomplish the general purpose of ORS 458.505 to 458.545, specifically 458.505 to 458.515, which designates the Housing and Community Services Department as the state agency responsible for administering state and federal antipoverty programs in Oregon. These administrative rules describe the Weatherization Programs, which operate at the local level through a network of service-provider agencies. The Program's objective is to provide weatherization assistance to lower-income households, with priority given to the elderly, those with disabilities and households with children under six years of age.

Stat. Auth.: ORS 458.505 - ORS 458.545
Stats. Implemented: ORS 458.505 - ORS 458.515
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02

813-205-0010

Definitions

All terms are used in OAR chapter 813, division 205, as defined in the Act, and as provided in OAR 813-05-005 and herein. As used in these rules, unless otherwise indicated by the context:

(1) "Client Energy Education" means the activities and instruction designed to help

low-income clients make appropriate decisions and life-style changes to effectively reduce energy consumption.

(2) "Department" means the Housing and Community Services Department of the State of Oregon.

(3) "Director" means the Director of the Department of Housing and Community Services.

(4) "Disabled" means a physical or mental impairment as outlined in Section 504 of the Rehabilitation Act of 1973, as amended.

(a) Households with persons receiving Supplemental Security Income SSI are automatically eligible regardless of household income.

(5) "Elderly" means those Persons 60 years of age and over.

(6) "Household" means any individual or group of individuals who are living together as one economic unit and purchase residential energy in common.

(7) "Income" means the total Household receipts before taxes from all sources. Income may be reduced by deductions allowed by the Department. Income does not mean assets or funds over which the applicant has no control.

(8) "Low-Income" means a Household or Person whose gross annual income is at or less than 60 percent of statewide median income.

(9) "Statewide Median Income" means the "median" family income in the state determined by the Department. In determining median family income in the state, the Department may, in its discretion, use the official standard established by the Secretary of the U.S. Department of Health and Human Services, adjusted for family size.

(10) "Oregon State Plan" means the DOE State Plan and/or the LIEAP State Plan.

(11) Community Resources Department (CRD) Grant Application" means the biennial planning document approved by the Department that outlines how each Subgrantee Agency determines its community's needs, including what forum is used to solicit input and who participates; summarizes each area's needs, goals and outcome-based objectives; and contains a quarterly reporting requirement that lets the Department and the agency know how it is doing.

(12) "Special Population Agency" means an organization formed to serve the unique

needs of an identified segment of the population.

(13) "Subgrantee Agency" means a local agency or organization with whom the Department has contracted to administer Program activities and services at the local level.

(14) "T&TA Activities" means training and technical assistance activities designed to maximize energy savings, minimize production costs, improve program management, and/or reduce the potential for waste, fraud and abuse.

Stat. Auth.: ORS 458.505 - ORS 458.545
Stats. Implemented: ORS 458.505 - ORS 458.515
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02

813-205-0020

Program Administration

(1) The Department has been designated by the Governor of the State of Oregon as the state agency that shall have responsibility to apply for, receive and administer federal funds available from the U.S. Department of Energy under the Energy Conservation in Existing Building Act of 1976. The funds are available to provide weatherization assistance for low-income Persons.

(2) The Department receives funding for the Program from a number of sources in addition to the DOE. These include the Low-Income Home Energy Assistance Act (i.e., LIEAP), the Bonneville Power Administration (BPA), Petroleum Violation Escrow (PVE) funds and Energy Conservation Helping Oregonians (ECHO).

(3) The Department intends to utilize the existing network of service-provider agencies to administer Program services and activities at the local level.

(a) For the purpose of the Program, these agencies, which include Community Action Agencies, Limited Purpose Organizations, Area Agencies on Aging and Special Population Organizations, shall be identified as Subgrantee Agencies.

(b) In order to be eligible to administer the Program at the local level, a Subgrantee Agency shall have an approved Refunding Application and/or Omni Plan on file with the Department.

(c) A Subgrantee Agency may contract with another organization to provide a Program service or activity in the Subgrantee Agency's service area.

(d) Each Subgrantee Agency shall follow the procedures outlined in the Oregon State Plan. These procedures include identifying potential

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applicants, certifying eligibility and providing weatherization services to eligible dwelling units within its geographic service area.

(e) The Department shall fund only one Subgrantee Agency within any geographical area.

(A) The Department may make an exception to this policy for a Special Population Organization.

(B) If the Department makes an exception for a Special Population Organization and allows two Subgrantee Agencies to operate within a common geographical area, a Memorandum of Agreement shall first be negotiated to insure full access to the Program for all persons within the geographical area to prevent duplication of services.

(f) The Department shall conduct a periodic evaluation of each Subgrantee Agency's Program performance. Factors that may be considered in this evaluation include, but are not limited to, the level of service provided, ease of access to applicants, error rate, and compatibility with other community service programs.

(d) If an agency is deemed to be deficient and the Department is not assured of improvement in its performance, the Department may contract with another Subgrantee Agency for future Program operation.

Stat Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.515

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02

813-205-0030

Eligible Applicants

To be eligible to receive assistance under the Program, a Household shall meet the requirements outlined in the Oregon State Plan, which shall include, but is not limited to:

(1) Income guidelines for the Program, as follows:

(a) A Household whose Income is at or below 60 percent of Statewide Median Income is eligible to participate in the Program.

(b) A Household who has a member receiving Supplemental Security Income (SSI) is eligible regardless of income.

(c) The period for determining eligibility shall not be more than the past 12 months from the date of application or less than the past 30 days from the date of application.

(d) A Person or Household who has applied for and been found eligible for the Low Income Home Energy Assistance Program (LIHEAP) shall be considered eligible for assistance under the Low-Income Weatherization Program. A LIHEAP income certification shall serve as evidence of income eligibility for the Program.

(2) Both renters and homeowners shall be eligible and those Households in similar circumstances shall receive similar benefits.

(3) No Person shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any activity funded in whole or in part with funds made available from the Program.

(a) A Subgrantee Agency shall provide assurances to the Department that it complies with any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973.

(4) Each Subgrantee Agency shall establish a waiting list to receive weatherization services.

(a) The Subgrantee Agency shall identify criteria for determining applicant priority on the waiting list. Priority shall be given to those who are:

(A) Elderly;

(B) Disabled Persons; and

(C) Households with children under six (6) years of age.

(b) Additional applicant priority criteria may be developed and may include, but is not limited to, those that encourage leveraging additional resources or the potential for energy savings.

(c) The criteria must be in writing and on file with the Subgrantee Agency.

(d) The priority criteria must be used consistently for all applicants unless the Subgrantee Agency is involved in a Department-sanctioned special project.

Stat Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.515

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02

813-205-0040

Eligible Activities

(1) Under the Low Income Weatherization Program, a Subgrantee Agency may provide one or more of the following services to an eligible applicant:

(a) General weatherization measures, which include, but are not limited to general heat waste, insulation, heating system repair and replacement, health and safety inspections and improvements, baseload measures, and Client Energy Education.

(b) Repair measures, which are measures necessary for the effective energy savings performance or preservation of weatherization materials.

(2) The Department shall allocate up to 5 percent of the Program's funds (unless specified by the Grantor) for T&TA Activities intended to maintain or increase the efficiency, quality and effectiveness of the Program at all levels.

(3) Department staff shall provide technical assistance to a Subgrantee Agency on a variety of issues designed to assist a Subgrantee Agency to improve its management of Program activities and increase the effectiveness of its customer service efforts.

(4) The property owner may sell multifamily Business Energy Tax Credits generated through the weatherization of investment property.

(5) Buildings (5 or more units in one building) and mobile home parks (three or more mobile homes that pay space rent on a single parcel of land) can be weatherized if 66.2/3% of the units are occupied by income eligible households. Prior to weatherizing a Mobile Home Park, subgrantees must submit a work plan to the Department and have the work plan approved.

(6) Multifamily buildings and Mobile Home Park where the owner pays 25% or more of the total cost of weatherization may qualify buildings where 50% of the occupants meet income eligibility guidelines.

Stat Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.515

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02

813-205-0050

Fund Uses (Federal)

The Department shall allocate funds received under the Program(s) through an allocation formula.

(1) The Department may set aside up to ten percent of the Program's funds for farmworkers. A Subgrantee Agency may receive an allocation based on the percent of farmworker population measured in the state as a whole.

(2) The Department may set aside up to three percent of the Program's funds for Native American populations:

(a) The Department may provide direct funding to Native American Tribes; or

(b) The Department may allocate funds to a Subgrantee Agency with recognized Native American populations.

(3) Funds remaining after administrative, T&TA and set-asides monies have been removed shall be allocated to Subgrantee Agencies using an allocation formula, outlined in the Oregon State Plan, based on percent of poverty Households in a service area and heating degree days.

(4) No DOE funds shall be expended for the items or services not listed or do not comply with the standards in 10 CFR part 440.21. The Department may move grant funds from Subgrantee Agencies who are having difficulty spending in a timely manner to Subgrantees who have spent out their funds prior to the end of the grant period. At least once a year (no later than March 15th) the Department will review the spending patterns of subgrantee Agencies for the purpose of reallocating funds.

(5) Lead SafeWork Practices shall be practiced on all dwellings constructed prior to 1978.

Stat Auth.: ORS 458.505 - ORS 458.545

Stats. Implemented: ORS 458.505 - ORS 458.515

Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02

813-205-0051

Fund Uses (ECHO)

The Department shall allocate funds received under public purposes.

(1) Allocation shall be based on the number of residential meters of a participating utility within the service territory of a weatherization subgrantee as a percentage of that utilities total residential meters statewide.

(a) Once a year on July 1st the Department will contact each utility and request a residential meter count by county. This information will be used to adjust allocations to participating weatherization agencies.

(2) Households must receive electric service from Pacific Power or Portland General Electric. Only households that use hard wired electrical

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systems as their primary heat source are eligible to receive weatherization, baseload and educational services. Households that heat with other fuels may receive baseload measures and energy-education services only.

(3) No Bonneville Power Administration (BPA) funds shall be used in conjunction with ECHO funds.

(4) The Department shall work with Subgrantee Agencies to reallocate funds from agencies unable to spend out within the allotted grant period to agencies who have spent out early. At least once a year (no later than March 15th) the Department will review the spending patterns of subgrantee Agencies for the purpose of reallocating funds.

(5) The Department may reallocate funds to programs outside the existing services network (Subgrantee Agencies) for special projects and pilots once all Subgrantee Agencies funding needs have been met.

(6) Lead SafeWork Practices shall be practiced on all dwellings constructed prior to 1978.

(7) Subgrantees shall follow the approved ECHO Low Income Weatherization Guidelines when delivering ECHO services. The ECHO Low Income Weatherization Guidelines shall be reviewed yearly, any changes must be reviewed by the Advisory Committee on Energy (ACE).

Stat Auth.: ORS 458.505 - ORS 458.545
Stats. Implemented: ORS 458.505 - ORS 458.515
Hist.: OHCS 19-2002, f. & cert. ef. 12-13-02

813-205-0060

Authorizations

(1) Prior to weatherizing residential units, the owner or authorized agent shall give written permission for the weatherization assistance. Such written authorization must include:

- (a) Location of dwelling, i.e., physical street address;
- (b) Name of eligible tenant, if applicable; and
- (c) Specific work to be done.

(2) If the dwelling to be weatherized is a rental unit, the Subgrantee Agency has the responsibility to:

(a) Insure that no rental dwelling unit shall be weatherized without first obtaining the written permission of the owner or the owner's authorized agent;

(b) Establish procedures to be approved by the Department to insure that:

(A) The benefits of weatherization assistance shall accrue primarily to the low-income residents;

(B) Rents shall not be raised as a result of the weatherization assistance;

(C) No undue or excessive enhancement shall occur to the value of the dwelling unit(s). If a dwelling is sold within one year after being weatherized, the subgrant may require the seller to reimburse the subgrantee agency for actual cost of weatherization on a prorated basis determined based on the energy cost buyback of measures; and

(D) Weatherization services shall not be provided to eligible clients who pay their energy cost as part of their rent, unless the landlord agrees to make reductions in rent to reflect the reductions in fuel costs associated with the weatherization activities, or there are health or safety reasons which justify weatherization.

Stat Auth.: ORS 458.505 - ORS 458.545
Stats. Implemented: ORS 458.505 - ORS 458.515
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02

813-205-0070

Fiscal Control/Reporting Requirements/Documentation

A Subgrantee Agency has a number of responsibilities under the Program. These responsibilities, which are detailed in the Oregon State Plan and the Refunding Application/Biennium Grant Application including, but are not limited to, the following:

(1) A Subgrantee Agency shall maintain records which document the receipt and dispersal of all funds provided through the Program.

(2) A Subgrantee Agency shall maintain records which document the clients receiving services through the Program. Such records shall be in a format designated by the Department.

(3) A Subgrantee Agency shall have in place an inventory control system, travel regulations and a financial operations manual.

(4) A Subgrantee Agency shall receive authorization from the Department for purchases or lease of acquisitions in excess of \$5,000.

(5) A Subgrantee Agency shall, within 15 working days following the end of each calendar quarter, provide the Department with a report detailing the progress made toward the Program objective(s), and all administrative and Program expenditures. Such reports shall be in a format designated by the Department.

(6) A Subgrantee Agency shall, within 90 days after the close of the agency's fiscal year, provide the Department with an annual audit of weatherization funds. The audit shall be conducted by a Certified Public Accountant.

Stat Auth.: ORS 458.505 - ORS 458.545
Stats. Implemented: ORS 458.505 - ORS 458.515
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02

813-205-0080

Monitoring

(1) The Department shall monitor the Subgrantee Agency's annual audit to verify information received on the quarterly reports and clarify questions raised by the Department, the Subgrantee Agency or the auditor.

(2) The Department shall monitor all quarterly reports to determine compliance with program requirements, monitor spending patterns and chart program progresses. Any irregularities or questions raised by the in-house review shall be sufficient reason to schedule an on-site review.

(3) The Department may conduct an on-site review of a Subgrantee Agency on an annual basis and when required in 813-205-080(2). During an on-site review, the following, at a minimum, shall be reviewed:

- (a) Financial records;
- (b) Inventory system;
- (c) Client files;
- (d) Work completed;
- (e) Subgrantee Agency post-installation inspection;
- (f) Subgrantee Agency review; and
- (g) Provide training and technical assistance.

Stat Auth.: ORS 458.505 - ORS 458.545
Stats. Implemented: ORS 458.505 - ORS 458.515
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02

813-205-0090

Waiver

The Director may waive or modify any requirements of these Program rules, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat Auth.: ORS 458.505 - ORS 458.545
Stats. Implemented: ORS 458.505 - ORS 458.515
Hist.: OHCS 9-2002(Temp), f. & cert. ef. 6-19-02 thru 12-15-02; OHCS 19-2002, f. & cert. ef. 12-13-02

Oregon Public Employees Retirement System Chapter 459

Adm. Order No.: PERS 14-2002

Filed with Sec. of State: 11-18-2002

Certified to be Effective: 11-18-02

Notice Publication Date: 8-1-02

Rules Adopted: 459-035-0220

Rules Amended: 459-035-0000, 459-035-0001, 459-035-0010, 459-035-0020, 459-035-0030, 459-035-0040, 459-035-0050, 459-035-0070, 459-035-0080, 459-035-0090, 459-035-0200

Rules Repealed: 459-035-0210

Subject: These rules pertain to the PERS Health Insurance Program. These changes are necessary to add language to accommodate dependent domestic partners; to modify the contracting/procurement procedures to better meet the Board's statutory authority for these activities and add administrative efficiencies; to add legal and procedural updates; and to modify language to comply with the reporting requirements under the addition of the Standards Retiree Health Insurance Account which was a part of PERS' plan qualification changes implemented in 1999.

Rules Coordinator: Yvette S. Elledge—(503) 603-7713

459-035-0000

Policy and Goals

(1) The health insurance plans of the Public Employees Retirement System (PERS) are established and shall be administered as provided in ORS 238.410, 238.415 and 238.420. The Public Employees Retirement Board (Board) may enter into one or more contracts with health insurance carriers licensed to do business in the State of Oregon, or certified in another state that is operating under the laws of that state, to obtain health insurance coverage for eligible retirees, and their spouses or dependents.

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(2) Benefits shall be provided under the Board's health insurance programs for eligible persons through retiree contributions and any other available funding to cover the Board's costs of health care coverage and administration under insurance contract between the Board and insurance carriers.

Stat. Auth.: ORS 238.410 & ORS 238.650
Stats. Implemented: ORS 238.410, ORS 238.415, & ORS 238.420
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0001

Definitions

The words and phrases used in this Division have the same meaning given them in ORS chapter 238. Additional terms are defined as follows unless the context requires otherwise.

(1) "Board" shall have the same meaning as the Public Employees Retirement Board in ORS 238.630.

(2) "Carrier" shall have the same meaning as provided in ORS 238.410(1)(a).

(3) "Competitive Negotiations" means the procurement method whereby proposals are requested from a number of sources and the Request for Proposals is publicized.

(4) "Creditable Service" shall have the same meaning as provided in ORS 238.005(5).

(5) "Dependent" means a PERS member's or retiree's dependent child who has never married. For the purpose of this rule a "child" is defined as follows:

(a) A natural child.

(b) A legally adopted child, or a child placed in the home pending adoption.

(c) A step-child who resides in the household of the stepparent who is an eligible retired member.

(d) A grandchild, provided that at the time of birth, at least one of the grandchild's parents was covered under a PERS-sponsored health insurance plan as a dependent child of the PERS member or retiree and resides in the household of the member or retiree.

(6) "Dependent Domestic Partner of a PERS Retiree" means a person who has a relationship with a PERS retiree that has the characteristics described below. To qualify as a "dependent domestic partner of a PERS retiree," the person and the PERS retiree must:

(a) Share a close personal relationship and be responsible for each other's common welfare, including but not limited to having joint financial responsibilities;

(b) Be each other's sole domestic partner;

(c) Not be married to anyone, nor have had another domestic partner within the previous 12 months;

(d) Not be related by blood so closely as to bar marriage in the State of Oregon;

(e) Have jointly shared the same regular and permanent residence for at least 12 months immediately preceding the effective date of coverage with the intent to continue doing so indefinitely; and

(f) Have the PERS retiree providing over one-half of the financial support for the person and have claimed that person on the PERS retiree's most recent federal tax return.

(7) "Eligible Person" means a person who is eligible for coverage under a PERS-sponsored health insurance plan. The conditions for such eligibility are set forth in OAR 459-035-0020.

(8) "Eligible Retired Member" means an eligible person who is eligible for payments toward the cost of the Medicare Companion Plan from RHIA. The conditions for such eligibility are set forth in OAR 459-035-0030.

(9) "Eligible Retired State Employee" means an eligible person who is eligible for non-Medicare insurance premium payments from the RHIPA. Conditions for such eligibility are set forth in OAR 459-035-0040.

(10) "Fund" shall have the same meaning as the Public Employees Retirement Fund in ORS 238.660.

(11) "Health Insurance" means insurance for health care, as that term is defined in ORS 238.410(1)(c).

(12) "Medicare" means the federal health care insurance plan established under Title XVIII of the Social Security Act as amended.

(13) "Medicare Companion Plan" means a PERS-sponsored health insurance plan for eligible persons who are eligible for and enrolled in Medicare.

(14) "Non-Competitive Negotiation" means procurement through solicitation of a proposal from only one source.

(15) "PEBB" means the Public Employees' Benefit Board established under ORS 243.061.

(16) "PERS" shall have the same meaning as the Public Employees Retirement System in ORS 238.600.

(17) "PERS Member" shall have the same meaning as "member" provided in ORS 238.005(12).

(18) "Plan Year" means a 12-month period beginning January 1 and ending December 31.

(19) "Qualifying Service" means creditable service, as defined in ORS 238.005(5), plus any periods of employment with an employer participating in PERS that are required of the employee before becoming a PERS member.

(20) "Retiree" means a PERS member who is receiving a service or disability retirement allowance or benefit under PERS or who received an optional lump sum payment under ORS 238.315, or a person who is receiving retirement pay or pension calculated under ORS 1.314 to 1.380 (1989 Edition).

(21) "RHIA" means the Retirement Health Insurance Account established under ORS 238.420 to help defray the cost of the Medicare Companion Plan.

(22) "RHIPA" means the Retiree Health Insurance Premium Account established under ORS 238.415 to help defray the cost of PERS-sponsored health plans other than the Medicare Companion Plan.

(23) "Small Purchase Procedures" (informal bidding) means the relatively simple and informal procurement methods whereby price and rate quotations are obtained from at least three sources and selection is made on the basis of cost and other applicable criteria.

(24) "SRHIA" means the Standard Retiree Health Insurance account established within the Public Employees Retirement Fund separate from the General Funds to administer employee and the employer contributions to the PERS sponsored health insurance program.

(25) "Staff" means the employees of the Public Employees Retirement System.

(26) "Third Party Administrator" means the individual or organization that the Board contracts with to provide administrative services as specified in the contract.

Stat. Auth.: ORS 238.410 & ORS 238.650
Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 15-1998, f. & cert. ef. 12-17-98; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0010

Standard Retiree Health Insurance Account

(1) ORS 238.410(7) establishes the Standard Retiree Health Insurance Account (SRHIA). The SRHIA shall be used only for the purposes set forth in ORS 238.410(7).

(2) Upon receipt by PERS, all premium payments as described in OAR 459-035-0090, shall be deposited in the SRHIA.

(3) Funds in the SRHIA shall be paid out only as follows:

(a) In accordance with insurance carrier contracts, premiums charged by a carrier for eligible persons' health insurance coverage, shall be paid to the carrier(s) from the SRHIA.

(b) In accordance with contract(s) entered into by the Board under ORS 238.410(6), administrative costs incurred in administering the PERS health insurance program shall be paid from the SRHIA.

(4) The total contributions paid into the SRHIA, RHIA and RHIPA will not exceed 25% of the aggregate contributions to the retirement benefits.

(5) The Director shall provide a report at the close of each calendar year that will contain the following elements:

(a) Total contributions by participating employers into the Public Employees Retirement Fund during the calendar year immediately past and the total accumulation of such contributions since July 11, 1987.

(b) Total contributions paid by participating employers into RHIA and RHIPA, and the total accumulation of such contributions since July 11, 1987.

(c) Total contributions by all eligible persons into SRHIA.

(d) The ratio of (a) to (b)+(c) expressed as a percentage.

(6) The Director shall provide a report to the PERS Board disclosing the ratio expressed in the calculation of (5)(d) and shall note whether PERS is compliant with the 25% rule under Internal Revenue Code §401(h).

Stat. Auth.: ORS 238.410 & ORS 238.650
Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420
Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02

ADMINISTRATIVE RULES

459-035-0020

Eligibility, General

This rule describes the eligibility requirements for a person to be eligible to participate in a PERS-sponsored health insurance plan. An "eligible person" includes a retiree, a spouse, a dependent, a dependent domestic partner and a surviving spouse or dependent. Each category of "eligible person" is defined as follows:

- (1) A retiree as defined in OAR 459-035-0001(20).
- (2) A spouse means the spouse of an eligible retiree.
- (3) A dependent means a dependent child as defined in OAR 459-035-0001(5), and satisfies one of the requirements listed in subsections (a), (b), or (c) that follow:
 - (a) The child is less than 19 years of age.
 - (b) The child is less than 24 years of age, and is regularly enrolled and attending school; e.g. an academic, trade or vocational school.
 - (c) The child is 19 years of age or more and has either been continuously dependent upon the retiree since childhood due to disability or physical handicap, or has been covered under a health care insurance plan as the retiree's dependent for at least 24 consecutive months immediately prior to enrollment in a PERS sponsored health insurance plan. In either case, the following additional requirements must also be satisfied:
 - (A) The child is not able to achieve self-support through his or her work due to a developmental disability, mental retardation or physical handicap as verified by a physician and accepted by the carrier, and
 - (B) The incapacity is continuous and began prior to the date the child would otherwise have ceased to be an eligible dependent.
- (4) A dependent domestic partner as defined in OAR 459-035-0001(6).
- (5) A surviving spouse or dependent means:
 - (a) The surviving spouse or dependent of a deceased retired PERS member; or
 - (b) The surviving spouse or dependent of a deceased PERS member who was not retired but who was eligible to retire at the time of death; or
 - (c) The surviving spouse or dependent of a deceased retiree who was receiving a retirement payment or benefit, or a pension calculated under ORS 1.314 to 1.380 (1989 Edition), provided that the surviving spouse or dependent was covered under a PERS sponsored health insurance plan at the time of the retiree's death.
- (6) In no event shall an eligible person as defined in this rule be entitled to coverage under more than one PERS-sponsored health insurance plan other than medical and a dental plan.
- (7) In no event shall an eligible person as defined in this rule be entitled to coverage as both a retiree and a spouse, dependent, or dependant domestic partner.

Stat. Auth: ORS 238.410 & 238.650

Stats. Implemented: ORS 238.410, 238.415 & 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0030

Eligibility, Retirement Health Insurance Account

This rule describes the requirements for an "eligible retired member" participating in a PERS-sponsored Medicare Companion Plan to be eligible for contributions from the RHIA toward the cost of premiums for that plan. The amount of the contribution is defined in OAR 459-035-0060. An "eligible retired member" shall include the following:

- (1) A retiree who is enrolled in Parts A and B of Medicare and who:
 - (a) Is retired, is receiving a PERS service or disability retirement allowance, and had eight or more years of qualifying service as defined in OAR 459-035-0001(19) at the time of retirement; or
 - (b) Is receiving a PERS disability retirement allowance computed as if he or she had eight years or more of creditable service as defined in ORS 238.005(5).
- (2) A surviving spouse or dependent of a deceased eligible retired member as described in section (1) of this rule, who is enrolled in Parts A and B of Medicare, and who:
 - (a) Is receiving a retirement allowance or benefit from PERS; or
 - (b) Was covered under the retired member's PERS-sponsored health insurance plan and the deceased retired member retired before May 1, 1991.
- (3) An eligible surviving spouse or dependent receiving benefits under the 15-year certain optional form of benefit payment (ORS 238.305 Option 4) will be entitled to contributions from the RHIA only until the remainder of the 180 monthly benefit payments are paid, unless he or she meets the requirements in subsection (2)(b) this rule.
- (4) If both an eligible surviving spouse and an eligible surviving dependent are receiving benefits at the same time under the 15-year certain

optional form of benefit payment (ORS 238.305 Option 4), only the eligible surviving spouse shall be entitled to contributions from the RHIA unless the surviving spouse, in writing, waives the contribution in favor of the eligible surviving dependent.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0040

Eligibility, Retiree Health Insurance Premium Account

This rule describes the eligibility requirements for an "eligible retired state employee" participating in a PERS-sponsored health insurance plan, exclusive of dental coverage, to be eligible for a contribution from the RHIPA toward the cost of premiums for that health insurance plan. The amount of the contribution is established in OAR 459-035-0050. An "eligible retired state employee" shall include the following:

- (1) A retiree who was a state employee at the time of retirement and who is not eligible for Medicare, and who:
 - (a) Is receiving a PERS service or disability retirement allowance or benefit, and had 8 or more years of qualifying service as defined in OAR 459-035-0001(19) at the time of retirement; or
 - (b) Is receiving a PERS disability retirement allowance computed as if the member had eight or more years of creditable service as defined in ORS 238.005(5), and has attained the earliest service retirement age under ORS 238.280.
- (2) A surviving spouse or dependent of a deceased eligible retired state employee, as described in section (1) of this rule, who is not eligible for Medicare, and who:
 - (a) Is receiving a retirement allowance or benefit from PERS; or
 - (b) Was covered under the eligible retired state employee's PERS-sponsored health insurance plan, and the eligible retired state employee retired on or after September 29, 1991.
- (3) An eligible surviving spouse or dependent receiving benefits under the 15-year certain optional form of benefit payment (ORS 238.305 Option 4) will be entitled to contributions from the RHIPA only until the remainder of the 180 monthly benefit payments are paid, unless he or she meets the requirement of subsection (2)(b) of this rule.
- (4) If both an eligible surviving spouse and an eligible surviving dependent are receiving benefits at the same time under the 15-year certain optional form of benefit payment (ORS 238.305 Option 4), only the eligible surviving spouse shall be entitled to contributions from the RHIPA unless the surviving spouse, in writing, waives the contribution in favor of the eligible surviving dependent.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238.415

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0050

Contribution Payment From Retiree Health Insurance Premium Account for Eligible Retired State Employees Not Eligible for Medicare

This rule establishes the procedure for determining the amount of contribution that will be paid from the Retiree Health Insurance Premium Account (RHIPA)(ORS 238.415) on behalf of an eligible retired state employee under age 65, as described in OAR 459-035-0040, who is enrolled in a health insurance plan sponsored by PERS.

- (1) Definitions:
 - (a) "Health Insurance Premium" means the self-sustaining premium calculated to cover the projected claims and costs incurred by the insurance company for a participant in a health care plan. "Health Insurance Premium" includes retrospective premiums and employee contributions. "Health Insurance Premium" does not include any intentional load to cover dependents or other groups or participants;
 - (b) "Net to Carrier" means the health insurance premium due to the insurance company. "Net to Carrier" does not include any charges for PEBB or PERS health insurance administration;
 - (c) "Retrospective Premium" means any additional premium liability that is determined at the end of the plan year, based on any pre-determined formula.
- (2) On or before November 1 of each calendar year, staff shall determine the monthly amount available to be paid from the RHIPA on behalf of an eligible retired state employee enrolled in a PERS health insurance plan contracted for under ORS 238.410. In determining the average difference between the health insurance premiums paid by retired state employees under contracts entered into by the Public Employees Retirement Board and the health insurance premiums paid by state employees who are not retired under contracts entered into by PEBB (without regard to employees

ADMINISTRATIVE RULES

who have opted out of PEBB-sponsored health insurance coverage), the staff shall calculate the change in value of the average of active PEBB plans after adjusting for the demographic (age/sex) differences between:

(a) The active employee participants; and
(b) Retired members receiving a subsidy and participating in one of the PERS non-Medicare health insurance plans as follows:

(A) Obtain the average employee participation for each health insurance plan sponsored by PEBB for the most recent three-month period;

(B) Obtain the health insurance premium for each health insurance plan sponsored by PEBB for the plan year next following;

(C) Obtain the average eligible retired state employee participation for each health insurance plan sponsored by PERS for the most recent three-month period;

(D) Compute the average health insurance premium for all plans sponsored by PEBB pursuant to the following formula:

(i) Step 1. Multiply the average participation in paragraph (A) of this subsection by the health insurance premium in paragraph (B) of this subsection for each plan;

(ii) Step 2. Total the average participation for all plans;

(iii) Step 3. Total the result for all of the calculations in Step 1 of sub-paragraph (i) of this paragraph;

(iv) Step 4. Divide the total in Step 3 of sub-paragraph (iii) of this paragraph by the total in Step 2 of sub-paragraph (ii) of this paragraph.

(E) Compute the change in value of the average active PEBB plan pursuant to the following formula:

(i) Step 1. Divide the total in paragraph (C) of this subsection by the total in Step 2 of paragraph (D) of this subsection;

(ii) Step 2. Multiply the average participation for each plan in paragraph (A) of this subsection by the result of Step 1 of sub-paragraph (E)(i) of this subsection for each plan;

(iii) Step 3. Multiply the premium for each plan in paragraph (B) of this subsection by the factor 1.6423. The factor 1.6423 is the estimated ratio of non-Medicare retiree claims cost to active claims cost;

(iv) Step 4. Multiply the result of Step 2 of sub-paragraph (ii) of this paragraph by the result of Step 3 of subparagraph (iii) of this paragraph for each plan;

(v) Step 5. Total the results for all of the calculations in Step 4 of sub-paragraph (iv) of this paragraph;

(vi) Step 6. Total the results of the average participation calculations for all plans in Step 2 of sub-paragraph (ii) of this paragraph;

(vii) Step 7. Divide the total premium in Step 5 of sub-paragraph (v) of this paragraph by total average participation as calculated in Step 6 of sub-paragraph (vi) of this paragraph.

(F) The result of Step 7 of sub-paragraph (E)(vii) of this subsection minus Step 4 of sub-paragraph (D)(iv) of this subsection is the maximum monthly amount available to be paid by the PERS on behalf of an eligible retired state employee. Under no circumstances will this amount be less than \$0.

(3) The factor in Step 3 of sub-paragraph (2)(E)(iii) of this rule shall be evaluated no less frequently than every three years.

(4) The monthly amount available established under section (2) of this rule shall be published by November 1 of each calendar year, or as soon as possible thereafter, and shall be effective for the plan year next following for PERS sponsored plans.

(5) In the event an active plan is not to be renewed for a subsequent plan year, the participants shall be deemed to be covered by another existing plan most similar in benefits.

(6) This rule applies to the amount to be paid by PERS for the plan year 1993 and subsequent plan years.

(7) No person eligible for a contribution from the RHIPA as provided for in this rule shall be entitled to a contribution from the RHIA.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.415

Hist.: PERS 8-1992, f. 12-14-92, cert. ef. 12-31-92; PERS 4-1996, f. & cert. ef. 6-11-96; PERS 4-1998, f. & cert. ef. 3-16-98; PERS 15-1998, f. & cert. ef. 12-17-98; PERS 12-2000(Temp), f. 12-15-00 cert. ef. 1-1-01 thru 6-29-01; PERS 2-2001, f. & cert. ef. 4-12-01; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0070

Enrollment

(1) Enrollment requirements of PERS-Sponsored health insurance plans for eligible persons are as follows:

(a) An eligible person must complete all applicable parts of PERS Medical & Dental Insurance Application form, and file the form with the Third Party Administrator including, in the case of a dependent domestic partner, an Affidavit of Dependent Domestic Partnership. The form must indicate which plan is desired and it must list individually all dependents,

including the spouse, that are to be enrolled. The form can be obtained from the Third Party Administrator or PERS;

(b) An eligible person who is a retiree may enroll:

(A) Within 90 days of the retiree's effective date of retirement;

(B) At any time if covered under another group health insurance plan for 24 consecutive months immediately preceding enrollment, provided that the application for enrollment is filed within 30 days of loss of coverage. Health care coverage under workers' compensation, Medicare or any other governmental entitlement program for health care do not qualify as other group health insurance coverage for purposes of this paragraph;

(C) Within 90 days of initial Medicare eligibility, if the retiree is enrolled in Parts A and B of Medicare; or

(D) During an open enrollment period designated by the Board.

(c) Except as provided in subsection (f) of this section, an eligible spouse or dependent must be enrolled at the same time and in the same plan as the eligible retiree;

(d) An eligible surviving spouse or dependent who is enrolled under the deceased retiree's plan at the time of death may continue coverage under that plan, and must complete a Medical & Dental Insurance Application form as soon as possible following the retiree's death;

(e) An eligible surviving spouse or dependent who is not covered under the retiree's plan at the time of the retiree's death, may enroll:

(A) Within 90 days of the retiree's death;

(B) At any time if covered under another group health insurance plan for 24 consecutive months immediately preceding enrollment, provided that the application for enrollment is filed within 30 days of loss of coverage. Health care coverage under workers' compensation, Medicare or any other governmental entitlement program for health care do not qualify as other group health insurance plan coverage for purposes of this paragraph;

(C) Within 90 days of initial Medicare eligibility, if he or she is enrolled in Parts A and B of Medicare; or

(D) During an open enrollment period designated by the Board.

(f) A new spouse, dependent domestic partner, or dependent may be enrolled:

(A) Within 30 days of becoming a spouse, a dependent domestic partner or dependent;

(B) If not enrolled in Medicare, only with the same carrier that the eligible retiree is enrolled in;

(C) If enrolled in Parts A and B of Medicare, only in the Medicare Companion Plan offered by the same carrier that covers the eligible retiree.

(g) An eligible retiree's spouse may enroll within 90 days of initial Medicare eligibility, if he/she is enrolled in Parts A & B of Medicare even though the retiree remains enrolled in a non-PERS health plan.

(2) Special enrollment requirements for dental insurance plans:

(a) Only persons who are enrolled in a PERS-sponsored health insurance plan may enroll in a PERS-sponsored dental insurance plan;

(b) Dental insurance coverage is not available to any eligible person unless all family members (the retiree, spouse, dependent domestic partner and dependent(s)) who are enrolled in a PERS-sponsored health insurance plan also enroll in the same PERS-sponsored dental insurance plan;

(c) If the retiree, spouse, dependent domestic partner and dependent(s) do not enroll in a PERS-sponsored dental insurance plan when eligible, or later choose to discontinue dental coverage, they will not be allowed to re-enroll in a PERS-sponsored dental insurance plan.

Stat. Auth.: ORS 238.410 & ORS 238.650

Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420

Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 15-1998, f. & cert. ef. 12-17-98; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0080

Effective Date of Coverage

(1) For an eligible person who enrolls in a PERS sponsored health insurance plan under the provisions of OAR 459-035-0070, the effective date of coverage shall be the first of the month following receipt of a completed PERS Medical & Dental Insurance Application form but not before the date described as follows:

(a) For an eligible retiree, the latest of the following dates:

(A) The effective date of retirement if enrolled within 90 days of the effective date of retirement;

(B) The termination date of other group health insurance coverage;

(C) For a Medicare Companion Plan, the effective date of enrollment in Parts A and B of Medicare; or

(D) The date specified in an announcement of a plan change period or an open enrollment period, if applicable.

(b) For an eligible spouse or dependent, the latest of the following dates:

ADMINISTRATIVE RULES

- (A) The date the retiree's coverage is effective;
 - (B) The first of the month following the termination date of other group health insurance coverage;
 - (C) For a Medicare Companion Plan, the effective date of enrollment in Parts A and B of Medicare; or
 - (D) The date specified in an announcement of a plan change period or an open enrollment period, if applicable.
- (c) For a new eligible spouse, dependent, or dependent domestic partner, the first day of the month following the date the completed enrollment form is filed and in the case of a domestic partner, an Affidavit of Dependent Domestic Partnership, except in the following situations:
- (A) A newborn child is covered from the moment of birth.
 - (B) An adopted child is covered from the date he or she is placed in the custody of the eligible retiree.
 - (d) For an eligible surviving spouse or dependent, the first of the month following the filing of an application for health insurance coverage.
- (2) Coverage shall cease for an eligible person on the earliest of the following dates:
- (a) The end of the month in which a signed notification is received by PERS from the covered person to terminate coverage.
 - (b) The end of the month for which the last premium is paid.
 - (c) The end of the month in which a person ceases to be an eligible person, subject to any continuation of coverage rights under state or federal law.

Stat. Auth.: ORS 238.410 & ORS 238.650
Stats. Implemented: ORS 238.410, ORS & ORS 238.420
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0090

Retiree Health Insurance Employee Contributions Account

(1) An eligible person who elects to participate in a PERS-sponsored health insurance plan shall choose one of the following methods for the payment of contributions for that coverage:

- (a) The direct payment method by an electronic transfer of the monthly contribution for the PERS-sponsored health insurance plan from an eligible person's bank account to the Third Party Administrator; or
- (b) The direct payment method by issuing a check or money order for the monthly contribution for the PERS-sponsored health insurance plan to the Third Party Administrator; or
- (c) The pension deduction method wherein PERS shall deduct the monthly contribution from the service or disability retirement allowance or other benefit payable to the eligible person and forward the contribution to the Standard Retiree Health Insurance Account.

(A) The total monthly contribution due shall be deducted for the benefit option selected by the eligible person.

(B) If an eligible person's monthly PERS benefits are not sufficient to cover the monthly contribution for the PERS-sponsored health insurance plan, the deduction method may not be used.

(2) Employee contributions for the PERS-sponsored health insurance plan shall be paid monthly and shall consist of the following:

(a) The premium charged by the carrier for the eligible person's health insurance coverage, less any amount contributed on the eligible person's behalf from the RHIA or RHIPA; and

(b) The eligible person's share of the administrative costs incurred by PERS in administering the health insurance program as provided for in ORS 238.410(4).

(3) If payment is by check or money order, the check or money order must be physically received by the Third Party Administrator on or before the due date.

(4) Failure to make the payment by the due date shall result in termination of a person's PERS-sponsored health insurance coverage.

(5) On receipt of an eligible person's contribution, the Third Party Administrator shall deposit the contributions in the Standard Retiree Health Insurance Account. Amounts deposited in the Standard Retiree Health Insurance Account shall be used only to pay health insurance premiums on behalf of eligible persons and the costs incurred by PERS in administering the health insurance program.

Stat. Auth.: ORS 238.410 & ORS 238.650
Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0200

Contracting for Health Insurance Plans, Administrator and Other Services

(1) In accordance with ORS 238.410, the Board shall enter into one or more contracts with one or more carriers to provide health insurance

coverage to all eligible persons. Such contracts may include health insurance plans that provide:

- (a) Coverage supplemental to Medicare coverage;
- (b) Non-Medicare health insurance coverage;
- (c) Managed care health plan coverage;
- (d) Dental insurance coverage; and
- (e) Long term care insurance plans.

(2) The Board may retain consultants, brokers or other advisory personnel, or organizations specializing in health care costs containment or other administrative services when it deems necessary.

(3) The procurement of health insurance coverage, health insurance administration services, and other specialized services will follow one or more of the following procurement methods:

(a) Small Purchase Procedures. Small Purchase Procedures may be used for the procurement of services costing not more than \$75,000.

(b) Competitive Negotiation. Competitive Negotiation shall be used for personal service contracts in excess of \$75,000 per agreement per fiscal year and may be used for contracts of less than \$75,000. Exceptions may be granted to accommodate one or more of the conditions described in subsection (3)(c) of this rule with the approval of the Director. The procedure described below must be followed when Competitive Negotiation is used.

(A) A Request for Proposal (RFP) shall be prepared for contracts for which competitive negotiation procedures will be used. The RFP shall include, at a minimum, the following information:

- (i) Date and hour which proposals must be received;
- (ii) Description of work; and
- (iii) Evaluation specific to contract criteria.

(B) Notification of the availability of the RFP shall be advertised in newspapers or periodicals as determined by the staff.

(C) Proposals shall be evaluated in a manner consistent with the evaluation criteria included in the RFP by the Board or committee thereof. A written document stating why the selection was made will be on file at PERS office.

(D) Paragraphs (3)(b)(B) and (3)(b)(C) of this rule may be excepted from these competitive negotiation procedures if the Director determines it is warranted by time or cost considerations.

(c) Non-Competitive Negotiation. Non-Competitive Negotiation may be used for contracts if public notice of the Board's intent to contract for services is properly published and one of the following is applicable:

(A) The item or service is available only from a single source, or the sole source has special skills that are only available based upon his/her expertise or situation;

(B) Public need or emergency situation compels purchasing the coverage or service without the delay incident to competitive solicitation; or

(C) The contract is a renewal of an existing contract, subject to approval by all required parties."

Stat. Auth.: ORS 238.410 & ORS 238.650
Stats. Implemented: ORS 238.410
Hist.: PERS 4-1996, f. & cert. ef. 6-11-96; PERS 14-2002, f. & cert. ef. 11-18-02

459-035-0220

Contract and Bid Request Solicitations

The Board and PERS will comply with the requirements of ORS 200.035 regarding the timely notice of all contract and bid request solicitations in excess of \$5,000 to the Advocate for Minority, Women and Emerging Small Business.

Stat. Auth.: ORS 238.410 & ORS 238.650
Stats. Implemented: ORS 238.410, ORS 238.415 & ORS 238.420
Hist.: PERS 14-2002, f. & cert. ef. 11-18-02

Oregon State Library
Chapter 543

Adm. Order No.: OSL 1-2002(Temp)

Filed with Sec. of State: 12-10-2002

Certified to be Effective: 12-16-02 thru 4-1-03

Notice Publication Date:

Rules Amended: 543-040-0040

Subject: Changes the required distribution of Ready to read Grants from the end of the second quarter of fiscal year 2002-03 to the end of the third quarter of fiscal year 2002-03.

Rules Coordinator: James B. Scheppeke—(503) 378-4367

ADMINISTRATIVE RULES

543-040-0040

Distribution Schedule

The State Library shall distribute Ready to Read Grants to all eligible library recipients prior to the end of the third quarter of fiscal year 2002-03.
Stat. Auth.: ORS 357.015(2) & ORS 357.760
Stats. Implemented: ORS 357.740 - ORS 357.780
Hist.: OSL 1-1980, f. & ef. 9-29-80; OSL 1-1989, f. 4-18-89, cert. ef. 4-17-89; OSL 1-1993, f. & cert. ef. 11-10-93; OSL 1-1996, f. & cert. ef. 10-23-96; OSL 1-2002(Temp), f. 12-10-02, cert. ef. 12-16-02 thru 4-1-03

Oregon State Lottery
Chapter 177

Adm. Order No.: LOTT 21-2002

Filed with Sec. of State: 11-25-2002

Certified to be Effective: 11-25-02

Notice Publication Date: 10-1-02

Rules Adopted: 177-010-0003

Rules Amended: 177-010-0000, 177-010-0007, 177-010-0009, 177-010-0025, 177-010-0045, 177-010-0050, 177-010-0080, 177-010-0085, 177-010-0100, 177-010-0110, 177-010-0120

Rules Repealed: 177-005-0000, 177-010-0005, 177-010-0020, 177-010-0040, 177-010-0055, 177-010-0060, 177-010-0065, 177-010-0070, 177-010-0096, 177-010-0300

Subject: Division 10 incorporates a new section for Definitions. OAR 177-010-0025 (Director) is being revised to avoid conflicts with constitutional and statutory provisions. OAR 177-010-0050 has been renamed to Merchandise Prizes. OAR 177-010-0096 (Non-Sufficient Funds Policy) has been moved to the Retailer Contract Division 40. OAR 177-010-0100 (Request and Fees for Copies) is being revised per Attorney General advice. OAR 177-010-0300 (Bonus Point Program) has been suspended as obsolete. The other proposed amendments generally are housekeeping and correction of grammar. OAR 177-010-0005, 177-010-0055 and 177-010-0070 have been suspended for redundancy and are being incorporated into the new General Game rule division. OAR 177-010-0020, 177-010-0040, 177-010-0060 and 177-010-0065 are being suspended and permanently repealed.

Note: OAR 177-010-0090 (Child Support Validation Check) is not part of this revisions packet.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-010-0000

General

(1) **Applicability:** Unless the context requires otherwise, the definitions contained in this Division are generally applicable throughout OAR Chapter 177. Specific Divisions may contain the definitions of words specific to that Division. In the event of a conflict, the definition in the specific Division controls the usage of the word in that Division.

(2) **Headings:** Where headings are used throughout OAR Chapter 177, they are for the convenience of the user only and are of no substantive effect.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020
Hist.: SLC 8-1985, f. & ef. 6-21-85; LC 4-1990, f. & cert. ef. 4-3-90; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0003

Definitions

(1) "Commissioner" has that definition as defined in ORS 461.010(2).
(2) "Director" has that definition as defined in ORS 461.010(3).

(3) "Drawing coordinator" means the Lottery employee designated by the Assistant Director for Security, subject to the approval of the Director, to develop and implement procedures for conducting drawings.

(4) "Immediate family" and "family member" mean a natural person's spouse, child, brother, sister, or parent by blood or adoption.

(5) "Lottery" or "State Lottery" has that definition as defined in ORS 461.010(1).

(6) "Lottery Commission" or "Commission" has that definition as defined in ORS 461.010(4).

(7) "Lottery contract" means any contract entered into by the Lottery for the purchase, lease, or sale of goods or services.

(8) "Lottery contractor" or "Contractor" has that definition as defined in ORS 461.010(9).

(9) "Lottery game" or "Game" has that definition as defined in ORS 461.010(5).

(10) "Lottery game retailer" or "Retailer" has that definition as defined in ORS 461.010(7).

(11) "Lottery vendor" or "Vendor" has that definition as defined in ORS 461.010(8).

(12) "Person" has that definition as defined in ORS 461.010(6).

(13) "Prize" means any award of economic value, monetary or otherwise, that may be distributed to a Lottery player for submitting a valid claim based on a winning Lottery ticket or share.

(14) "Retailer contract" means any written contract entered into by the Lottery with a retailer for selling Lottery tickets or shares to the public.

(15) "Share" means an opportunity to win a prize in a Lottery game that does not use certificates or tokens, such as in video lottery games.

(16) "Ticket" means a certificate or token of the opportunity to win a prize in a Lottery game.

(17) "Unclaimed prize" means any prize offered in a Lottery game which has not been submitted to the Lottery for validation and prize payment within the specified prize claim period and for which the Lottery has data or evidence that the ticket or share was sold or distributed to the public.

(18) "Video lottery terminal" means an electrical, electronic, or electro-mechanical device, component, or terminal, which may display a game or other graphics through the use of a video display screen, which is available for consumer play upon payment of the necessary or appropriate consideration, with winners determined by the application of the element of chance and the possible prizes displayed on the device.

(19) "Winner claim form" means a form provided by the Lottery to a player for the purpose of claiming a prize.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 192.440, ORS 461.020, ORS 461.100, ORS 461.120, ORS 461.170, ORS 461.213, ORS 461.215, ORS 461.230, ORS 461.240, ORS 461.250, ORS 461.260, ORS 461.300, ORS 461.310, ORS 461.500 & ORS 461.510
Hist.: LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0007

Notice of Proposed Rules

Prior to the adoption, amendment, or repeal of any rule, other than a temporary rule which is adopted in accordance with ORS 183.335(5), the Lottery Director shall give notice of the intended action:

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

(2) By mailing a copy of the notice at least 28 days before the effective date of the intended action to persons on the Lottery Director's mailing list established pursuant to ORS 183.335(8) and at least 49 days before the effective date of the intended action to the persons specified in ORS 183.335(15);

(3) By delivering a copy of the notice to the Capitol Press Room;

(4) By listing any rule changes proposed for adoption on the agenda for the Commission's monthly meeting.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.120(2)
Hist.: LC 5-1990, f. & cert. ef. 4-3-90; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0009

Model Rules of Procedure

The Lottery has adopted the following Model Rules of Procedure from the Attorney General under the Oregon Administrative Procedures Act as adopted October 3, 2001:

(1) Division 1 Rulemaking.

(2) Division 2 Declaratory Rulings.

(3) Division 5 Collaborative Dispute Resolution.

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

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.120(2)
Hist.: LC 5-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0025

Director of the Oregon State Lottery

(1) The Director shall have the authority to implement and execute such policies and procedures as the Director may deem appropriate for the efficient administration of the Lottery.

(2) The Director may appoint, prescribe the duties of, and establish the compensation of, no more than four assistant directors as the Director deems necessary. The Director shall supervise the assistant directors. The

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Commission delegates the authority to the Director to discipline, and/ or terminate with or without cause, any or all of the assistant directors at any time. The decision of the Director to discipline and/ or terminate an assistant director is final.

(3) Except for approving the salaries of the Director and the assistant directors, and cost-of-living increases, the Director shall have the authority to establish and implement personnel policies and procedures pertaining to the employment, termination, and compensation of all Lottery staff.

(4) The Director may adopt temporary administrative rules in accordance with the procedures set forth in ORS 183.335(5) and (6) upon the Director's signature.

(5) The Director shall perform all duties, exercise all powers and jurisdiction, assume and discharge all responsibilities and carry out and effect the purposes of ORS 461.

(6) The duties and responsibilities of operating a lottery which are not otherwise specified in law or rules are reserved to the Director subject to review and approval by the Commission.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.150

Hist.: SLC 13-1986(Temp), f. & ef. 6-13-86; SLC 19-1986, f. & ef. 7-29-86; LC 4-1990, f. & cert. ef. 4-3-90; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0045

Contingency Reserve

Use of Reserve: The money allotted to Lottery's contingency reserve may include amounts retained to fund specific future expenses or may be for an undesignated purpose. The Lottery shall not include contingency reserve expenditures in its calculation of the total annual revenues allocated for administrative expenses.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.510

Hist.: SLC 8-1985, f. & ef. 6-21-85; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0050

Merchandise Prizes

The Director may, in the exercise of the Director's discretion, pay the cash value of a merchandise prize in lieu of that prize. The cash value of a merchandise prize is the amount that the Lottery paid for the merchandise.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.230

Hist.: SLC 9-1986, f. & ef. 5-28-86; LC 4-1990, f. & cert. ef. 4-3-90; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0080

Sale of Tickets and Shares

(1) The Director shall contract with retailers for the sale of Lottery tickets and shares. The contract shall include the terms and conditions and incorporate by reference the rules applicable to the sale of all Lottery tickets and shares sold by the retailer.

(2) The Director may also develop procedures for the sale of Lottery tickets and shares directly to the public. The procedures shall contain measures to ensure the accountability and security of all tickets and shares sold to the public by Lottery employees.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.260

Hist.: LC 12-1990, f. & cert. ef. 10-2-90; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0085

Unclaimed Prize Money

Any prize not claimed within the specified period for a lottery game is forfeited and credited to the public purpose. The Lottery shall transfer unclaimed prize money when it transfers proceeds allocated to the public purpose.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.250

Hist.: LC 2-1995, f. 4-27-95, cert. ef. 5-1-95; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0100

Requests and Fees for Copies of Public Records

(1) **Procedure:** A request to inspect or obtain copies of a public record in the custody of the Lottery must be made in writing and delivered in person or by mail to the Director, Oregon State Lottery, P.O. Box 12649, Salem, Oregon 97309. At its discretion, the Lottery may accept oral requests. Each request must include the name, address, and telephone number of the requester.

(2) **Fees — Paper Records:** For paper records a fee of \$0.10 (ten cents) per page copied is charged.

(3) **Fees — Computer Records:** For standard computer reports which are maintained in machine readable or electronic form, the following fee schedule applies:

(a) \$7.50 for a computer-generated paper copy;

(b) \$10.00 for producing a copy of the report on a floppy disk.

(4) **Fees — Other Requests:** For all other requests, including but not limited to, requests for records to be created using existing Lottery software, or video, or audio tape records, the Lottery shall determine its actual costs to produce the records at the time the request is made. This fee must be paid before the Lottery produces the records.

(5) **Additional Fees:** If the Lottery's costs in responding to a request exceed the costs normally associated with a routine file search, an additional fee to cover those costs may be imposed.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 192.440

Hist.: LC 6-1994, f. 7-22-94, cert. ef. 8-1-94; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0110

Lottery Trade or Service Marks

(1) **Requests for Use:** All requests from the public for the use of trade or service marks registered by the Lottery must be approved by the Director or the designee of the Director. Trade or service marks registered by the Lottery include, but are not limited to, the Lottery's name, logo, and promotional names.

(2) **Requirements:** All requests must be in writing and must include a sample of the proposed use of the trade or service mark. The request must also explain how and where the trade or service mark will be used.

(3) **Permission:** Permission for use of a trade or service mark may be granted in the exercise of the sole and exclusive discretion of the Lottery, taking into account the particularly sensitive nature of the Lottery and insuring the integrity of its operations and image. Approval for use of a trade or service mark shall not be given for display of the mark in an inappropriate manner or format.

(4) **Rights:** Nothing in this rule shall be construed to grant or create any expectation or right to display, publish or use, in any manner, in whole or in part, any trade or service mark registered by the Lottery. Any display, publication or use of any trade or service mark registered by the Lottery without the express, written prior consent and agreement of the Lottery is unauthorized and unlawful, and the Lottery expressly reserves the right to take any action to enforce its rights in such trade and service marks.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.150

Hist.: LC 4-1994, f. 3-31-94, cert. ef. 4-1-94; Administrative Correction 4-15-98; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

177-010-0120

Display and Demonstration of a Trade Show Device at a Trade Show

(1) **Definition:** For the purposes of this rule, "Trade show device" means a gaming device that would otherwise be a gray machine as described in ORS 167.117(9) or a slot machine as described in ORS 167.117(19) except that the device is authorized for display or demonstration purposes at a trade show and the device is displayed and demonstrated by a manufacturer or manufacturer's representative as an example of a model that is currently in production for sale or is scheduled to be in production for sale by the manufacturer.

(2) **Trade Show Display:** A trade show device approved for display and demonstration at a trade show:

(a) Cannot be used for actual wagering. Any device that accepts any consideration is not authorized under this rule.

(b) Cannot be sold directly from the site of the trade show or while in transit to or from the trade show.

(c) Must have the coin or bill acceptor removed or physically restricted from use so that wagering is not possible.

(d) Must have a sign posted in close proximity to the device that contains the phrase, "No one under 21 years of age is allowed to operate this machine." A vendor displaying and demonstrating trade show devices must ensure that minors under the age of 21 are not allowed to operate the device.

(3) **Limitations:** For purposes of this rule, a trade show cannot be held at a location or in a manner in which the Oregon State Police Lottery Security Section is encumbered from ensuring compliance with applicable law. For example, a trade show cannot be held in a mobile demonstration van or be conducted simultaneously at multiple locations.

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(4) **Application:** A vendor participating in a trade show must complete, in its entirety, and file an application with the Director for authorization to display, demonstrate, and transport a trade show device at a trade show. The application shall include, but not be limited to:

(a) The full name, address, and telephone number of both the business and the individual initiating the request to display and demonstrate such a device at a trade show;

(b) The title, location, and dates of the trade show;

(c) The full name, address, and telephone number of the sponsor or organizer of the trade show;

(d) The manufacturer of each device;

(e) The serial number of each device;

(f) The model of each device;

(g) The schedule of transport of such a device;

(h) The specific address and location of any intermediary storage sites for the device before or after the trade show; and

(i) The name, address, and telephone number of a person who can be contacted if questions arise regarding any aspect of the authorization, the devices, or the trade show.

(5) **Approval:** The Director may approve, in writing, an application to display, demonstrate, and transport a trade show device submitted under Section (4) upon finding that each device identified in the application is a trade show device and that the applicant will use the trade show device solely for display and demonstration purposes at a trade show that is not open to the public and where minors under the age of 21 are prohibited from operating any trade show device.

(6) **Approval to Accompany Machine:** Upon approval by the Director, a copy of the Director's approval to display, demonstrate, and transport a trade show device must accompany the device while in transit to or from the trade show and while the device is at the trade show.

(7) **Transport:** A trade show device scheduled to be displayed or demonstrated at a trade show must be transported as described in the approval to display, demonstrate, and transport the device. Any variation in the number, type, or serial number of devices to be displayed and demonstrated at a trade show, or of the schedule of the transport of the devices to or from a trade show contained in the authorization shall be immediately reported to the Lottery following notification procedures described in the authorization.

(8) **Inspection:** Trade show devices displayed or demonstrated at a trade show must be available for inspection by the Oregon Lottery Security Section to assure compliance with applicable law.

(9) Violations of this rule may subject the device to confiscation.

Stat. Auth.: Or. Const. Art. XV, Sec. 4 & ORS 461

Stats. Implemented: OL 1999, Ch. 193 & ORS 461.215

Hist.: LOTT 12-1999(Temp), f. & cert. ef. 12-27-99 thru 6-20-00; LOTT 3-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02

Adm. Order No.: LOTT 22-2002

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Rules Adopted: 177-040-0051, 177-040-0052

Rules Amended: 177-040-0000, 177-040-0001, 177-040-0003, 177-040-0005, 177-040-0010, 177-040-0025, 177-040-0040, 177-040-0050, 177-040-0055, 177-040-0105

Rules Repealed: 177-040-0012

Subject: OAR 177-040-0051 (Designated Employees and Hours of Payment) and 177-040-0052 (Non-Sufficient Funds Policy) were revised and moved from Division 10. OAR 177-040-0050 has been revised to add Retailer training requirements. OAR 177-040-0055 has been revised regarding the use of the Lottery's trade or service marks. The other proposed amendments generally are housekeeping and correction of grammar. OAR 177-040-0012 is being suspended and permanently repealed because it is obsolete.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0000

Definitions

For purposes of OAR chapter 177 division 40, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Age-controlled area" means an area where natural persons who are under 21 years of age are prohibited from entering or remaining as posted by either the Lottery or the Oregon Liquor Control Commission.

(2) "Applicant" means a person applying for a contract with the Lottery for the purpose of selling Lottery tickets or shares to the public, and any key person.

(3) "Application" means the forms, documents, or other information that the Lottery requires an applicant to submit to the Lottery in order to apply for or maintain a retailer contract.

(4) "Business" includes:

(a) A commercial activity engaged in for profit or gain; or

(b) The activity engaged in by a nonprofit organization; or

(c) The activity engaged in by a private club as defined in ORS 471.175(8).

(5) "Complete application" means an application that is completely filled out, and when required, is signed by the applicant, and includes all the documentation and information requested by the Lottery.

(6) "Premises" means the building and grounds occupied by a business, including those areas not normally open to the public. Premises includes an area designated by the Lottery at any single location identified in an application as a proposed site for Oregon video lottery terminals.

(7) "Key person" means:

(a) All officers, directors and stockholders of a privately held corporation including the officers, directors and stockholders of any parent company;

(b) All officers, directors and those stockholders who own 5% or more of a publicly traded corporation including the officers, directors and those stockholders who own five percent or more of any parent company;

(c) For a private club as defined in ORS 471.175(8), the president or equivalent position, the treasurer or equivalent position, and officers, directors, trustees, and managers who oversee or direct the operation of the food, beverage, lottery, or other gambling related activities of the private club. The definitions in subsection (7)(a) and (b) do not apply to private clubs.

(d) In a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(e) In an association, the members, officers, and directors;

(f) In a partnership or joint venture, the general partners, limited partners, or joint venturers;

(g) In a limited liability company all the members and managers;

(h) If any parent company, partner, member, manager of a limited liability company, shareholder or joint venturer is itself a corporation, association, trust, limited liability company, partnership, or joint venture, then the applicant shall provide disclosure for such entity as if it were a key person;

(i) Immediate family members as required in ORS 461.300;

(j) The sole proprietor, if the retailer is a sole proprietor;

(k) Any person who acts or who has the authority to act on behalf of the owner in all matters concerning the operation of the owner's business during all business hours. This definition does not include a "shift manager" or a "store manager" unless qualified under this rule. The following are examples of managers who are key persons under this definition:

(A) A person who operates the business for a corporation or absentee owner, such as a general manager;

(B) A person who operates multiple locations or supervises multiple store managers, such as an area manager; or

(C) Any person who, acting on behalf of the owner, performs duties that amount to full responsibility for the daily operation of the business. Full responsibility means the person has the authority to perform and routinely performs all of the following duties: the hiring and firing of employees, making purchasing decisions relating to the buying of supplies and inventory; and conducting banking functions for the business;

(l) A landlord who receives 40% or more of the retailer's Lottery commissions as a part of lease payments and/or rent, or any landlord who the Director finds, based on reasonably reliable information, exerts influence over the operation of the retailer's business;

(m) Any person who has a lease, contract, or other agreement with the applicant or retailer or anyone else, to provide food service or to manage or operate any part of the business in a video lottery retailer's premises other than as an employee.

(n) Notwithstanding the information each person is required to disclose described in ORS Chapter 461, the Director may waive disclosure requirements for the persons in (a) through (m) of this section when the Director concludes it is reasonable and prudent to do so and will not jeopardize the fairness, integrity, security, or honesty of the Lottery.

(o) Any reference to a "control person" of a retailer in OAR chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on the

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effective date of this rule shall be deemed to refer to a "key person" as defined in this section.

(8) "Personal disclosure" means that part of the application which relates to a natural person's personal, criminal, and financial background.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.300

Hist.: SLC 3-1985(Temp), f. & ef. 1-15-85; SLC 8-1985, f. & ef. 6-21-85; LC 11-1987, f. 6-22-87, ef. 7-1-87; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert.. ef. 11-25-02

177-040-0001

General Application Requirements

(1) Any person may request an application from the Lottery.

(2) The Director may require any degree or type of disclosure necessary of the applicant or any other person in order to assure the security and integrity of the Lottery. An applicant must disclose to the Lottery all information required by the Director.

(3) An applicant must file a complete application. The application shall include, but not be limited to, a requirement that the applicant provide documents and other information relating to the applicant's personal, financial, and criminal background and an applicant's associations with other persons. The application shall also include, but not be limited to:

(a) An authorization, signed by the applicant, to investigate the applicant;

(b) Written consent to allow the examination of all accounts and records to be considered by the Director to be material to the application;

(c) Disclosure of the source of funds, financing, and business income used for the purchase and operation of the applicant's business.

(d) If the premises are not wholly owned by the applicant, the applicant shall furnish to the Lottery:

(A) A statement of the name and address of the owner or owners of such premises;

(B) A copy of all agreements whereby the applicant is entitled to possession of the premises;

(C) Complete information pertaining to the interest held by any person other than the applicant, including interest held under any mortgage, deed of trust, bond or debenture, pledge of corporate stock, voting trust agreement, or other device; and

(D) Such other information as the Lottery may require.

(4) An applicant's failure to comply with any application or disclosure requirement may be grounds for denial or rejection of the application.

(5) An applicant must immediately report to the Lottery, in writing, any material changes to the application during the application process. Material changes means any change that may affect the Lottery's evaluation of the application based on the requirements contained in division 40 of these rules.

(6) In submitting an application, the applicant expressly waives any claim against the Lottery, the Director, the Commission, the State of Oregon and their officers and employees for damages that may result. Each applicant also accepts any risk of adverse public notice, embarrassment, criticism, damages, or claims which may result from any disclosure or publication by a third party of any public information on file with the Lottery.

(7) When an applicant has submitted a complete personal disclosure to the Lottery within the preceding two years, the applicant need not necessarily submit a new personal disclosure, but if the applicant does not submit a new personal disclosure, the applicant must submit, on forms approved by the Director, a sworn statement regarding any changes which may have occurred regarding the accuracy of the information provided in the previous personal disclosure. The Director may require the applicant to submit a complete personal disclosure if the Director determines substantial changes have occurred.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert.. ef. 11-25-02

177-040-0003

Application for Temporary Lottery Retailer Contract

(1) For the purposes of this rule, temporary retailer contract means a contract issued to a retailer for a temporary period. A temporary contract may be formed subject to such special terms, conditions, or limitations as the Director may deem prudent.

(2)(a) To apply for a temporary retailer contract, an applicant must submit a complete application for a retailer contract.

(b) When an applicant intends to apply for a temporary contract for a business which the applicant is purchasing from an existing Lottery retailer, the applicant may submit to the Lottery a complete application with a

copy of the purchase agreement and other relevant sales documents prior to the date the applicant takes possession of the premises pursuant to the purchase agreement. Notwithstanding submission of the application prior to the date of possession, the Lottery shall not enter into a temporary contract with the applicant until on or after the date the applicant takes legal possession of the business.

(3) When the Lottery accepts the complete application for a temporary retailer contract, the Director will conduct an abbreviated investigation of the applicant and the business. That investigation includes, but is not limited to:

(a) A computerized background check for criminal arrests and convictions;

(b) A credit check using the services of a commercial credit reporting company; and

(c) An inspection of the business for which the applicant seeks a temporary retailer contract.

(4) An applicant may qualify for a temporary retailer contract if, based on the abbreviated investigation and on the application, all of the following criteria are met:

(a) The applicant is applying for a retailer contract at a specific location;

(b) The "Criteria Precluding Entering Into A Contract" described in OAR 177-040-0005 do not apply to the applicant;

(c) The applicant has no criminal convictions of any kind within five years of the date application is made;

(d) The applicant has no convictions as described in the "Personal Criteria Which May Be Grounds for Denial", OAR 177-040-0010 sections (3), (6), and (7);

(e) The applicant has no Class "A" misdemeanor or felony charges pending against the applicant;

(f) The applicant has no outstanding judgments, liens, or collections, except those judgments which the applicant is disputing through a legal process;

(g) The applicant is in compliance with all tax laws;

(h) The applicant has certified that their location is in compliance with the "Retailer Wheelchair Accessibility Program" criteria described in OAR 177-040-0070;

(i) The applicant has the appropriate Oregon Liquor Control Commission license, as defined in ORS Chapter 461, if applying for a contract to offer video Lottery games; and

(j) There are no apparent factors regarding the applicant to cause the Director to reasonably conclude that the applicant poses an actual or apparent threat to the fairness, honesty, integrity or security of the Lottery and its games. Factors that may pose a threat include, but are not limited to, any of the following examples:

(A) the applicant or key person has one or more criminal arrests or convictions, depending on the nature and severity of the crimes involved; or

(B) the applicant or key person has been involved in any civil action in which the final judgment indicates that the applicant or key person is not financially responsible, depending on the nature, severity, and recency of the action.

(5) Prior to the effective date of the temporary retailer contract, the Director may require the applicant to:

(a) Receive training from the Lottery;

(b) Establish an electronic funds transfer (EFT) bank account for Lottery funds;

(c) Pay all necessary fees associated with the installation of telephone lines and telephone service;

(d) Agree to pay all necessary fees associated with amusement device taxes prior to the effective date of a temporary retailer contract; and

(e) Agree to be responsible for and to pay all fees in connection with the application, including any cancellation fees for telephone lines and service.

(6) The applicant and the applicant's business must qualify for the type of Lottery sales sought by the applicant. For example, if the applicant seeks a contract to offer video Lottery games, the business must have an appropriate liquor license and an age controlled area that meets the Lottery's requirements. The business must have been open to the public and operating as required in OAR 177-040-0017, and the applicant must submit sales figures showing that Lottery revenue will be less than 60 percent of the business's total revenue as defined herein.

(7) If the applicant is an entity other than either a sole proprietor who is a natural person or a private club as defined in ORS 471.175(8), at least one natural person who is a principal of the applicant entity and who is a

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key person may be required to personally guarantee all monies owed to the Lottery.

(8) The Director may require the applicant to post a bond, letter of credit, or cash deposit in the form of certified funds prior to the effective date of a temporary retailer contract.

(9) If the Lottery enters into a temporary retailer contract with the applicant, the terms of that contract will require that the applicant agree to pay the amount due to the Lottery for the sale of Lottery tickets or shares by the use of an electronic funds transfer (EFT). In most instances, amounts due the Lottery will be collected via EFT at the end of the fourth day after the close of the Lottery business week which ends at 5:59 a.m. Sunday morning. When an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites. The applicant shall establish an account for deposit of money from the sale of Lottery tickets and shares with a financial institution that has the capability of making EFT draws.

(10) The burden for establishing that an applicant qualifies for a temporary retailer contract is on the applicant.

(11) The Director, at the Director's sole discretion, may immediately terminate a temporary retailer contract if the Director determines that continuing to contract with the applicant is not in the best interest of the Lottery including, but not limited to, when:

(a) The applicant provided material false or misleading information, or the applicant made a material omission in the application for a retailer contract;

(b) The applicant or any key person is arrested or convicted of a Class "A" misdemeanor or felony during the term of the temporary retailer contract;

(c) An EFT payment is rejected for non-sufficient funds (NSF), or the applicant fails to provide timely information to the Lottery regarding any change of the applicant's EFT bank account;

(d) Any other reason contained in the contract or administrative rules that provides a basis for termination of a retailer contract; and

(e) When the Director concludes that continuing to contract with the applicant may pose a threat to the fairness, honesty, integrity, or security of the Lottery and its games.

(12) A temporary retailer contract shall be valid for a specific time period for up to 120 days. A temporary retailer contract may, in the Director's discretion, be extended for up to 120 additional days.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 5-2000, f. 7-26-00, cert. ef. 11-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02

177-040-0005

Criteria Precluding Entering Into a Contract

The following criteria shall preclude the Director from entering into a retailer contract with an applicant. The Lottery will not contract with an applicant when the person applying for a contract:

(1) Is under 18 years of age.

(2) Will be engaged exclusively in the business of selling Lottery tickets or shares.

(3) Is an employee of the Lottery.

(4) Is or will be owned or controlled by any entity or any subsidiary or parent corporation thereof, that is a supplier of instant tickets or a manufacturer of computer equipment used to determine winners in Lottery games.

(5) Is a corporation or other form of business that is not incorporated in Oregon or authorized to do business in Oregon.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: SLC 3-1985(Temp), f. & ef. 1-15-85; SLC 8-1985, f. & ef. 6-21-85; LC 4-1990, f. & cert. ef. 4-3-90; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02

177-040-0010

Personal Criteria Which May Be Grounds for Denial

(1) Before approving an application, the Director shall consider whether:

(a) The applicant is a person of good character, honesty, and integrity;

(b) The applicant is a person whose background, including criminal, civil, and financial records, and reputation do not jeopardize the public interest of the state or the security or integrity of the Lottery.

(c) The applicant associates with persons who have direct or indirect involvement in the applicant's business who do not jeopardize the public

interest of the state or the fairness, honesty, integrity or security of the Lottery. The Director may also consider whether the applicant associates with persons who have no involvement in the applicant's business when the applicant's association with such persons will create a real or perceived conflict with the Lottery's security or integrity interests.

(d) The applicant is a person whose experience, character, or general fitness is such that approving the applicant would be consistent with the public interest, convenience, and trust in keeping with the sensitive nature of the Lottery;

(e) The applicant demonstrates responsibility and integrity in financial transactions, and the applicant is creditworthy and is currently in a satisfactory financial condition. The Lottery may use the services of a commercial credit reporting agency in order to evaluate the applicant's creditworthiness, financial responsibility, and financial condition. The application may also be denied if the applicant has outstanding judgments, collections, liens or is not in compliance with all state, federal, or local tax laws;

(f) The applicant has omitted any material facts or has provided any material misstatement or any untrue statement of material facts;

(g) The applicant's history with the Oregon Liquor Control Commission and state and local law enforcement shows that the applicant poses a threat to the security and integrity of the Lottery based on any significant and material compliance or adjudicated violation history, or compliance history with the Lottery.

(2) The person applying to be a retailer must:

(a) Adequately demonstrate, either individually or through the person's employees, the business ability and experience necessary to successfully establish, operate, and maintain the business for which application is made;

(b) Demonstrate adequate funding and ongoing business income that is sufficient to open, maintain, and operate the business as proposed by the applicant. The Director shall consider whether funding is from a source that may pose a threat to the integrity, security, honesty, or fairness of the Lottery.

(3) The Director shall consider the criminal history of the applicant in accordance with the following guidelines:

(a) The Director may deny an application when the applicant has any felony conviction more than 10 years old on the date the Lottery accepts the application.

(b) The Director may deny an application when the applicant has a conviction more than 15 years old on the date the Lottery accepts the application for violating any state, federal, or local gambling laws, or for felony possession of a controlled substance, or any crime involving the manufacture, sale, or delivery of a controlled substance. The Director may also deny an application if the applicant has ever engaged in conduct which violates ORS 91.240.

(c) The Director may deny an application when the Director has reasonably reliable information that the applicant has engaged in conduct which constitutes a violation of any gambling law or any law which defines a felony or misdemeanor.

(d) The Director may deny an application when the applicant has been held responsible, by judgment, settlement, consent decree or otherwise, in any court proceeding, or proceeding before an administrative body which was based in whole or in part on allegations of misleading or dishonest conduct including, but not limited to, fraud, deceit, misrepresentation, embezzlement, breach of fiduciary responsibility, or the Director has reasonably reliable information that the applicant has engaged in such conduct.

(e) The Director may deny an application when the applicant has been convicted of, or otherwise subject to official sanction for, any offense other than an offense described in sections (6) and (7) of this rule, except traffic infractions unless the applicant has engaged in conduct which demonstrates the applicant's habitual disregard for the law. The Director may also deny an application when the Director has reasonably reliable information that the applicant has engaged in conduct which constitutes an offense as described under this subsection.

(4) In addition to sections (1), (2), and (3) of this rule, the Director may also deny an application when the applicant:

(a) Has an association with persons or businesses of known criminal background that may jeopardize the integrity, security, honesty, fairness, or reputation of the Lottery; or

(b) Is qualified, but there is an ownership interest in the applicant's business or premises by a person who is unqualified to hold a Lottery contract based on the requirements of OAR 177-040-0010 or any retailer contract, regardless of the qualifications of the applicant;

ADMINISTRATIVE RULES

(5) In evaluating whether to deny an application based on sections (1) through (4) of this rule, the Director may consider the following mitigating factors:

- (a) The nature and severity of the conduct, incident, or circumstance;
- (b) The passage of time since the conduct, incident, or circumstance;
- (c) Any intervening factors since the conduct, incident, or circumstance;
- (d) The number of offenses, crimes, or incidents;
- (e) The relevance of the conduct, incident, or circumstance to the performance of duties under the Lottery contract; or
- (f) Any extenuating circumstances.

(6) The Director shall deny an application when the applicant, within 15 years of the date the Lottery accepts the application, has been convicted of violating any federal, state, or local gambling laws, other than ORS 91.240, or when the applicant has been convicted of any felony possession of a controlled substance or any crime involving the manufacture, sale or delivery of a controlled substance.

(7) The Director shall deny an application when the applicant has been convicted within 10 years of the date the Lottery accepts the application of any felony.

(8) The Director shall deny an application when the applicant owns, manufactures, possesses, operates, has interest in or gains income or reimbursement from, any unlawful gambling device in any jurisdiction unless the device is approved and certified by another state lottery or federal, state, or local gaming control agency, and such ownership, manufacture, possession, operation, or income is disclosed to and approved by the Lottery.

(9) Except for subsection (3)(b) and section (6) of this rule, the criteria described in sections (1) through (8) of this rule are also criteria that apply to an existing retailer contract and may provide grounds for the Director to terminate a retailer contract.

(10) The denial by the Director of an application is final.

(11) If an application is denied by the Director, an applicant, or an applicant that is similar to the previously denied applicant, shall wait one year from the date of denial to reapply to become a Lottery retailer. In the Director's sole discretion, the Director may waive this requirement based on a showing of good cause by the applicant.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461

Hist.: SLC 3-1985(Temp), f. & ef. 1-15-85; SLC 8-1985, f. & ef. 6-21-85; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 17-2001(Temp), f. & cert. ef. 12-20-01 thru 6-7-02; LOTT 4-2002, f. & cert. ef. 3-25-02; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02

177-040-0025

Retailer Compensation

(1) Base retailer compensation for the sale of traditional Lottery tickets and shares is determined by a retailer's weekly sale of traditional Lottery tickets and shares at a particular retail location. For purpose of calculating base compensation, a retailer's weekly sales of traditional Lottery tickets and shares shall be the sum of actual On-Line sales, Scratch-It tickets activated by the retailer and Breakopen packs shipped by the Lottery, less Scratch-It ticket and Breakopen share returns recorded by the Lottery, and other sales-related adjustments made during the week. Sales Per Week Compensation - % of Gross Sales:

Amount Per Week — Compensation - % of Gross Sales

Below \$1,000 — 5.00%
\$1,000 to \$1,999.99 — 7.00%
\$2,000 to \$2,999.99 — 7.50%
\$3,000 to \$3,999.99 — 8.00%
\$4,000 to \$4,999.99 — 8.50%
\$5,000 to \$5,999.99 — 9.00%
\$6,000 to \$6,999.99 — 9.50%
\$7,000 and up — 10.00%

(2) Notwithstanding the compensation structure established in section (1) above, the minimum commission rate paid to a Lottery retailer for the sale of Breakopen shares shall be 8% regardless of a Lottery retailer's weekly sales of traditional Lottery tickets and shares. If a retailer's weekly sales of traditional Lottery tickets and shares is less than \$3,000, the Lottery shall compensate the retailer for the sale of Breakopen shares at 8% and shall include the Breakopen sales to calculate the rate at which the retailer's sales of other traditional Lottery tickets and shares shall be compensated in accordance with section (1) above. For example: If a retailer's weekly sales of traditional Lottery tickets and shares equals \$2,620 with \$1,620 representing Breakopen sales, then the compensation rate for On-Line and Scratch-It sales of \$1,000 is 7.5% and the compensation rate for Breakopen sales of \$1,620 is 8%.

(3)(a) For selling any winning and validated Scratch-It or On-Line prize of \$10,000 or more, a Lottery retailer shall receive a bonus of one per-

cent (1%) of the offered or advertised prize won by the player up to a maximum bonus of \$100,000 rounded to the nearest dollar. For example: For selling a winning and validated annuitized prize of \$8,000,000, the selling Lottery retailer shall receive a bonus of \$80,000 regardless of the payment option chosen by the winner; for selling a winning and validated Scratch-It prize of \$25,000, the selling Lottery retailer shall receive \$250.

(b) Prior to the implementation of a traditional game that includes one or more prizes with a value that is, in the opinion of the Director, variable or in some other way ambiguous including, but not limited to, circumstances such as non-monetary prizes or annuities of unspecified duration, the Director shall assign a prize value to any such prize for the purposes of determining the retailer selling bonus pursuant to subsection (a) of this section. The Director's determination of the prize value is final.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.010

Hist.: LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 12-1996, f. & cert. ef. 12-27-96; LOTT 9-1999, f. 5-27-99, cert. ef. 6-27-99; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02

177-040-0040

Traditional Retailer Minimum Sales Requirements

(1) The Lottery is required by portions of ORS 461.300(1) and (2)(a) to specify the terms and conditions for contracting with retailers so as to:

(a) Provide adequate and convenient availability of tickets or shares to prospective buyers of each Lottery game as appropriate for each particular game;

(b) Best serve the public convenience; and

(c) Promote the sale of tickets or shares.

(2) The purpose of this rule is to establish a process by which the Director shall determine if a traditional retailer applicant or, subsequently, an existing traditional Lottery retailer accomplishes the statutory objectives set forth in ORS 461.300(1) and (2)(a) as described in section (1) of this rule.

(3) The Commission has determined that, generally, the most effective and equitable way to determine whether an applicant will achieve the objectives described in section (1) of this rule is through a review of actual Lottery retail sales produced by a Lottery retailer over time. Therefore, the Director may enter into a Lottery retailer contract with an applicant in order to form the conclusions required by ORS 461.300(1) and (2)(a) as described in sections (1) and (2) of this rule.

(4) Notwithstanding section (3) of this rule, when it is reasonable to conclude an applicant will not, as determined by the Director, achieve the objectives of ORS 461.300(1) and (2)(a) as described in sections (1) and (2) of this rule, the Director may deny a retailer application without having previously entered into a Lottery retailer contract.

(5) The Commission has determined there is a point where a Lottery retailer's low sales of Lottery tickets or shares calls into question the value of maintaining the Lottery's contractual relationship with that retailer at that location. It is the policy of the Lottery that the minimum weekly sales average for a traditional Lottery retailer for the combined sale of all Scratch-It tickets, On-Line tickets or shares, or Breakopens shall be \$500. The purpose of the minimum weekly sales average is to provide an actual measure by which the Lottery can evaluate whether a Lottery retailer meets the objectives set forth in ORS 461.300(1) and (2)(a). When a Lottery retailer's weekly sales average is below \$500, this fact shall be evidence that the Lottery retailer has not met the objectives set forth in ORS 461.300(1) and (2)(a). For the purposes of this rule, weekly sales average means the total sales of all traditional Lottery tickets and shares sold from a retailer's location over a specified, consecutive 52 week period divided by 52.

(6) The Lottery shall annually conduct a sales performance review of each traditional Lottery retailer to identify those retailers whose weekly sales average is below \$500. The review shall be of the retailer's traditional sales for the 52 week period ending the last Saturday in December.

(7)(a) When a traditional Lottery retailer's weekly sales average is below \$500, that fact shall be grounds for termination of the retailer contract.

(b) A retailer that is subject to termination for failure to meet the objectives set forth in ORS 461.300 as described in this rule may, by following ORS 461.300(5), avoid termination by paying an expense offset charge (EOC) that is a reasonable representation of the amount needed to offset administrative expenses incurred by the Lottery based on the retailer's weekly sales average. The amount needed by the Lottery to offset expenses is as follows:

Weekly Sales Average — Quarterly/Yearly EOC

\$251-500 — \$406.25 x 4 = \$1,625

\$0-250 — \$568.75 x 4 = \$2,275

To avoid termination, a retailer must pay the yearly expense offset charges calculated for the preceding year.

ADMINISTRATIVE RULES

(8) Notwithstanding section (7)(a) of this rule, the Director may decide not to terminate a retailer contract in a community with a population of less than 3,000:

(a) To maintain adequate and convenient availability of tickets or shares to prospective buyers of each Lottery game as appropriate for each particular game; or

(b) To maintain sufficient Lottery retailers for any particular Lottery game to serve the public convenience and the projected volume of sales for the Lottery game involved; or

(c) When terminating the retailer contract would disrupt the competitive balance within a community.

(9) Notwithstanding section (7)(a) of this rule, the Director may decide not to terminate a retailer contract when there are unusual circumstances affecting a Lottery retailer's selling potential.

(10) This rule shall not apply to retailers who sell Breakopen shares but no other traditional Lottery tickets and shares.

(11) Any retailer whose contract has been terminated under this rule must wait one year from the date of termination before reapplying for a contract to sell traditional Lottery tickets and shares at the terminated Lottery retail site. In the Director's sole discretion, the Director may waive this requirement based on a showing of good cause by the applicant.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.300

Hist.: LC 6-1993, f. & cert. ef. 7-2-93; LC 5-1994, f. 6-15-94, cert. ef. 7-1-94; LC 10-1995, f. & cert. ef. 9-29-95; LC 4-1996, f. & cert. ef. 4-1-96; LOTT 5-1999(Temp), f. & cert. ef. 5-26-99 thru 6-26-99, Administrative correction 11-17-99; LOTT 2-2001(Temp) f. & cert. ef. 1-19-01 thru 7-18-01; LOTT 6-2001, f. 4-25-01, cert. ef. 4-26-01; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02

177-040-0050

Retailer Duties

(1) This rule contains duties to be performed by a Lottery retailer beyond those duties described in the Lottery retailer contract. The duties listed herein are not meant to be exclusive. Other duties and requirements for retailers may be contained elsewhere in the OAR division 177, ORS Chapter 461, or in the retailer contract as negotiated individually with each Lottery retailer.

(2) All Lottery retailers shall:

(a) Replace ribbons, ticket stock and clear paper jams as may be required for any of the equipment provided by the Lottery for the sale of Lottery tickets or shares.

(b) Install and use only approved Lottery paper stock which has been specifically assigned to the selling retailer when selling Lottery tickets and shares.

(c) Be required to arrange for and obtain all necessary permits required by state and local governments for electrical installation, electrical power, telephone service, fiber optic lines and connections, and coaxial cable and connections required to sell Lottery tickets or shares at the retail site.

(d) Pay the amount due to the Lottery for the sale of Lottery tickets or shares by the use of an electronic funds transfer (EFT). In most instances, this EFT shall occur at the end of the fourth day after the close of each the Lottery business week which ends at 5:59 a.m. Sunday morning. When an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites.

(3) A traditional game Lottery retailer shall:

(a) Validate a Scratch-It ticket prize through the Instant Ticket System (ITS) and destroy it after validation and payment of the prize. Any traditional Lottery retailer who does not destroy the ticket after validation and payment of a winning ticket shall be liable for a prize paid by another Lottery retailer who subsequently sight validates the ticket.

(b) Validate On-Line game prizes through the On-Line terminal before paying an On-Line prize.

(4) A Breakopen game Lottery retailer shall, after validation and payment of the prize, destroy the Breakopen share.

(5) A video Lottery game retailer shall:

(a) Validate cash slips through the video management terminal (VMT) before paying a prize.

(b) Restrict video lottery terminals from visibility from areas outside of the business and from view of dining areas or other areas where minors are permitted to linger.

(c) Maintain video lottery terminals in an area of the business that is prohibited to minors. The area must be posted as such by the Oregon Lottery or the Oregon Liquor Control Commission. This restriction against minors shall not apply to minors who qualify under the exceptions permit-

ted by the Oregon Liquor Control Commission for access to areas normally prohibited to minors.

(6) The Director may sanction a Lottery retailer for the loss, damage, or destruction of any winning game ticket or share including, but not limited to, imposing a requirement for remedial training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract or OAR Chapter 177.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LOTT 5-1999(Temp), f. & cert. ef. 5-26-99 thru 6-26-99, Administrative correction 11-17-99; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02

177-040-0051

Designated Employees

Each retailer shall designate employees authorized to redeem winning Lottery tickets and shares. Prizes shall be immediately paid in cash or check when a player presents a winning Lottery ticket or share for payment meeting the requirements of these rules. Prizes cannot be paid in tokens, chips, or merchandise.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02

177-040-0052

Non-Sufficient Funds Policy

(1) For the purpose of this rule, "working day" means a weekday (Monday through Friday) from 8 a.m. to 5 p.m. except those weekdays when the Lottery office is closed.

(2) It is the policy of the Lottery to apply the standards described in this rule to any Lottery retailer, except a retailer operating under a temporary retailer contract, when a Lottery retailer's electronic funds transfer (EFT) payment is rejected for non-sufficient funds (NSF).

(3) First NSF: When a Lottery retailer's EFT payment is rejected for NSF, the Lottery shall:

(a) Make a reasonable effort to notify the Lottery retailer or the Lottery retailer's business by telephone of the NSF;

(b) Disable the retailer's Lottery equipment until the retailer pays, via certified funds, the amount of money that was to be paid via EFT plus an additional \$50 charge;

(c) Temporarily withhold any bonus payments the retailer may have earned until the required payments are made; and

(d) If the retailer does not make the required payments within five working days after the retailer's Lottery equipment was disabled, cancel any bonus or incentive payments the retailer may have earned.

(4) Second NSF: When a Lottery retailer's EFT payment is rejected for NSF for the second time within one year of a first NSF, the Lottery shall:

(a) Make a reasonable effort to notify the Lottery retailer or Lottery retailer's business by telephone of the NSF;

(b) Disable the retailer's Lottery equipment until the retailer pays, via certified funds, the amount of money that was to be paid via EFT plus an additional \$50 charge and until the retailer posts a bond, letter of credit, or cash deposit as described in subsection (f) of this section;

(c) Temporarily withhold any bonus payments the retailer may have earned until the required payments are made;

(d) If the retailer does not make the required payment within five working days after the retailer's Lottery equipment was disabled, cancel any bonus or incentive payment the retailer may have earned; and

(e) If the retailer is subject to an EFT that routinely draws funds from the retailer's account at the end of the eleventh day after the close of the Lottery business week, require the retailer to be subject to an EFT that routinely draws funds from the retailer's account at the end of the fourth day after the close of the Lottery business week.

(f) In the Director's sole discretion, the Director may allow the retailer to post a bond or letter of credit, or make a cash deposit via certified funds with the Lottery. The Director shall determine the amount of the bond, letter of credit, or cash deposit and the term for which it shall be in effect, and any other applicable terms and conditions for continuing the retailer contract. Generally, the amount of the bond, letter of credit, or cash deposit will be an amount that is approximately equal to two weeks of the retailer's average EFT draws, but may be more as necessary to protect the interests of the Lottery. If the Director does not allow the retailer to post a bond, letter of credit, or make a cash deposit, the Director shall terminate the retailer's contract.

ADMINISTRATIVE RULES

(5) Third NSF: When a Lottery retailer's EFT payment is rejected for NSF for the third time within one year of a first NSF, the Lottery shall:

(a) Make a reasonable effort to notify the Lottery retailer or the Lottery retailer's business by telephone of the NSF;

(b) Disable the Lottery retailer's equipment until the retailer pays, via certified funds, the amount of money that was to be paid via EFT and a \$50 charge and until the retailer provides a personal guarantee if required by subsection (e) of this section;

(c) Require the retailer to forfeit any bonus or incentive payment the retailer may have earned for the week;

(d) Require the retailer to forfeit one week of Lottery compensation for the week in which the NSF occurred; and

(e) Except for a sole proprietorship or a private club as defined in ORS 471.175(7), require the retailer to provide a personal guarantee of the payment of funds due the Lottery on a form provided by the Lottery.

(6) Fourth NSF: When a Lottery retailer's EFT payment is rejected for NSF for the fourth time within one year of a first NSF, the Lottery shall:

(a) Make a reasonable effort to notify the Lottery retailer or the Lottery retailer's business by telephone of the NSF;

(b) Disable the Lottery retailer's equipment;

(c) Initiate retailer contract termination procedures;

(d) Require the retailer to forfeit any bonus or incentive the retailer may have earned for the week;

(e) Require the retailer to pay, via certified funds, the amount of money that was to be paid via EFT and a \$50 charge within five working days after the retailer's Lottery equipment was disabled.

(7) When a Lottery retailer's EFT is rejected for NSF and the Director is not required to terminate the retailer's contract, the Director may terminate the retailer's contract if a retailer fails to pay, via certified funds, the amount of money that was to be paid via EFT and the \$50 charge within five working days after the retailer's Lottery equipment was disabled.

(8) Termination of the retailer's contract shall not release the retailer from any obligation to pay any amount due the Lottery under this rule. The Lottery may make a claim upon any bond, letter of credit, or cash deposit posted by the retailer under this rule and apply the money to any remaining retailer obligation.

(9) All payments by a retailer that are rejected because of non-sufficient funds shall be included as part of the retailer's account history.

(10) The Director may excuse one NSF in a 12-month period which is caused by the retailer's financial institution. The retailer shall provide documentation from the retailer's financial institution which explains and substantiates the bank's error in causing the NSF. No other NSF due to a bank error may be excused within a twelve month period.

(11) The Director may make exceptions to these requirements based upon the facts and circumstances of any particular payment by a retailer which is rejected for non-sufficient funds.

(12) This rule shall apply to all retailer contracts in effect as of December 15, 2000 and all other retailer contracts that are effective after December 15, 2000, except a retailer operating under a temporary retailer contract.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert.. ef. 11-25-02

177-040-0055

Advertising Lottery Games and Inducements to Play

(1) **Prohibitions:** A retailer must not conduct false or misleading advertising, in any form, regarding the Lottery or Lottery games including, but not limited to, claiming the odds of winning a Lottery game are different at the retailer's business than at any other retailer's business.

(2) **Requests for Use:** The Director or the Director's designee must approve all requests from a retailer for the use of trade or service marks registered by the Lottery. Trade or service marks registered by the Lottery include, but are not limited to, the Lottery's name, logo, and promotional names.

(3) **Requirements:** All requests from a retailer must be in writing and must include a sample of the proposed use of the trade or service mark. The request must also explain how and where the trade or service mark will be used.

(4) **Permission:** Permission for use of a trade or service mark may be granted in the exercise of the sole and exclusive discretion of the Lottery, taking into account the particularly sensitive nature of the Lottery and insuring the integrity of its operations and image. Approval for use of a trade or service mark shall not be given for display of the mark in an inappropriate manner or format.

(5) **Rights:** Nothing in this rule shall be construed to grant, or create any expectation or right to display, publish or use, in any manner, in whole or in part, any trade or service mark registered by the Lottery. Any display, publication or use by a retailer of any trade or service mark registered by the Lottery without the express, written prior consent and agreement of the Lottery is unauthorized and unlawful, and the Lottery expressly reserves the right to take any action to enforce its rights in such trade and service marks.

(6) **Inducements:** For purposes of this section, a retailer shall not extend credit to persons to play Lottery games. This does not include the use of a credit or debit card by a player for the purchase of Lottery tickets or shares. An example of the use of a credit or debit card for the purchase of Lottery tickets or shares includes, but is not limited to, the purchase of Scratch-It tickets with a grocery purchase. A retailer shall not provide alcoholic beverages as an inducement to play Lottery games. Additionally, a retailer shall not provide any form of financial assistance to a video lottery player. An example of financial assistance to a video lottery player includes, but is not limited to, a loan of money for any amount of time.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.150

Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert.. ef. 11-25-02

177-040-0105

Change Location

Any time a Lottery retailer moves its business, the retailer must receive approval from the Lottery before moving the sale of Lottery tickets or shares to the new location.

(1) The Director may approve the sale of Lottery tickets or shares at the new location when the new location serves essentially the same customer base and the business will be a continuation of the old business from the old location rather than the establishment of a new business. In such event, the retailer need not apply for a new contract at the new location. However, the retailer must provide documentation related to the new location as required by the Director.

(2) When the new location will not serve essentially the same customer base or is essentially a new business, the Director may terminate the existing retailer contract and require the retailer to apply for a new contract for the new location.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert.. ef. 11-25-02

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Subject: The proposed Division will consolidate and standardize various rules from other Divisions.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-046-0010

Purpose

The purpose of this Division of OAR chapter 177 is to set forth standardized rule provisions that are applicable to lottery games (excluding video lottery games) offered by the Lottery. Each type of game is set forth in a specific division containing rules unique to that type of game. In the event of a conflict between a provision contained in this Division and the specific rule Division, the provision in the specific rule Division controls.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0020

Sale of Lottery Tickets and Shares

(1) The Director shall contract with retailers for the sale of Lottery tickets and shares. Only a retailer under contract with the Lottery may sell Lottery tickets or shares. Nothing in this section shall be construed to pre-

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vent a person who may lawfully purchase or possess a Lottery ticket or share from making a gift of such ticket or share to another.

(2) Unless authorized by the Lottery, Lottery tickets or shares may only be sold at locations listed in a retailer contract.

(3) Nothing in this section prohibits the Lottery from designating its agents or employees to sell Lottery tickets or shares directly to the public either in person or through electronic means.

(4) Unless otherwise provided in OAR chapter 177, the sale of all Lottery tickets and shares is final. A player may not return a Lottery ticket or share for a refund of the purchase price or exchange unless the specific game rule provides otherwise. The Lottery is not liable for Lottery tickets or shares that are purchased in error.

(5) The Director is authorized to arrange for the direct distribution of on-line terminals, ticket stock, and supplies to authorized retailers.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0030

Stolen, Destroyed, or Damaged Tickets or Shares

A Lottery retailer may receive credit for stolen, defective, damaged, or destroyed tickets or shares only as specified in the specific game rule or in the retailer contract.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0040

Retail Price Discounts and Promotions

(1) The Lottery may offer discounts from the retail sale price of Lottery tickets or shares to the public by any method approved by the Director. The Director will communicate or distribute information regarding discounts by using methods designed to reach the public. These methods may include, but are not limited to, the use of direct mail, newspaper advertising, or by offering coupons at Lottery offices or retail locations.

(2) The Director may provide written authorization for a Lottery retailer to engage in a promotion in which the retailer gives one or more Lottery tickets or shares to the retailer's customers in exchange for the purchase of goods or services.

(a) A Lottery retailer seeking authorization to conduct such a promotion shall identify, to the degree required by the Director, the goods or services to be purchased by a customer in exchange for a Lottery ticket or share and the number and type of tickets or shares to be given to the customer in exchange.

(b) A Lottery retailer is not permitted to increase the price of goods or services offered for sale as a part of the promotion to recoup costs associated with the promotion.

(c) It is the policy of the Lottery to authorize a promotion described in this section only when the proposed promotion maintains the integrity, security, honesty, and fairness of the Lottery.

(d) Lottery tickets or shares given during an authorized promotion are considered and counted as a sale for the retail price established by the Lottery in the rules for each Lottery game.

(e) No promotion is authorized unless it complies with this rule.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0050

Accuracy of Tickets and Shares

It is the sole responsibility of a player to verify the accuracy of a ticket or share purchased by the player. The Lottery is not liable for any Lottery ticket or share purchased or printed in error. Specific game rules may provide for cancellation under certain circumstances.

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0060

Cancellation of Tickets and Shares

(1) Where a specific rule provides that the purchaser of a Lottery ticket or share may cancel the purchase, the following is the procedure for cancellation:

(a) To cancel a purchase of a Lottery ticket or share, the player must return it to the selling retailer on the day of purchase before wagers are disabled prior to the first drawing or other winner determination time as relevant.

(b) The player shall receive a refund from the retailer equal to the purchase amount of the Lottery ticket or share.

(c) If a Lottery ticket or share cannot be cancelled because the Lottery's central computer system does not record the cancellation in a timely manner due to a mechanical or electronic transmission malfunction, credit may still be given to the retailer provided the following steps are taken:

(A) The retailer attempts to cancel the Lottery ticket or share before wagers are suspended and a computer record is created of the attempt.

(B) The retailer calls the Retailer Services Hotline and gives the Lottery ticket or share's identifying number to the operator, and

(C) The retailer mails the Lottery ticket or share to the Lottery within two weeks from the date of purchase.

(2) Notwithstanding any other rule, exchange tickets or shares cannot be cancelled under any circumstances.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0070

Official Start of Each Game

The Director may publicly announce the start date of each new lottery game by releasing the game launch to Lottery retailers, by posting the information on the Lottery's official website, or by any other appropriate means. The Director may also announce the description of the game, the number and value of the prizes in the game, and the odds of winning those prizes.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0080

Drawings

(1) The Director shall designate a drawing coordinator. Drawings shall be conducted pursuant to the procedures developed by the drawing coordinator in consultation with the Assistant Director for Security and as approved by the Director. Drawing procedures shall include provisions for the substitution of back up drawing equipment in the event the primary drawing equipment malfunctions or fails for any reason.

(2) The equipment used to determine the winning combination shall not be electronically or otherwise connected to the Lottery's central computer or to any tapes, discs, files, etc., generated or produced by the central computer. The equipment shall be tested prior to and after each drawing to assure proper operation and lack of tampering or fraud. The random number generator shall be statistically analyzed, tested, and certified by an independent, qualified statistician for integrity. Periodic checks shall be made to ensure the randomness of the system. Drawings shall not be held until all pre-inspection checks are completed. No prizes shall be paid until after all post-inspection checks have been completed.

(3) Subject to the approval of the Director, the Lottery's Assistant Director for Security shall establish procedures to ensure the physical security of the computer-driven random number generator, and shall specify the individuals who shall have physical access to the random number generator. The computer-driven random number generator shall be kept in a sealed enclosure within a secure area, and a Lottery Security Section employee or officer, shall escort every individual entering the sealed enclosure containing the random number generator. Only individuals authorized by the Director shall have access to the sealed enclosure containing the random number generator.

(4) If, during a drawing for a game, a mechanical or electronic failure or operator error causes an interruption in the selection of numbers or symbols, the drawing coordinator will call a technical difficulty. Any number drawn prior to a technical difficulty being declared will stand and be deemed official after passing inspection and certification by the drawing coordinator.

(5) The Director will delay payment of all prizes if any evidence exists or there are grounds for suspicion of equipment malfunction, tampering, or fraud. Payment shall be made after an investigation is completed and the Director approves the drawing and authorizes payment. If the drawing is not approved, it will be void and another drawing will be conducted to determine an actual winner.

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Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0090

Validation Requirements

(1) Each type of Lottery game rule may specify unique or additional requirements necessary for validation for that specific game.

(2) In general, to be a valid ticket or share:

(a) The ticket or share must not be counterfeit or a forgery in whole or in part.

(b) The Lottery must have issued the ticket or share in an authorized manner.

(c) The ticket or share must not be altered, unreadable, reconstituted, or tampered with in any manner and must meet all of the Lottery's security requirements.

(d) The ticket or share must not appear on any list of omitted, inactive, missing, previously paid, or stolen tickets on file at the Lottery, and the Lottery's Instant Ticket System (ITS) must accept and validate the ticket or share as a winner.

(e) The ticket or share must not be blank or partially blank, misregistered, non-scratchable, or printed or produced in error.

(f) The ticket or share is subject to all additional confidential validation tests of the Lottery including validation through the Lottery's computer system.

(3) A ticket or share is the only proof of a game play or plays and the submission of a winning ticket or share to the Lottery or an authorized retailer is the sole method of claiming a prize or prizes unless otherwise provided in OAR chapter 177. A play slip or a copy of a ticket or share has no pecuniary or prize value and does not constitute evidence of ticket or share purchase or otherwise represent an opportunity to win a prize.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0100

Ownership of Tickets and Shares

(1) **Bearer Instrument:** Except for tickets or shares claimed jointly in accordance with the provisions of OAR 177-046-0110(6) of this rule, until such time as a name of an individual or individuals is imprinted or placed upon a Lottery ticket or share in the area designated for "Name," the ticket or share is a bearer instrument and is owned by the bearer of the ticket or share. When a name or names is placed on the ticket or share in the designated place, the ticket or share ceases to be a bearer instrument and the individual whose name appears in that area is the owner of the ticket or share. Only natural persons may own a ticket or share and claim a prize.

(2) **Multiple Names:** Multiple individuals may jointly own, possess, and claim a prize as owners of a winning ticket. Multiple individuals hold the ticket as tenants in common. Multiple individuals may specify the percentage of ownership each person holds. Each person must hold \$1.00 of the prize at a minimum.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0110

Payment of Prizes

(1) **General:** All winning Lottery tickets or shares may be presented to the Oregon Lottery for payment. Winning tickets or shares for prizes under \$600 may also be presented to the appropriate Lottery retailer specified in the applicable game rule and may be paid by the retailer in cash or by check.

(2) **Mailing address:** Winners who wish to mail their winning Lottery ticket or share to the Lottery must sign the back of the Lottery ticket or share, write the player's mailing address on the back of the Lottery ticket or share, and mail it to the Oregon Lottery, P.O. Box 14515, Salem, Oregon 97309 (registered mail recommended).

(3) **Headquarters Address:** Winners who wish to present their claim in person at the Lottery may do so by bringing the winning Lottery ticket or share to the Oregon Lottery, Player Services, 500 Airport Road SE, Salem, Oregon 97301 during Lottery business hours.

(4) **Retailer Validation:** To determine whether a ticket or share presented for payment entitles the holder to a prize, a retailer shall validate the

claim with the Lottery by scanning the bar code or manually entering the bar code number printed on the back of each Lottery ticket or share into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due.

(5) **Payment:** Upon the Director's determination that a ticket or share presented to the Lottery for payment is valid and a winner, and the claimant has a valid claim, the Director may present or mail a check to the player for the amount of the prize less any applicable tax withholding. If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the Director shall deny the claim and inform the player.

(6) **Claiming Tickets or Shares Jointly:** If more than one name appears on a Lottery ticket or share or if a Lottery ticket or share is owned by two or more persons, the prize must be claimed in accordance with the following:

(a) **General:** All persons claiming ownership of the winning Lottery ticket or share must complete and sign the Lottery's request and release form. Each of the persons signing the form must indicate each person's proportionate share of the prize. Each person must receive at least \$1.00. At least one of the persons claiming ownership of the ticket or share must sign the ticket or share. That person's signature must also appear on the request and release form. If a winning ticket or share is mailed to the Lottery with multiple signatures on it, the Director will mail the request and release form to the claimants.

(b) **Deceased Signatories:** A deceased signatory who dies before signing the request and release form will be presumed to have an ownership interest equal to that of the other signatories. In the event there is a deceased signatory, the Director may place a hold on payment for 60 days from the date of validation to allow co-owners the opportunity to seek a declaratory ruling.

(c) **Relinquishment of Interest:** When a person who has signed a Lottery ticket or share wishes to relinquish the person's ownership interest in the Lottery ticket or share, that person must sign the Lottery's release of ownership form relinquishing the person's ownership interest. In no event, will a person be permitted to relinquish ownership interest once it is determined that the person owes money for child support or other legal attachment has taken place. Once the Lottery receives the release of ownership form, it is irrevocable.

(d) **Issuance of Prize Checks to Multiple Owners:** The Director may issue prize checks to each person whose name appears on the Lottery's request and release form. However, the Director reserves the right to issue a single prize check to an individual whose name appears on the ticket or share instead of multiple prize checks to the owners of the ticket or share if the value of each individual prize check would be less than \$50 or if the number of persons claiming a share of the prize exceeds 100 people. The Lottery shall pay multiple winners of Lottery prize only through the Salem Lottery office. Lottery retailers are not authorized to pay multiple winners who share a single prize.

(e) **Conflicting Information or Discrepancies:** If there is conflicting information or discrepancies between the names on a winning ticket or share and the names on a claim form, the Lottery may hold payment until the winners resolve the conflicting information. Discrepancies include but are not limited to: Names or addresses scratched out or erased, unreadable or altered names or addresses.

(f) **Investigations:** In the exercise of its discretion, the Director may conduct an investigation to aid in the determination of the rightful owners prior to payment of any prize.

(g) **Determinations:** The Director's decisions and judgments in respect to the determination of a winning ticket or share, or the determination of the rightful owner or owners of a prize, or of any other dispute or matter arising from payment or awarding of prizes are final.

(7) Payment of Prizes Donated Anonymously to a Charitable Institution and Others:

(a) The Director may pay a prize according to written anonymous instructions received with a winning ticket or share. The recipient must be a natural person or a charitable institution as defined by Section 501(c)(3), Internal Revenue Code.

(b) If the intended recipient is a natural person of majority, the Director will contact them and make payment to them in accordance with the anonymous written instructions.

(c) If the intended donation benefits a natural person who is a minor, the Director will make payment in accordance with the Oregon Gifts to Minors Act, Chapter 126.

(d) If the intended recipient is a charitable institution as defined by Section 501(c)(3), Internal Revenue Code, the Director will make payment only as follows:

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(A) The Director will attempt to identify and contact the intended recipient. The intended recipient shall designate in writing an agent, (a natural person) to act on its behalf and to receive the prize payment on behalf of the recipient. The Director shall confirm both the written authorization and the agent. An intended recipient is encouraged to select a bonded agent.

(B) The agent shall appear in person at the Lottery headquarters to claim the prize payment on behalf of the intended recipient. The Director may confirm to the Director's satisfaction that the agent is authorized to accept the donation in the agent's own name on behalf of the intended recipient.

(C) Subsequent to receipt of acceptable identification, along with a completed claim form from the agent, and the Director's review and approval, the agent shall sign the agent's own name on the back of the winning ticket or share in the presence of a duly authorized Lottery official and immediately return it to the Lottery. The Director shall then make payment to the agent less any applicable taxes.

(D) If the Director can reasonably identify the donor, the Director shall not make payment as specified above, but shall instead contact the donor and notify the donor to retrieve the ticket or share upon presenting acceptable proof of identification. The donor may retrieve the winning ticket or share in person at the Lottery's office in Salem upon the presentation of acceptable proof of identification.

(e) If the winning ticket received is a Win for Life top prize of \$1,000 a week for life, the prize paid will be the lump sum guaranteed five year payment under the Win for Life game rules.

(f) In the event that the Director is unable to locate the intended recipient or the anonymous donor, the winning ticket or share shall be retained until the end of the prize claim period. After the end of the prize claim period, the ticket or share shall constitute an unclaimed prize as described in OAR 177-010-0085 and shall be forfeited to the public purpose.

(g) The State of Oregon, its agents, officers, employees, and representatives, including but not limited to, the Oregon Lottery, its Director, agents, officers, employees, and representatives, are discharged of all liability upon payment of an anonymously donated prize in accordance with this rule and any applicable game rules to the extent that they do not conflict with this rule. The Lottery is not responsible in any way for the fulfillment or completion of the agreement between the intended recipient and the agent. The Lottery's decisions and judgment in respect to the determination of a winning ticket or share donated anonymously or any question or dispute arising from the payment of such a prize is final and binding on all parties. In the event a question or issue arises regarding payment of a prize donated anonymously, the Director may hold payment until the controversy is resolved, or the Lottery, or the intended recipient, or the agent for the intended recipient may petition a court of competent jurisdiction for instructions and a resolution of the matter.

(8) **Social Security Numbers:** Each United States resident who is to receive a payment of winnings greater than \$600 shall furnish to the Lottery the information required on the Internal Revenue Form W-2G (or any other form required by the IRS,) including but not limited to the winner's name, address, and social security number. This disclosure is mandatory and the authority for such disclosure is 42 USC 405(c)(2)(C), 26 CFR 31.3402(q)-1(e), and ORS 461.715(1)(a). A winner's social security number will be used for the purpose of identifying child support obligors and submitting required documents to state and federal tax authorities.

(9) **Payment Decisions:** The final decision on whether any prize is paid is made by the Director. All prizes shall be paid within a reasonable time after they are validated. For any prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. The Director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim, or any other matter that may have come to the Director's attention. All delayed payments will be brought up to date immediately upon the Director's validation and continue to be paid on each original anniversary date thereafter.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0120

Prizes Payable after Death

(1) A person is a deceased prize winner if that person dies after the Lottery validates a prize claim for that person but has not disbursed a prize or a portion of a prize to that person. The Director may rely on the presentment of certified copies of the court's appointment of a personal representative or other evidence of a person entitled to the payment of prize win-

nings when due and may make payment to the winner's estate once the Director is satisfied that such payment is lawful and proper.

(2) For deceased prize winners, the personal representative of the winner's estate, or all the parties listed on a beneficiary designation form if one is on file, must sign the Lottery's release form before payment of the prize or any remaining portions of the prize.

(3) The Director reserves the right to petition any court of competent jurisdiction to determine the proper payment of any prize winnings due to a deceased prize winner.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0130

Disclosure of Winners

(1) The Lottery may use the name, addresses, and likenesses of a winner in any Lottery promotional campaign. A winner consents to the use of the winner's name, address, and likeness for advertising and publicity purposes by the Lottery and Lottery retailers. A winner who receives a prize or prize payment from the Lottery grants the Lottery, its agents, officers, employees, and representatives the right to use, publish in print or by means of the Internet, and reproduce the winner's name, address, physical likeness, photograph, portraits, statements made by the winner, and/or use audio sound clips and video or film footage of the winner for the purpose of promoting the Lottery and its games.

(2) If the Lottery, its agents, officers, employees, and representatives deem it suitable for advertising, promotional or publicity use, or press use, a winner further grants the Lottery the right to use and reproduce the winner's likeness in print either alone or in any combination with other persons. Examples of permitted uses include but are not limited to: Radio, television, newspapers, posters, billboards, commercials, magazines, print advertisements, and the Lottery web site.

(3) Each winner releases the State of Oregon, its agents, officers, employees, and representatives, the Oregon Lottery, its Director, agents, officers, employees, and representatives from any liability arising out of any blurring, distortion, alteration, or use in composite form whether intentional or otherwise, that may occur, or be produced in the printing and production process towards the completion of any finished product. A winner waives any right to inspect or approve the finished products, whether it is for advertising, promotional publicity, or press use.

(4) Any addresses used shall not contain the street or house number of the winner.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0140

Suspension of Play

(1) **Suspension of Drawings:** At the discretion of the Director, a Lottery drawing may be suspended.

(2) If the Director suspends a drawing after tickets or shares have been sold for that drawing, a player may receive a refund of the player's ticket or share price, or a replacement ticket or share from another Lottery game, or the Director may hold a replacement drawing at the Director's discretion.

(3) **Termination of Games:** A Lottery game may be discontinued at any time.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0150

Official End of Games and Last day to Claim a Prize or to Receive Credit for Unsold Tickets or Shares

(1) The Director shall announce the official end of a Lottery game and last day to claim a prize by use of any appropriate means, including, but not limited to, providing notice on the Lottery's official website or through Lottery retail sales sites unless specific game rules provide otherwise. The Director will calculate the last day to claim a prize by adding one calendar year to the end of the game. Prizes must be claimed by the close of business on the last day to claim prizes. In the event the final day of the one-year claim period falls on a weekend or an official Lottery holiday, the

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claim period will be extended to end at the close of the next Lottery business day.

(2) Where applicable, a retailer must return to the Lottery unsold tickets or shares for each game within one year of the official end of that game in order to receive credit from the Lottery as provided for in the retailer's contract. Upon the retailer's request and with the recommendation of the Assistant Director of Retail Operations, the Director may extend the one year time limit.

(3) From time to time, the Director may offer games or drawings having top tier prizes consisting of merchandise of limited availability. Since such prizes are randomly available among the game tickets or shares, it is not possible to tell when the final top tier prize is won and will be claimed until it actually is validated and claimed. For this reason, the Lottery will continue to sell such tickets or shares until the last such top tier prize is validated. Once the last such prize is validated, the Director will then end the game, end orders for that game, and end activations 30 days from that date of validation by following the announcement procedure in section (1) above. The Director will notify retailers as soon as reasonably possible after the last top tier prize is claimed so that the retailers may notify customers purchasing such tickets or shares that the top tier prizes have all been claimed and that the game is ending on the 30th day from the date of the last top tier prize validation. Customers may still purchase such tickets during that 30 day time period for the other prizes offered in the particular game.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0160

Discharge of Lottery from Liability

(1) The State of Oregon, its agents, officers, employees and representatives, the Lottery, its Director, agents, officers, employees, and representatives are discharged of all liability upon payment of a prize or any one installment thereof to the holder of any winning ticket or share or in accordance with the information set forth on any winning ticket or share, any claim form, including but not limited to a winner claim form, request to divide prize form, beneficiary designation form, and relinquishment of ownership interest form, supplied by the Lottery.

(2) The Director's decisions and judgments regarding payment or awarding of prizes is final and binding. In the event a question arises relative to any winning ticket or share, any claim form, the payment, or the awarding of any prize, the Lottery may deposit the prize winnings into an interest bearing escrow fund until it resolves the controversy, or it may petition a court of competent jurisdiction for instructions and a resolution of the controversy. All interest that may accrue while the prize winnings are on deposit in an interest bearing fund is and remains the property of the Lottery.

(3) In the event a dispute occurs between the Lottery and a player as to the amount of a prize, whether a ticket or share is a winner, whether it is valid, or whether it was purchased in error, the Director shall provide the player with one unplayed replacement ticket or share from any current Lottery game, and also in the Director's discretion, may provide up to one hundred new tickets or shares from any current game. This is the player's sole and exclusive remedy.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

177-046-0170

Governing Law

(1) All players or persons purchasing or possessing any Lottery ticket or share will comply with and are bound by all applicable laws, rules, and procedures and any additional terms and conditions found on the ticket or share itself. In the event of a conflict between the additional terms and conditions found on the back of a ticket or share with the Lottery's rules, the rules control.

(2) All materials distributed by the Lottery for playing Lottery games are to be used solely for playing the game described by these rules. Any use or reproduction of the materials for purposes other than those permitted by these rules may constitute a violation of the gambling laws of the State of Oregon.

(3) All decisions of the Director regarding Lottery games are final.
Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240, ORS 461.250 & ORS 461.260

Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02

Adm. Order No.: LOTT 24-2002

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Rules Amended: 177-050-0002, 177-050-0020, 177-050-0025, 177-050-0027, 177-050-0037

Rules Repealed: 177-050-0000, 177-050-0010, 177-050-0021, 177-050-0023, 177-050-0045, 177-050-0051, 177-050-0055, 177-050-0065, 177-050-0075

Subject: The proposed amendments generally are housekeeping and correction of grammar. OAR 177-050-0010, 177-050-0023, 177-050-0045, 177-050-0051, 177-050-0055, 177-050-0065 and parts of 177-050-0027 have been suspended for redundancy and are being incorporated into the new General Game rule division. OAR 177-050-0000 and 177-050-0021 and 177-050-0075 are being suspended and permanently repealed.

Note: OAR 177-050-0024 (Method of Determining Winners) and OAR 177-050-0070 (Confidentiality of Scratch-It tickets) remain the same and are not included in this revision packet.

Rules Coordinator: Mark W. Hohl—(503) 540-1417

177-050-0002

Definitions

For the purposes of division 50, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Pack" means a book of shrink-wrapped Scratch-It game tickets which may or may not be attached to each other by perforations.

(2) "Pack-Ticket Number" means the uncovered number printed on the back of the ticket; the number consists of a game number, a unique pack identification number, and a ticket number.

(3) "Play Symbols" mean the figures printed in gray-black or other colored ink which appear under each of the ruboff spots on the front of the ticket.

(4) "Play Symbol Caption" means the small printed material appearing below each play symbol which repeats or explains the play symbol; only one of these play symbol captions appears under each play symbol and is printed in gray-black or other colored ink.

(5) "Retailer Validation Code" means the small letters found under the removable rub-off latex that covers the play symbols on the front of the ticket. The letters appear in varying locations beneath the removable rub-off latex and among the play symbols.

(6) "Scratch-It" means a game in which winning tickets are produced at the time of manufacture with the aid of equipment, and the winning tickets are identified after purchase by scanning the bar code or manually entering the bar code number printed on the back of each ticket with equipment provided by the Lottery. A Scratch-It game ticket offers a player the opportunity to remove a latex covering on the front of a ticket and play the Scratch-It ticket for entertainment purposes.

(7) "Ticket Validation Number" means the unique number covered by latex on the front of the ticket.

(8) "Void if Removed Number" (VIRN) means the series of digits on the face of a Scratch-It ticket located beneath the play area and covered with latex which is used in the validation process.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.010

Hist.: LC 7-1987, f. & ef. 4-29-87; LC 13-1987(Temp), f. & ef. 7-27-87; LC 15-1987, f. 8-24-87, ef. 9-1-87; LC 4-1988, f. & cert. ef. 1-26-88; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02

177-050-0020

Scratch-It Ticket Price

The price of a Scratch-It ticket shall be at least \$1, except to the extent of any discounts authorized by the Commission.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.240

Hist.: SLC 4-1985(Temp), f. & ef. 1-29-85; SLC 8-1985, f. & ef. 6-21-85; LC 7-1987, f. & ef. 4-29-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02

ADMINISTRATIVE RULES

177-050-0025

Payment of Prizes

This rule provides procedures for a player to claim Scratch-It ticket prizes and for payment of prizes on valid winning tickets.

(1) Scratch-It ticket prizes of \$600 and less shall be claimed by one of the following methods:

(a) The player may present the Scratch-It ticket to a Lottery retailer. The retailer shall determine whether a ticket entitles the holder to a prize, validate the claim with the Lottery by scanning the bar code or manually entering the bar code number printed on the back of each ticket into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due.

(b) In the event the retailer is not authorized to pay the claim, the player may bring the ticket to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours and present the ticket to the Oregon Lottery.

(c) The player may also sign the back of the ticket, write the player's mailing address on the back of the ticket, and mail it to the Oregon Lottery, PO Box 14515, Salem, Oregon 97309 (registered mail recommended).

(d) Upon the Director's determination that the ticket is a winner and validation of the ticket under OAR 177-050-0027, the Lottery may then present or mail a check to the player in payment of the amount of the prize due less any applicable tax withholding. If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player shall be promptly notified.

(2) A retailer that is authorized to pay a prize of \$600 or less shall pay that prize in cash or check, or any combination thereof.

(a) A retailer that pays a prize with a check that is dishonored may be subject to termination of the Lottery Retailer Contract.

(b) If a retailer's prize payment check is dishonored, the player may seek payment from the Lottery by presenting a copy of the dishonored check to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours, or by mailing a copy of the dishonored check with a winner claim form to the Oregon Lottery, PO Box 14515, Salem, Oregon 97309. If the Lottery determines that payment of the prize is authorized, the retailer has not paid the prize, and it is unlikely that the retailer will pay the prize, the Lottery may then issue a check to the player in the amount of the prize due less any applicable tax withholding.

(3) A claimant must claim a Scratch-It ticket prize of more than \$600 by:

(a) Bringing the ticket to the Oregon Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours and presenting the ticket to the Oregon Lottery; or

(b) Signing the back of the ticket, writing the player's mailing address on the back of the ticket, completing a winner claim form, and mailing it together with the winning ticket to the Oregon Lottery, PO Box 14515, Salem, Oregon 97309 (registered mail recommended). The winner claim form may be obtained from any Lottery retailer offering traditional games or from the Lottery at the addresses listed above.

(c) Upon the Director's determination that the ticket is a winner and validation of the ticket under OAR 177-050-0027, the Lottery may then present or mail a check to the player in payment of the amount of the prize due less any applicable tax withholding. If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player shall be promptly notified.

(4) If a claimant of a Scratch-It prize of more than \$600 cannot submit an intact winning ticket because a Scratch-It game retailer lost, damaged, or destroyed the ticket while attempting to perform validation procedures on the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may still be validated provided the claim is made before the end of the one year claim period after the end of the game as described in OAR 177-046-0150(1).

(a) To claim a prize based on a lost, damaged, or destroyed ticket, the player shall obtain, complete, and sign a winner claim form and a claim affidavit furnished by the Lottery. The player shall submit the two completed forms along with any other evidence of the validation attempt that is in the player's possession (including, but not limited to, the "claim at Lottery" slip produced by the terminal at the time of the validation attempt) to the Lottery at the addresses listed above either by mail (registered mail recommended) or in person at the Lottery office during Lottery business hours.

(b) The evidence submitted by the player must corroborate the validation attempt including, but not limited to, identification of the Lottery game retailer or clerk who attempted to validate the prize, the time and date

of the validation attempt, the ticket validation number, the terminal number, and the prize amount.

(c) The Assistant Director for Security will conduct an investigation to determine if the claim and winning game ticket are valid.

(d) A retailer who is the subject of an investigation conducted under this section is required to complete and provide to the Lottery a retailer affidavit form explaining the events in question.

(e) Based upon all the facts and information available, the Director shall make a determination whether prize payment is warranted and authorized.

(f) Upon the Director's determination that the claim submitted under subsection (4) of this rule is based on a valid, winning ticket, and that the player is the proper person to whom a prize is payable, the Lottery shall present or mail a check to the player in payment of the appropriate prize amount less any applicable tax withholding.

(g) Payments of claims submitted under subsection (4) of this rule are restricted to the prize amount.

(h) The Director may sanction a Lottery game retailer for the loss, damage, or destruction of a winning Scratch-It game ticket including, but not limited to, imposing a requirement for training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract.

(5) If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player shall be promptly notified.

(6) A prize claim must be made under this rule within the time limit specified in OAR 177-046-0150(1).

(7) Any ticket not passing all applicable validation checks is invalid and void for claims made under OAR 177-050-0025(4). A player submitting an invalid or void ticket is ineligible for any prize and no prize shall be paid for such a ticket.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: SLC 4-1985(Temp), f. & ef. 1-29-85; SLC 8-1985, f. & ef. 6-21-85; SLC 4-1986, f. & ef. 2-25-86; SLC 27-1986, f. & ef. 11-24-86; LC 7-1987, f. & ef. 4-29-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 8-1993, f. 9-22-93, cert. ef. 10-18-93; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02

177-050-0027

Ticket Validation Requirements

(1) Besides meeting all of the other requirements in OAR chapter 177 and as may be printed on the back of each ticket, the following validation requirements shall apply with regard to Scratch-It game tickets:

(2) Except as provided in OAR 177-050-0025(4), to be a valid Scratch-It game ticket, all of the following requirements must be met:

(a) Where applicable, each of the play symbols must have a play symbol caption underneath, and each play symbol must agree with its play symbol caption;

(b) Each of the play symbols and captions must be present in its entirety and be legible;

(c) Each of the play symbols and its play symbol caption must be printed according to game specifications;

(d) The game number, pack number, ticket number, bar code, bar code number, and VIRN number must be present and all information shall correspond with the Lottery's computer records.

(e) The play symbols, play symbol captions, game number, pack-ticket number, and VIRN number must be right-side-up and not reversed in any manner;

(f) The ticket must have exactly one pack-ticket number;

(g) The VIRN number of an apparent high-tier winning ticket shall appear on the Lottery's official record of winning ticket VIRN numbers; and a ticket with that VIRN number shall not have been paid previously;

(h) Each of the following must correspond precisely to the artwork on file at the Lottery: play symbols on the ticket, play symbol captions, pack-ticket numbers, display printing, game numbers, retailer validation code; and ticket VIRN number.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: LC 7-1987, f. & ef. 4-29-87; LC 4-1988, f. & cert. ef. 1-26-88; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 7-1995, f. & cert. ef. 7-7-95; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 1-1997, f. 1-31-97, cert. ef. 2-1-97; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02

ADMINISTRATIVE RULES

177-050-0037

Stolen, Destroyed, and Damaged Scratch-It Tickets

(1) A Lottery game retailer shall receive credit for defective, damaged, or destroyed active Scratch-It tickets or shall not be billed for inactive defective, damaged, or destroyed Scratch-It tickets under the following conditions:

(a) The defect is a result of a manufacturing error or damage during shipment; or

(b) The damage is due to circumstances beyond the retailer's control, such as a structure fire, flood, or other natural disaster; and

(c) All such damaged or defective Scratch-It tickets must be returned to the Lottery. In those instances where the Scratch-It tickets cannot be returned because they are completely destroyed or damaged beyond recognition, the retailer shall submit, on a form provided by the Lottery, a signed affidavit which describes the circumstances of how the Scratch-It tickets were destroyed or damaged. The Lottery's Accounting department will review inventory and sales records and estimate the value of the destroyed or damaged Scratch-It tickets.

(d) Credit for defective, damaged, or destroyed Scratch-It tickets will be given upon approval of the Director.

(2) A retailer who is the victim of a criminal act which results in the loss of \$200 or more of active Scratch-It tickets shall be credited for half of the uninsured loss by the Lottery provided the following conditions are satisfied:

(a) The retailer immediately reports the crime and the game, pack, and Scratch-It ticket numbers of the stolen tickets to the local law enforcement agency and to the Lottery.

(b) The retailer submits to the Lottery a copy of the crime report prepared by the local law enforcement agency.

(c) The retailer submits to the Lottery, on an affidavit form provided by the Lottery, a signed statement which shows and describes the circumstances of the criminal act. The affidavit shall include the game, pack, and Scratch-It ticket numbers of the stolen tickets; and

(d) The retailer includes, as part of its affidavit, a statement that the retailer is self-insured or that the loss is not covered by the retailer's insurance policy. If the loss is fully covered by third-party insurance, the retailer is not eligible to receive a credit for the stolen tickets. If the loss is not entirely covered by third-party insurance, then the retailer may receive a credit for the balance of the loss if the retailer provides the Lottery with the name of the third-party insurer, policy number, and any other information needed by the Lottery to process the request for credit. Credit for such stolen Scratch-It tickets may be given upon final approval by the Director.

(3) Retailers who are the victims of a criminal act which results in the loss of \$200 or more of inactive Scratch-It tickets will not be billed for such tickets nor will they receive credit for them provided the retailer follows the steps specified in sections (2)(a), (b), (c), and (d) above.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 2-1991, f. & cert. ef. 7-24-91; LC 6-1993, f. & cert. ef. 7-2-93; LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 13-1996, f. & cert. ef. 12-27-96; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02

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Rules Amended: 177-065-0005, 177-065-0015, 177-065-0020, 177-065-0025, 177-065-0030, 177-065-0035, 177-065-0040, 177-065-0045, 177-065-0055, 177-065-0065, 177-065-0075, 177-065-0080

Rules Repealed: 177-065-0000, 177-065-0100

Subject: The proposed amendments generally are housekeeping and correction of grammar. OAR 177-065-0000 is being suspended and permanently repealed. OAR 177-065-0100 has been suspended for redundancy and is being incorporated into the new General Game rule division.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-065-0005

Definitions

For the purposes of division 65, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Breakopen," or "Breakopen share" means a single card, the face of which is initially covered or otherwise hidden from view to conceal a

number or series of numbers, symbol or set of symbols, or other patterns, a few of which numbers, symbols, or patterns have been designated in advance as prize winners.

(2) "Breakopen dispensing device" means a clear container or any coin or currency operated mechanical or electro mechanical device that a retailer uses for dispensing Breakopen shares to the public, upon payment of the appropriate purchase price.

(3) "Breakopen game" means a category of Breakopen packs that have in common the same unique game number, game theme and name, odds, prize structure, and payout rate.

(4) "Breakopen pack" means a sealed box containing a predetermined number of Breakopen shares which are then sold individually to Lottery players by a retailer.

(5) "Breakopen Prize Flare" or "Prize Flare" means a poster describing the contents of a Breakopen pack including: the numbers, symbols or patterns which win a prize; a tabulation of the number of prizes of each prize denomination; the odds of winning such prizes; and the number of Breakopen shares contained in the Breakopen pack.

(6) "Sight validation" means a printed feature on a Breakopen share used by a retailer to visually inspect a winning Breakopen share to verify the winning combination of numbers, symbols or patterns, and the prize amount.

(7) "Share verification card" means a printed card unique to and provided with each Breakopen pack which serves as an additional means of verifying a winning Breakopen share with a prize of \$5.00 or more by providing a serialized cross-reference.

(8) "Breakopen vendor" means any person who produces and provides Breakopen games to the Lottery.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 14-1987(Temp), f. & cert. ef. 7-27-87; LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

177-065-0015

Breakopen Game Special Inspection

(1) The Director has the authority to select, remove from a retail sale environment, and examine any Breakopen pack or Breakopen packs to evaluate the quality and/or integrity of a Breakopen game or Breakopen pack. If the Director permanently withdraws from sale a Breakopen pack in which the Lottery finds no alteration, deceptive condition, or other violation attributed to the retailer, then the retailer shall either:

(a) receive a new sealed Breakopen pack;

(b) be credited by the Lottery for the cost to the retailer of the Breakopen pack if the original factory seal was intact when removed by the Director; or

(c) receive credit for a pro rata portion of the retailer's cost for the Breakopen pack based upon the remaining unsold Breakopen shares in the selected Breakopen pack.

(2) The permanently withdrawn Breakopen pack becomes the property of the Lottery. Whether the retailer receives credit or a replacement Breakopen pack is at the discretion of the Director.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 14-1987(Temp), f. & cert. ef. 7-27-87; LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 9-1989, f. & cert. ef. 4-25-89; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

177-065-0020

Limitations on the Sale of Breakopen Games

(1) No retailer is permitted to display or sell any Breakopen share which may have been in any manner marked, defaced, or tampered with or otherwise placed in a condition that may deceive the public or affect the chances of winning the prizes associated with the Breakopen pack.

(2) A retailer is prohibited from selling Breakopen shares using any method other than fair chance or in any manner contrary to the principle that every share has an equal and random chance of winning a prize.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 14-1987(Temp), f. & cert. ef. 7-27-87; LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

ADMINISTRATIVE RULES

177-065-0025

Breakopen Game Price

The price of a Breakopen share is \$0.25, \$0.50, or \$1.00, or such other price approved by the Director and marked on the individual share.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 14-1987(Temp), f. & ef. 7-27-87; LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 24-1987(Temp), f. & cert. ef. 12-22-87; LC 8-1988, f. & cert. ef. 2-23-88; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LC 4-1990, f. & cert. ef. 4-3-90; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

177-065-0030

Determination of Winners and Payment of Prizes

(1) Whether a Breakopen share is a winner, and the prize value for which such a Breakopen share may be claimed pursuant to OAR 177-065-0035, is determined in one of two ways:

(a) An individual may compare the numbers, symbols or patterns on a Breakopen share with the winning numbers, symbols or patterns displayed on a prize flare; or

(b) A retailer may compare a Breakopen share to the sight validation and/or share verification card.

(c) In the event that the methodologies specified in subsection (1)(a) and (1)(b) above produce conflicting results, the results of the methodology specified in subsection (1)(b) is controlling.

(2) A retailer shall pay all Breakopen game prizes for winning Breakopen shares validated pursuant to subsection (3). All Breakopen game prizes shall be paid by the retailer in cash or check, or any combination thereof.

(3) A retailer shall ensure the validity of an apparent winning Breakopen share by visually inspecting the Breakopen share using the sight validation feature, and by comparing the Breakopen share to the share verification card for Breakopen prizes of \$5.00 or more.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 14-1987(Temp), f. & ef. 7-27-87; LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 24-1987(Temp), f. & cert. ef. 12-22-87; LC 8-1988, f. & cert. ef. 2-23-88; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LC 6-1991, f. & cert. ef. 9-25-91; LC 7-1992, f. & cert. ef. 7-23-92; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

177-065-0035

Claiming of Prizes

(1) Breakopen prizes must be redeemed on the day of purchase at the location where the winning share was purchased.

(2) A retailer shall prominently display a sign which informs the public that all Breakopen shares purchased at the retailer's location must be redeemed at the retailer's location on the day of purchase.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 14-1987(Temp), f. & ef. 7-27-87; LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 24-1987(Temp), f. & cert. ef. 12-22-87; LC 8-1988, f. & cert. ef. 2-23-88; LC 29-1988, f. & cert. ef. 11-29-88; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LC 4-1990, f. & cert. ef. 4-3-90; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

177-065-0040

Limitation on Breakopen Dispensing Devices

(1) Any Breakopen dispensing device must allow the public to clearly see that Breakopen shares are available within the device. Any container or device that attempts to reveal the uncovered play symbols of a Breakopen share that is being dispensed to a player shall not be a Breakopen dispensing device.

(2) A retailer must use a Breakopen dispensing device to dispense Breakopen shares to the public and shall use a Breakopen dispensing device solely for this purpose.

(3)(a) Except as provided in subsection (b) below, the Lottery is not responsible for any costs incurred by a retailer for the purchase, repair, or maintenance of any Breakopen dispensing device unless such costs are associated with a Lottery test of a Breakopen dispensing device at the retailer's location and the Lottery agreed in writing to reimburse the retailer's costs, or a specified portion thereof, in advance of the retailer incurring these costs.

(b) For those Breakopen dispensing devices that a retailer purchases from the Lottery, the Lottery, at its discretion, may provide minimal repair and maintenance services at no charge to the retailer. Prior to providing

repair or maintenance services on such a Breakopen dispensing device, the Lottery shall inform a retailer as to whether the services shall be performed free of charge.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 14-1987(Temp), f. & ef. 7-27-87; LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 24-1987(Temp), f. & cert. ef. 12-22-87; LC 8-1988, f. & cert. ef. 2-23-88; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LC 4-1990, f. & cert. ef. 4-3-90; LC 7-1992, f. & cert. ef. 7-23-92; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03

177-065-0045

All Devices Must Comply with Requirements

A retailer is not permitted to display or use any device to dispense Breakopen shares unless such device conforms to all requirements of these rules.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 14-1987(Temp), f. & ef. 7-27-87; LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

177-065-0055

Breakopen Game Assembly and Packaging

(1) Breakopen vendors shall manufacture, assemble, and package each Breakopen game and each Breakopen pack within any such Breakopen game in such a manner that none of the winning Breakopen shares can be identified prior to playing such shares and that neither the location nor approximate location of any of the winning shares can be determined by any means including, but not limited to, any pattern in manufacture, assembly, packaging, markings, sizing, or through the use of a light or any other device.

(2) No retailer or any employee or agent of a retailer shall attempt to identify winning Breakopen shares except pursuant to his or her responsibility under OAR 177-065-0030.

(3) All Breakopen games shall be approved by the Director for distribution and sale. Only the Lottery may distribute Breakopen packs to Lottery retailers. Only the Lottery and its retailers may sell Breakopen shares.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 14-1987(Temp), f. & ef. 7-27-87; LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

177-065-0065

Posting of Prize Flares

A Breakopen vendor shall include a prize flare in each Breakopen pack. A retailer shall display the prize flare in the immediate vicinity of the Breakopen dispensing device used to dispense Breakopen shares from the Breakopen pack.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 14-1987(Temp), f. & ef. 7-27-87; LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 24-1987(Temp), f. & cert. ef. 12-22-87; LC 8-1988, f. & cert. ef. 2-23-88; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LC 7-1992, f. & cert. ef. 7-23-92; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

177-065-0075

Number and Value of Breakopen Game Prizes

(1) For each Breakopen game and Breakopen pack, the Director shall determine the number and value of prizes, the quantity of shares ordered, and the odds of winning prizes.

(2) The Director shall provide a Breakopen game insert to all Breakopen game retailers which provides a tabulation of the number of prizes of each prize denomination that are to be awarded in each Breakopen pack and the odds of winning such prizes.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 16-1987, f. 8-24-87, ef. 9-1-87; LC 11-1988(Temp), f. & cert. ef. 3-29-88; LC 13-1988, f. & cert. ef. 4-26-88; LC 15-1988, f. & cert. ef. 6-2-88; LC 19-1988(Temp), f. & cert. ef. 6-28-88; LC 21-1988, f. & cert. ef. 8-23-88; LC 12-1989(Temp), f. & cert. ef. 7-17-89; LC 15-1989, f. & cert. ef. 8-28-89; LC 1-1991, f. & cert. ef. 3-7-91; LC 7-1992, f. & cert. ef. 7-23-92; LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

177-065-0080

Breakopen Pack Returns

(1) A retailer may return a full Breakopen pack and receive either a new sealed Breakopen pack or credit for the retailer's cost for the returned

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Breakopen pack so long as the Breakopen game to which the Breakopen pack belongs is still being distributed by the Lottery to Lottery retailers and at least one of the following conditions exists:

- (a) The Breakopen pack contains a manufacturing defect;
- (b) The Breakopen pack contains Breakopen shares damaged during delivery or shipment;
- (c) The original factory seal surrounding the Breakopen pack has not been broken and the Breakopen pack was ordered or shipped in error; or
- (d) The Lottery or the retailer has terminated the retailer's contract to sell Breakopen games.

(2) If the Lottery or a retailer has terminated the retailer's contract to sell Breakopen games, the retailer may return a partial Breakopen pack and receive credit for a pro rata portion of the retailer's cost for the returned Breakopen pack based upon the remaining unsold Breakopen shares in the returned Breakopen pack.

(3) The Lottery shall ship a new, sealed Breakopen pack or give credit to the retailer upon the Director's confirmation of the requirements specified in subsection (1) or (2) above. Whether the retailer receives credit or a replacement Breakopen pack is within the Director's discretion.

(4) The Lottery reserves the right to allow the return of Breakopen shares for credit or Breakopen pack replacement in circumstances other than those specified in subsection (1) or (2) above, when, in the opinion of the Director, it is in the best interest of the Lottery to do so.

(5) A Breakopen pack returned under this rule becomes the property of the Lottery.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LOTT 6-1999, f. & cert. ef. 5-27-99; LOTT 14-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 25-2002, f. & cert. ef. 11-25-02

Adm. Order No.: LOTT 26-2002

Filed with Sec. of State: 11-25-2002

Certified to be Effective: 11-25-02

Notice Publication Date: 10-1-02

Rules Amended: 177-070-0005, 177-070-0025, 177-070-0035, 177-070-0080

Rules Repealed: 177-070-0000, 177-070-0010, 177-070-0015, 177-070-0055, 177-070-0060, 177-070-0065, 177-070-0070, 177-070-0075

Subject: The proposed amendments generally are housekeeping and correction of grammar. 177-070-0015, 177-070-0065, 177-070-0070 and 177-070-0075 have been suspended for redundancy and are being incorporated into the new General Game rule division. OAR 177-070-0000, 177-070-0010, 177-070-0055 and 177-070-0060 are being suspended and permanently repealed.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-070-0005

Definitions

For the purposes of division 70, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Drawing" means the procedure whereby the Lottery selects the winning combination in accordance with the rules of the game.

(2) "On-Line game" means a lottery game, other than video lottery games, in which a player selects a combination of numbers, events or symbols, the type of game and amount of play, and the drawing date(s) by use of a computer. In return for paying the appropriate amount, the player receives a computer-generated ticket with the player's selection(s) printed on it. Examples of On-Line games include, but are not limited to Megabucks, Powerball, Sports Action, Pick 4, Win for Life, and Keno.

(3) "On-Line retailer" means a person or business authorized by the Lottery to sell On-Line tickets.

(4) "On-Line terminal (OLT)" means the computer hardware by which an On-Line retailer or player enters the combination selected by the player and by which On-Line tickets are generated and claims are validated.

(5) "On-Line ticket" means a computer-generated ticket issued by an On-Line terminal to a player as a receipt for the combination a player has selected. That ticket is the only acceptable evidence of the combination of numbers or symbols selected.

(6) "Play slip" means a card used in selecting and marking a player's game plays which may then be inserted into a terminal's play slip reader.

(7) "Validation" means the process of determining whether an On-Line ticket presented for payment is a winning ticket.

(8) "Winning combination" means the one or more numbers or symbols randomly selected by the Lottery in a drawing.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.010

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 3-1992, f. & cert. ef. 4-27-92; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02

177-070-0025

Payment of Prizes

(1) To claim an On-Line game prize of \$600 or less, the claimant may present the winning On-Line ticket to any On-Line retailer, or to the Salem Lottery office:

(a) If the claim is presented to an On-Line retailer, the On-Line retailer shall validate the claim and, if determined to be a winning ticket, shall make payment of the amount due the claimant during the prize redemption hours agreed upon between the retailer and the Lottery. The retailer may pay prizes in cash or check, or any combination thereof. If the On-Line retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to the Lottery by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery shall present or mail a check to the claimant in payment of the amount due;

(b) If the claim is presented to the Salem Lottery office, the claimant shall complete a "Winner Claim Form" regardless of the prize amount and submit it with the winning ticket, either by mail or in person. Upon determination that the ticket is a winning ticket, the Lottery shall present or mail a check to the claimant in payment of the amount due, less any applicable tax withholding. If the ticket is determined to be a non-winning ticket, the claim shall be denied and the claimant notified.

(2)(a) To claim an On-Line prize of more than \$600, the claimant shall obtain and complete a "Winner Claim Form" and submit it with the winning ticket to the Lottery Player Services Office, Oregon Lottery, 500 Airport Road SE, Salem, Oregon by mail or in person.

(b) Notwithstanding OAR 177-075-0027(3), if a claimant for an On-Line prize of more than \$600 cannot submit an intact winning ticket because a Lottery game retailer lost, damaged, or destroyed the winning ticket while performing validation procedures on the ticket, the claimant shall obtain, complete, and sign an Oregon Lottery "Winner Claim Form" and Oregon Lottery "Claim Affidavit." The claimant shall submit the "Winner Claim Form" and "Claim Affidavit" along with any other evidence of the validation attempt in the claimant's possession including, but not limited to, the "Claim at Lottery" slip produced by the terminal at the time of the validation attempt, to the Lottery Player Services Office, Oregon Lottery, 500 Airport Road SE, Salem, Oregon by mail or in person.

(c) Upon determination that the claim is based on a valid winning ticket, the Lottery shall present or mail a check to the claimant in payment of the amount due, less any applicable tax withholding. The amount due shall be calculated according to the rules adopted for the particular On-Line game. If the ticket is determined to be a non-winning ticket or invalid, the claim shall be denied and the claimant notified. Non-winning or invalid tickets will not be returned to the claimant.

(d)(A) When a prize payment is authorized by the Director under OAR 177-070-0035(4), prize payment shall be validated through the Lottery's central computer system on the last day of the eligible prize claim period. If the prize claim period expires on a weekend or on a holiday when the Lottery is closed, the expiration period will be extended to the next working day. Following validation, the Lottery shall issue the prize payment in the usual course of Lottery business.

(B) Prize payments made under this subsection shall be restricted to the prize amount under the prize structure for the On-Line game in which the ticket was purchased.

(3) All prizes must be claimed within one year of the drawing in which the prize was won. In the event the final day of the one-year period falls on a weekend or a Lottery holiday, the claim period will be extended to end on the next business day. Any prize not claimed within the specified period shall be forfeited and thereafter placed into the Economic Development Fund established by ORS 461.540 for the purpose of creating jobs and furthering economic development in Oregon. The transfer shall take place at the same time the Lottery's next scheduled transfer of proceeds allocated for economic development is made.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.260

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 20-1987, f. 10-26-87, ef. 11-2-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 7-1995, f. & cert. ef. 7-7-95; LOTT 4-2000(Temp),

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f. 6-15-00, cert. ef. 6-15-00 thru 12-12-00; LOTT 7-2000, f. & cert. ef. 10-4-00; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02

177-070-0035

Validation Requirements

(1) To be a valid winning On-Line ticket, all of the following conditions must be met:

(a) The ticket data must have been recorded in the Lottery's central computer system prior to the drawing and the information appearing on the ticket must correspond with the computer record;

(b) The ticket shall be intact to the extent that all information appearing on the ticket corresponds with the Lottery's computer records;

(c) The ticket shall not be altered or tampered with in any manner;

(d) The ticket shall not be counterfeit or a duplicate of another winning ticket;

(e) The ticket must have been issued by an authorized On-Line retailer or dispensed by a player-activated terminal in an authorized manner;

(f) The ticket must not have been stolen or canceled;

(g) The ticket must not have been previously paid;

(h) The ticket is subject to all other confidential security checks of the Lottery.

(2) Except as provided in section (4) of this rule, a ticket is the only valid receipt for claiming a prize. A copy of a ticket or a play slip has no pecuniary or prize value and does not constitute evidence of ticket purchase or of numbers selected.

(3) A ticket shall be validated through the Lottery's computer system.

(4) Notwithstanding OAR 177-090-0025(4), in the event that a Lottery retailer attempted to validate a winning On-Line game ticket with a prize of more than \$600 and in the course of the validation process the retailer or an employee of the retailer lost, damaged, or destroyed the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may be validated.

(a) To be validated, the information supplied on the winner claim form, the claim affidavit, and other evidence submitted by the claimant must agree with the data recorded in the Lottery's central computer system including, but not limited to: corroboration of the criteria set forth in section (1) of this rule except those specific criteria related to the physical properties of the lost, damaged, or destroyed game ticket; and corroboration of the validation attempt including, but not limited to, identification of the Lottery retailer or clerk who attempted to validate the prize, the time and date of the validation attempt, the ticket serial number, the terminal number, and the prize amount.

(b) The Assistant Director for Security will conduct an investigation to determine if the claim and winning game ticket are valid.

(c) The Director shall, based on all the facts and information available, make a determination whether prize payment is warranted and authorized.

(d) The Director may assign sanctions to a Lottery retailer for the loss, damage, or destruction of a game ticket including, but not limited to, imposing a requirement for training for the retailer or the retailer's employee(s), and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract.

(e) A retailer who is the subject of an investigation conducted under this section is required to complete an Oregon Lottery retailer affidavit form explaining the events in question.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 5-1986, f. & ef. 3-5-86; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1991, f. & cert. ef. 9-25-91; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 1-1997, f. 1-31-97, cert. ef. 2-1-97; LOTT 4-2000(Temp), f. 6-15-00, cert. ef. 6-15-00 thru 12-12-00; LOTT 7-2000, f. & cert. ef. 10-4-00; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02

177-070-0080

Unauthorized Use of Play Slips

(1) A person shall not insert into an on-line terminal's play slip reader any material that is not a play slip printed and approved for use by the Oregon Lottery, including but not limited to facsimiles or copies of play slips. No device shall be connected to a Lottery terminal to enter plays, except as may be approved by the Lottery.

(2) All plays made in the game shall be marked on the play slip by hand. No play slips with plays marked by an electric or mechanical device shall be used to enter plays.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: LC 6-1992, f. & cert. ef. 6-23-92; LOTT 15-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 26-2002, f. & cert. ef. 11-25-02

Adm. Order No.: LOTT 27-2002

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Rules Amended: 177-075-0000, 177-075-0005, 177-075-0010, 177-075-0015, 177-075-0020, 177-075-0027, 177-075-0030, 177-075-0035

Rules Repealed: 177-075-0045, 177-075-0050

Subject: OAR 177-075-0010 has been amended to reflect that the player no longer has to choose a prize payment method at the time of purchase. OAR 177-075-0027 has been amended to allow a Division 1 prize winner to select either a lump sum payment or an annuity payment for 60 days from the date of validation of the winning ticket. The other proposed amendments generally are housekeeping and correction of grammar. OAR 177-075-0045, 177-075-0050, parts of 177-075-0000 and 177-075-0015 have been suspended for redundancy and are being incorporated into the new General Game rule division. Note: OAR 177-075-0040 (Probability of Winning) is not being amended and is not part of this revision packet.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-075-0000

Definitions

For the purposes of Oregon Megabucks, a 6 of 48 lotto game, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Division 1 prize pool" means the amount of money required to fund an advertised Division 1 prize.

(2) "Exchange ticket" means a computer-generated, printed paper issued by a terminal to replace a game ticket that had been purchased for play in consecutive Megabucks Lotto games and was validated as a winning ticket before the latest drawing appearing on the game ticket. An exchange ticket shall contain the exact game play and future drawing date(s) appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket prize.

(3) "Game board" or "boards" means that area of the play slip which contains 48 squares numbered 1 through 48.

(4) "Game ticket" or "ticket" means a ticket produced by a terminal, which contains the caption "Megabucks", two or more lettered game plays each of which has six numbers from 1 through 48 followed by the drawing date, the price of the ticket, a retailer number, and a serial number.

(5) "Kicker" means the play option whereby a player, by paying an additional one dollar for each dollar wagered on Megabucks, is entitled to receive larger prizes for matching three of six, four of six, or five of six numbers.

(6) "Lotto" means a lottery game wherein a player selects a group of numbers, usually six, out of a larger predetermined set of numbers.

(7) "Play" or "game play" means the six different numbers from 1 through 48 which appear on a ticket as a single lettered selection and are to be played by a player in a game.

(8) "Privileged terminal" means a terminal authorized to validate prizes over \$600.00.

(9) "Quick pick" means the random selection by a terminal of six different numbers from 1 through 48 which appear on a ticket and are to be played by a player in the game.

(10) "Play slip" or "Game slip" means a card used in marking a player's game plays. For this purpose, each play slip has ten game boards. Each game board is lettered with one letter from A through J and, when used to purchase a game play, corresponds to the numbers selected and printed on the ticket. An even number of boards, i.e., two, four, six, eight, or ten must be selected on each slip.

(11) "Random number generator" means a computer-driven electronic device capable of producing numbers at random.

(12) "Terminal" means a device as defined in OAR 177-070-0005(4).

(13) "Winning numbers" means the six numbers between 1 and 48, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461.120(2)

Stats. Implemented: Or. Const. Art. XV, Sec. 4(4) & ORS 461.250

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 6-1986, f. & ef. 3-5-86; SLC 12-1986, f. 5-28-86, ef. 6-1-86; LC 10-1989(Temp), f. 4-25-89, cert. ef. 4-30-89; LC 11-1989, f. & cert. ef. 7-6-89; LC 9-1990, f. 7-20-90, cert. ef. 8-5-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 3-1994, f. 2-24-94, cert. ef. 3-1-94; LC 3-1995, f. & cert. ef. 4-27-95; LOTT 8-1998(Temp), f. & cert. ef. 12-16-98 thru 6-11-99; LOTT 7-1999, f. 5-27-99, cert. ef. 5-30-99; LOTT 8-

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2001(Temp), f. & cert. ef. 5-18-01 thru 11-9-01; LOTT 11-2001, f. & cert. ef. 8-7-01; LOTT 16-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 27-2002, f. & cert. ef. 11-25-02

177-075-0005

Price

Game plays shall sell for \$0.50 each with the minimum wager being two plays for \$1. All plays must be made in \$1 increments, hence only an even number of selections, up to a maximum of ten selections for \$5.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.240

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SL 6-1986, f. & ef. 3-5-86; SLC 12-1986, f. 5-28-86, ef. 6-1-86; LC 6-1992, f. & cert. ef. 6-23-92; LOTT 16-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 27-2002, f. & cert. ef. 11-25-02

177-075-0010

Ticket Purchase, Characteristics and Restrictions

(1) Oregon Megabucks is a pari-mutuel lotto game. A player must select an even number set of six different numbers, between 1 and 48 for input into a terminal. Tickets can be purchased either from a terminal operated by a retailer (i.e., a clerk-activated terminal) or from a terminal operated by the player (i.e., a player-activated terminal). If purchased from a retailer, the player may select each set by marking six numbered squares in any one game board on a play slip and submitting the play slip to the retailer, or by requesting "Quick pick" from the retailer. The retailer will then issue a ticket, via the terminal, containing the selected even number set or sets of numbers, each of which constitutes a game play. Tickets can also be purchased from a player-activated terminal by use of a touch screen or by inserting a play slip into the machine. A ticket can contain up to ten game plays lettered A through J. Tickets may be purchased for up to six consecutive drawings.

(2) The player must also choose whether to play "Kicker". Kicker awards larger prizes for correctly selecting three of six, four of six, and five of six numbers.

(3) A Megabucks ticket may not be voided or cancelled by returning the ticket to the retailer, including tickets that are printed in error. The placing of plays is done at the player's own risk through the On-Line retailer who is acting on behalf of the player in entering the player's plays.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.210

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 6-1986, f. & ef. 3-5-86; SLC 12-1986, f. 5-28-86, ef. 6-1-86; LC 16-1988, f. & cert. ef. 6-2-88; LC 10-1989(Temp), f. 4-25-89, cert. ef. 4-30-89; LC 11-1989, f. & cert. ef. 7-6-89; LC 9-1990, f. 7-20-90, cert. ef. 8-5-90; LC 2-1991, f. & cert. ef. 7-24-91; LC 6-1993, f. & cert. ef. 7-2-93; LC 3-1995, f. & cert. ef. 4-27-95; LOTT 8-2001(Temp), f. & cert. ef. 5-18-01 thru 11-9-01; LOTT 11-2001, f. & cert. ef. 8-7-01; LOTT 16-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 27-2002, f. & cert. ef. 11-25-02

177-075-0015

Drawings

(1) Megabucks drawings shall normally take place every Monday, Wednesday, and Saturday at approximately 7:29 PM or at any other times as determined by the Director.

(2) The objective of a drawing shall be to randomly select six winning numbers between 1 and 48. Drawings may be conducted with the aid of mechanical drawing equipment or a random number generator or other such devices as the Director may determine.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.230

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 6-1986, f. & ef. 3-5-86; SLC 12-1986, f. 5-28-86, ef. 6-1-86; LC 10-1989(Temp), f. 4-25-89, cert. ef. 4-30-89; LC 11-1989, f. & cert. ef. 7-6-89; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 8-2001(Temp), f. & cert. ef. 5-18-01 thru 11-9-01; LOTT 11-2001, f. & cert. ef. 8-7-01; LOTT 16-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 27-2002, f. & cert. ef. 11-25-02

177-075-0020

Determination of Prize Winners

(1) Prizes shall be determined and awarded on the following basis:
Tickets Containing the Following Number of Matches in One Single Lettered Game Play Irrespective of Drawing Order — Prize Category

All Six Winning Numbers — Division 1

Five Winning Numbers — Division 2

Four Winning Numbers — Division 3

Three Winning Numbers — Division 4

(2) Division 1 prizes of less than \$100,000 will be paid in a lump sum. Division 1 prizes with a value of \$100,000 and more will be paid in the form of the prevailing maximum acceptable annuity or zero coupon bonds which can be purchased with the Division 1 prize pool. The annuity or zero coupon bonds will provide for 25 equal periodic payments, the first immediately and the other 24 annually on the anniversary date (or the first regular business day thereafter) of the applicable Megabucks drawing.

(3) Divisions 2 and 3 prize winners will be paid in a lump sum. Division 4 prize winners with a Kicker game play will be paid in a lump

sum. Division 4 prize winners who did not select a Kicker game play on the winning ticket shall receive a free Megabucks ticket valued at \$1.00 except when such prize is redeemed at Lottery Headquarters, in which event the winner will have the option to be paid \$1.00 from the privileged terminal or to receive a free ticket from the Lottery Store terminal.

(4) Players are eligible to receive only the highest division prize for each winning game play.

(5) Notwithstanding the allocations in section (1) of this rule, shares in each prize category shall be rounded down to the nearest \$0.10 and each winning game play in each prize category shall be considered to be a single unit equal to one share of that prize category. All breakage (amounts left over after rounding down) shall be carried forward to the prize pool for the next drawing.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 6-1986, f. & ef. 3-5-86; SLC 12-1986, f. 5-28-86, ef. 6-1-86; SLC 22-1986(Temp), f. 8-26-86, ef. 9-21-86; LC 19-1987, f. & ef. 9-28-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 9-1990, f. 7-20-90, cert. ef. 8-5-90; LC 8-1992, f. & cert. ef. 7-23-92; LC 6-1993, f. & cert. ef. 7-2-93; LC 3-1994, f. 2-24-94, cert. ef. 3-1-94; LC 3-1995, f. & cert. ef. 4-27-95; LOTT 8-2001(Temp), f. & cert. ef. 5-18-01 thru 11-9-01; LOTT 11-2001, f. & cert. ef. 8-7-01; LOTT 16-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 27-2002, f. & cert. ef. 11-25-02

177-075-0027

Annuity Conversion Option

(1) A Division 1 prize winner has the option of receiving the advertised Division 1 prize in a single lump sum payment consisting of one-half of the advertised Division 1 prize or of receiving the full value of the Division 1 prize paid out in equal annual installments over a period of 25 years.

(2) A Division 1 prize winner shall present the winner's ticket and completed claim form, in person, at the Salem Lottery office, pursuant to OAR 177-070-0025. Upon the Lottery's determination and validation that the winner's ticket is a winning ticket of a Division 1 prize, the prize winner may exercise the payment option provided in this rule.

(3) Within 60 days of the date of validation of the Division 1 prize, a winner, prior to receiving any prize payment from the Lottery, may acknowledge in writing the winner's election to receive either the single lump sum payment or the annuitized prize payments. A winner's election is irrevocable once the winner's written election is received by the Lottery subject to the limited exception provided in Section 5 below.

(4) In the event a winner does not exercise the above option within 60 days of the validation of the Division 1 prize, the winner shall receive the full value of the prize paid in equal annual installments over a period of 25 years pursuant to OAR 177-075-0020(2).

(5) A Division 1 prize winner who has elected the annuitized prize payment method or who has failed to make an election and is placed on the annuitized prize payment plan according to Section 4 above, may be permitted at the Lottery's sole discretion to convert to the lump sum payment provided the Lottery has not yet made any payments to the prize winner. Once the Lottery makes any payment of a Division 1 prize to a Division 1 prize winner, the choice of payment is irrevocably fixed.

(6) Multiple winners, jointly claiming ownership of a Division 1 prize winning ticket in accordance with OAR chapter 177, shall make individual determinations whether to exercise the option to receive their portion of the prize in the form of a single lump sum payment or annuitized payments. Each of the multiple winners exercising the option to receive a single lump sum payment or annuitized payments must do so pursuant to the terms of this rule. Each winner has the option of choosing the lump sum payment or the annuitized payments when the entire prize is more than \$100,000 even if each individual's portion of the prize is less than \$100,000.

(7) A winner is under no obligation to exercise the option made available by this rule.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461.120(2)

Stats. Implemented: Or. Const. Art. XV, Sec. 4(4) & ORS 461.250

Hist.: LOTT 8-1998(Temp) f. & cert. ef. 12-16-98 thru 6-11-99; LOTT 7-1999, f. 5-27-99, cert. ef. 5-30-99; LOTT 8-2001(Temp), f. & cert. ef. 5-18-01 thru 11-9-01; LOTT 11-2001, f. & cert. ef. 8-7-01; LOTT 16-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 27-2002, f. & cert. ef. 11-25-02

177-075-0030

Ticket Validation Requirements

To be a valid ticket and eligible to receive a prize, all the following requirements must be satisfied in addition to all other requirements contained in OAR chapter 177:

(1) Each winning game play appearing on the ticket must be separately lettered and consist of six different numbers between one and 48.

(2) A game ticket containing a winning game play which was also wagered in subsequent, consecutive drawings may be validated prior to the

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occurrence of future drawings for which the game ticket was purchased. An exchange ticket shall be issued at the time the original game ticket is validated for the remainder of the drawings appearing on the validated game ticket. An exchange ticket shall also be issued at the time a previously issued exchange ticket is validated for the remainder of the drawings appearing on the validated exchange ticket.

(3) Claimants who share ownership interests in a winning ticket must comply with any additional requirements for prize payment described elsewhere in OAR chapter 177 as it may be amended from time to time.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 6-1986, f. & ef. 3-5-86; SLC 12-1986, f. 5-28-86, ef. 6-1-86; LC 10-1989(Temp), f. 4-25-89, cert. ef. 4-30-89; LC 11-1989, f. & cert. ef. 7-6-89; LC 4-1990, f. & cert. ef. 4-3-90; LOTT 8-2001(Temp), f. & cert. ef. 5-18-01 thru 11-9-01; LOTT 11-2001, f. & cert. ef. 8-7-01; LOTT 16-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 27-2002, f. & cert. ef. 11-25-02

177-075-0035

Allocation of Revenues

(1) On the average 50 percent of all gross sales revenues shall be reserved for prizes and shall be allocated to the prize categories as set forth below. [Table not included. See ED. NOTE.]

(2) In the event it is determined that there are no valid winning tickets for a specific prize category in any given drawing, all monies allocated for that prize category shall be carried forward and accumulated with the monies allocated for that prize category for the next drawing. This process shall continue until such time as there is one or more valid winning ticket(s) for the Division 1 prize category.

(3) In the event the Oregon Megabucks game is terminated for any reason whatsoever, any prizes which were not won shall be reallocated by the Director. Any prizes which were won but not claimed within the specified claim period shall be forfeited and allocated to the benefit of the public purpose. The transfer shall take place at the same time the Lottery's next scheduled transfer of proceeds is made.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.220

Hist.: SLC 11-1985(Temp), f. & ef. 10-24-85; SLC 6-1986, f. & ef. 3-5-86; SLC 12-1986, f. 5-28-86, ef. 6-1-86; SLC 22-1986(Temp), f. 8-26-86, ef. 9-21-86; LC 19-1987, f. & ef. 9-28-87; LC 10-1989(Temp), f. 4-25-89, cert. ef. 4-30-89; LC 11-1989, f. & cert. ef. 7-6-89; LC 17-1989(Temp), f. & cert. ef. 9-29-89; LC 18-1989, f. 11-7-89, cert. ef. 11-15-89; LC 4-1990, f. & cert. ef. 4-3-90; LC 9-1990, f. 7-20-90, cert. ef. 8-5-90; LC 12-1992, f. cert. ef. 9-28-92; LC 2-1993, f. & cert. ef. 2-25-93; LC 3-1995, f. & cert. ef. 4-27-95; Administrative Reformatting 11-30-97; LOTT 8-2001(Temp), f. & cert. ef. 5-18-01 thru 11-9-01; LOTT 11-2001, f. & cert. ef. 8-7-01; LOTT 16-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 27-2002, f. & cert. ef. 11-25-02

Adm. Order No.: LOTT 28-2002

Filed with Sec. of State: 11-25-2002

Certified to be Effective: 11-25-02

Notice Publication Date: 10-1-02

Rules Amended: 177-081-0000, 177-081-0010, 177-081-0020, 177-081-0030, 177-081-0040, 177-081-0050, 177-081-0060, 177-081-0080

Rules Repealed: 177-081-0035, 177-081-0090

Subject: The proposed amendments generally are housekeeping and correction of grammar. OAR 177-081-0035 and parts of 177-081-0000, 177-081-0030, 177-081-0040 and 177-081-0050 have been suspended for redundancy and are being incorporated into the new General Game rule division. OAR 177-081-0020 (Price) is being amended to update the maximum number of consecutive drawings a player may purchase.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-081-0000

Definitions

For the purposes of Division 81, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Exchange ticket" means a computer-generated, printed paper issued by a terminal to replace a game ticket that had been purchased for play in consecutive Pick 4 drawings and was validated as a winning ticket before the latest drawing appearing on the game ticket. An exchange ticket shall contain the exact game play and future drawing date(s) appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket price.

(2) "Easy 4 combo" means a specific match choice option as described in OAR 177-081-0080(1) in which there are six possible ways to match two to four numbers in exact order.

(3) "Game play" means the number or group of numbers and the order in which they occur appearing on a ticket for a particular drawing which shall be compared to the winning numbers and the order of the winning numbers, selected at the drawing(s) appearing on the ticket, to determine any prize payment for which the ticket may be redeemed.

(4) "Match Choice" means one or more of the seven Pick 4 game play selections offered by the Lottery as described in OAR 177-081-0080(1). The Match Choice options include the following:

(a) Option A — All four game play numbers match the Lottery's numbers in the exact order;

(b) Option B — All four game play numbers match the Lottery's numbers in any order;

(c) Option C — Easy 4 Combo;

(d) Option D — First three game play numbers match the Lottery's numbers in the exact order;

(e) Option E — Last three game play numbers match the Lottery's numbers in exact order;

(f) Option F — First three game play numbers match the Lottery's numbers in any order; and

(g) Option G — Last three game play numbers match the Lottery's numbers in any order.

(5) "Quick Pick" means the random selection of numbers by a terminal which appear as the game play on a ticket.

(6) "Winning numbers" means the four single-digit numbers, each from zero to nine, and the order in which they occur, that are selected at each drawing that is used to determine winning game plays contained on the game tickets.

Stat. Auth.: Or. Const. Art. XV Sec. (4) & ORS 461

Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.240 & ORS 461.250

Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02

177-081-0010

Game Description

(1) Pick 4 is a game based on four-digit numbers in which a player selects:

(a) A single number from each of four columns of single-digit numbers from zero to nine. The player has the option of selecting a Quick Pick or choosing his or her own number selections;

(b) One or more Match Choices from the seven possible Match Choice options; and

(c) A wager of at least \$1.00.

(2) The player's four number selections form a specific four-digit number sequence from left to right. The player's number selections and subsequent Match Choices which match the winning numbers and the order of the winning numbers in accordance with OAR 177-081-0080(1) selected at the drawing(s) on the date(s) indicated on the player's ticket determine any prize amount won.

(3) An offer to buy and an offer to sell a Pick 4 Ticket shall be made only at a location which has a contract with the Lottery to sell On-Line games, as defined in OAR 177-070-0005(3).

Stat. Auth.: Or. Const. Art. XV Sec. (4) & ORS 461

Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.240 & ORS 461.250

Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02

177-081-0020

Price

The price of a ticket shall be determined by the amount of money a player chooses to wager on the game play selected, multiplied by the number of drawings in which the ticket will be played.

(1) The price of a ticket for a single drawing purchased through a clerk-operated terminal shall range from a minimum of \$1.00 to a maximum of \$7.00 in \$.50 increments.

(2) The price of a ticket for a single drawing purchased through a player-operated terminal shall range from a minimum of \$1.00 to a maximum of \$7.00 in \$1.00 increments. When a player requests a Quick Pick from a player-operated terminal the only wager possible is \$1.00.

(3) A player may purchase a ticket for a single drawing or for up to a maximum of twelve consecutive drawings. The price of a ticket is determined by multiplying the number of drawings in which the ticket will be played by the total wager for each drawing. The minimum ticket price for a ticket containing consecutive drawings is \$2.00 (\$1 x 2 consecutive drawings = \$2). The maximum ticket price for a ticket containing consecutive

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drawings is \$84 (\$7 x twelve consecutive drawings = \$84). A game slip indicating a price of less than \$1.00 or greater than \$84.00 shall be automatically rejected by the terminal. Expansion of the number of consecutive drawings from seven to twelve applies retroactively to 1:00 P.M. February 11, 2002.

(4) Notwithstanding sections (1) through (3) of this rule, the price of a ticket for consecutive drawings purchased through a player-operated terminal shall range from a minimum of \$2.00 to a maximum of \$84.00 and must be in whole dollar amounts. For example, a \$1.50 wager placed for two consecutive drawings equals a viable \$3.00 total game play wager.

Stat. Auth.: Or. Const. Art. XV Sec. (4) & ORS 461
Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.240 & ORS 461.250
Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02

177-081-0030

Ticket Purchase, Characteristics, and Restrictions

(1) Pick 4 tickets may be purchased everyday of the year during the hours of operation of the Lottery's On-Line game system and a Lottery retailer's business hours of operation.

(2) Ticket purchase: Tickets may be purchased either from a terminal operated by a retailer, i.e., a clerk-operated terminal, or from a terminal operated by the player, i.e., a player-operated terminal. To play Pick 4, a player must either:

(a) Complete a game slip for input into a clerk-operated terminal or player-operated terminal;

(b) Request a Quick Pick or manual numbers selection from a clerk; or

(c) Request a Quick Pick using a player-operated terminal.

(3) Completing a game slip:

(a) A player must choose a game play by one of two methods:

(A) A player must select four numbers, one each from four columns of numbers from zero to nine on the game slip; or

(B) The player may select the Quick Pick option.

(b) A player must also complete the selection of the Match Choice option(s) on the game slip.

(c) A player must indicate if the game play is for consecutive drawings.

(4) Purchasing a ticket from a clerk-operated terminal:

(a) After the player completes a game slip and submits it along with the price of the ticket to the clerk, the clerk shall use the terminal to issue a ticket to the player.

(b) Alternately, the player may request that a clerk, without using a game slip, electronically submit a player's game play request through the terminal for a Quick Pick number selection or manually enter the player's four numbers, and request game play for a single drawing or consecutive drawings. A wager submitted by a clerk through the terminal without a game slip can only be made on the Easy 4 Combo Match Choice.

(5) A player may purchase a ticket from a player-operated terminal by following the instructions appearing on the screen of the terminal. Once the player has completed the game slip and inserted it and paid the price of the ticket into the terminal, the terminal will issue a ticket to the player. The player may also request a Quick Pick without using a game slip by using the player-operated terminal. A player requesting a Quick Pick from a player-operated terminal without using a game slip must play the Easy 4 Combo Match Choice and the number of consecutive drawings to be played.

(6) **Ticket Restrictions:** A player cannot place an "All 4 In Any Order" wager when all 4 numbers are the same, a "First 3 In Any Order" wager when all 3 numbers are the same, or a "Last 3 In Any Order" wager when all 3 numbers are the same. Any of the aforementioned shall be automatically rejected by the terminal.

Stat. Auth.: Or. Const. Art. XV Sec. (4) & ORS 461
Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.240 & ORS 461.250
Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02

177-081-0040

Cancellation of Tickets

A player may cancel a Pick 4 ticket for a single drawing or consecutive drawings. To cancel a ticket, a player must follow the procedure in OAR 177-046-0060.

Stat. Auth.: Or. Const. Art. XV Sec. (4) & ORS 461
Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.240 & ORS 461.250
Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02

177-081-0050

Drawings

Effective February 11, 2002, drawings shall generally occur 7-days a week at 1:00 p.m., 4:00 p.m., 7:00 p.m. and 10:00 p.m. or as otherwise authorized by the Director. Each drawing shall randomly select a specific sequence of four numbers, each from zero to nine. The winning numbers selected at each drawing shall be generated through the use of a computer-driven random number generator.

Stat. Auth.: ORS 461 & Or. Const. Art. XV Sec. 4(4)
Stats. Implemented: ORS 461.200
Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 2-2002(Temp), f. 1-1-02, cert. ef. 1-11-02 thru 8-2-02; LOTT 6-2002, f. & cert. ef. 4-29-02; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02

177-081-0060

Ticket Validation Requirements

(1) For a ticket to be valid and eligible to receive prize payment, the requirements in OAR chapter 177 must be met:

(2) A game ticket containing a winning game play and purchased for play in consecutive drawings may be validated prior to the occurrence of future drawings for which the game ticket was purchased. An exchange ticket shall be issued, at the time the original game ticket is validated, for the remainder of the drawings appearing on the validated game ticket.

Stat. Auth.: Or. Const. Art. XV Sec. (4) & ORS 461
Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.240 & ORS 461.250
Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02

177-081-0080

Prizes

(1) Prizes for a winning ticket are determined by the ticket's game play and Match Choices which match the winning numbers and the Match Choice criteria established in this section. The prize structure is as follows: [Table not included. See ED. NOTE.]

(2)(a) When the potential, aggregate Pick 4 prize liability resulting from all wagers containing a particular combination of numbers reaches or first exceeds \$500,000 in a single drawing, then no further wagers of that number combination shall be accepted by the Lottery gaming system for that drawing.

(b) Notwithstanding subsection (a) of this section, the Director may, when conditions so warrant as determined in the Director's sole discretion, establish a prize liability threshold that is higher than \$500,000 for a single drawing. The Director shall not raise the prize liability limit for a particular drawing once wagers have been curtailed because the prize limit has been reached for that drawing.

(3) The number of prizes for Pick 4 is not pre-determined by the Lottery. The overall prize-percentage payout for Pick 4 prizes is estimated at 60% over time, but the actual prize payout may vary from day-to-day and year-to-year, due to factors that include, but are not limited to, the number of players participating each day and the number of winning wagers.

(4) In the event of a dispute over the determination of a prize, the Lottery's determination is controlling.

(5) Each prize-winning player will be paid in one lump sum.

(6) For each drawing, a player may have more than one winning combination on a single ticket depending on the game play and match choice selected. However, when the Easy 4 Combo Match Choice is selected the player shall receive only the highest single prize for which the player is eligible.

[ED. NOTE: Tables referenced in this rule are available from the agency.]
Stat. Auth.: Or. Const. Art. XV Sec. (4) & ORS 461
Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.240 & 461.250
Hist.: LOTT 2-2000, f. 3-31-00, cert. ef. 4-3-00; LOTT 9-2000(Temp), f. & cert. ef. 10-9-00 thru 4-7-01; LOTT 4-2001, f. & cert. ef. 4-6-01; LOTT 17-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 28-2002, f. & cert. ef. 11-25-02

Adm. Order No.: LOTT 29-2002

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Rules Amended: 177-094-0000, 177-094-0010, 177-094-0020, 177-094-0030, 177-094-0040, 177-094-0050, 177-094-0060, 177-094-0085

Rules Repealed: 177-094-0035, 177-094-0090, 177-094-0095

Subject: The proposed amendments generally are housekeeping and correction of grammar. OAR 177-094-0035, 177-094-0090, 177-094-0095 and parts of 177-094-0030, 177-094-0040 and 177-094-0050 have been suspended for redundancy and are being incorpo-

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rated into the new General Game rule division. Note: Section 177-094-0080 was previously amended and is not part of this revision packet.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-094-0000

Definitions

For the purposes of the Win for Life game, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Board" means that portion of the game slip through which a player, either manually or by indicating a Quick Pick, selects a set of four, two-digit numbers from one through seventy-seven which comprise a Win for Life prize category wager. There are five boards on each Win for Life game slip which, depending on the number of boards marked by the player, will produce up to five game plays per game slip.

(2) "Exchange ticket" means a computer-generated, printed paper issued by a terminal to replace a game ticket that had been purchased for play in consecutive Win for Life drawings and was validated as a winning ticket before the latest drawing appearing on the game ticket. An exchange ticket shall contain the exact game play and future drawing date(s) appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket price.

(3) "Game play" means the player selection of one set of numbers as their Win for Life prize category selection. The Win for Life selection, once properly submitted as described in OAR 177-094-0030, then prompts the terminal to automatically and randomly select fourteen additional sets of numbers. The first two of the fourteen sets apply to the \$50,000 prize category, the next four sets apply to the \$20,000 prize category, and the last eight sets apply to the \$10,000 prize category. All fifteen sets of numbers appear on a ticket for a particular drawing each of which shall be compared to the winning numbers selected at the drawing(s) and appearing on the ticket to determine the prize or multiple prize payment that may be claimed.

(4) "Game ticket" or "ticket" means a computer-generated, printed paper issued by a terminal as a receipt for the game play selected by a player and which contains the following: the caption "Win for Life," one game play, the date(s) of the drawing(s) in which the ticket shall be played, the number of consecutive drawings on which the ticket shall be played, the identifying number for each drawing, the price of the ticket, a six-digit retailer number, a serial number, and a bar code.

(5) "Prize category" means a subset of the prize structure described in OAR 177-094-0080 which describes the value of the Win for Life prizes.

(6) "Quick Pick" means the random selection of numbers by a terminal which appear as the game play on a ticket.

(7) "Set" means the four, two-digit numbers from one through seventy-seven which are selected by either the player or the terminal as Win for Life wagers.

(8) "Winning numbers" means the four numbers, from one to seventy-seven randomly selected at each drawing, as described in OAR 177-094-0050, which are used to determine whether the game ticket contains winning game plays.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02

177-094-0010

Game Description

(1) Win for Life is a Lottery game based on fifteen horizontal sets of numbers.

(2) Each of the fifteen sets of numbers that match the winning numbers as prescribed by OAR 177-094-0080(1) selected at each drawing on the date(s) indicated on the player's ticket determine any prize amount won.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02

177-094-0020

Price

(1) The minimum price of a ticket for a single drawing is \$2.

(2) The price of a ticket for play in consecutive drawings shall be the price of a ticket for a single drawing (\$2.00) multiplied by the number of consecutive drawings in which the ticket will be played. The minimum ticket price for consecutive drawings is \$4.00 (\$2 x 2 consecutive drawings

= \$4). The maximum ticket price for multiple, consecutive drawings is \$12.00 (\$2 x 6 consecutive Drawings = \$12).

(3) A ticket purchased for consecutive drawings is limited solely to the following options: 2, 3, 4, 5, or 6 consecutive drawings following ticket purchase.

(4) A game slip contains five boards. Each of the five boards may be used by a player to purchase a single ticket. Therefore, a game slip may be used to purchase up to five tickets. The maximum wager allowed through one game slip is \$60 (5 boards x \$2 = \$10 x 6 consecutive drawings = \$60). Any game slip indicating a total ticket purchase price greater than \$60.00 shall be automatically rejected by the terminal.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02

177-094-0030

Ticket Purchase, Characteristics, and Restrictions

(1) Win for Life tickets may be purchased every day of the year during the hours of operation of the Lottery's On-Line game system and a Lottery retailer's business hours.

(2) Ticket purchase: Tickets may be purchased either from a terminal operated by a retailer, i.e., a clerk-operated terminal, or from a terminal operated by the player, i.e., a player-operated terminal. To play Win for Life, a player must:

(a) Complete a game slip for input into a clerk-operated terminal or player-operated terminal:

(b) Request a Quick Pick from a clerk; or

(c) Request a Quick Pick using a player-operated terminal.

(3) Completing a game slip:

(a) A player must choose a game play or game plays by one of two methods:

(A) A player may select four two-digit numbers from one to seventy-seven on a board on a game slip; or

(B) The player may select the Quick Pick option on a board on a game slip.

(b) A player may choose from one to five game plays per game slip by utilizing one or more of the five boards.

(c) A player must indicate if the game play is to be played in consecutive drawings.

(4) Purchasing a ticket from a clerk-operated terminal:

(a) After the player completes a game slip and submits it along with the price of the ticket(s) to the clerk, the clerk shall use the terminal to issue the ticket(s) to the player.

(b) Alternately, the player may submit the price of the ticket(s) to a clerk and request that a clerk, without using a game slip, electronically submit a player's Quick Pick game play selection through the terminal and request game play for a single drawing or consecutive drawings.

(5) Purchasing a ticket from a player-operated terminal:

(a) A player may purchase a ticket from a player-operated terminal by following the instructions appearing on the screen of the terminal.

(b) Once the player has completed the game slip, inserted it along with the purchase price of the ticket(s) into the terminal, the terminal will issue the ticket(s) to the player.

(c) Alternately, the player may request a Quick Pick game play selection without using a game slip through a player-operated terminal by selecting the Win for Life game option, indicating the number of consecutive drawings to be played, and inserting the purchase price of the ticket. The terminal will then issue a ticket to the player.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02

177-094-0040

Cancellation of Tickets

A player may cancel a Win for Life ticket for a single drawing or consecutive drawings. To cancel a ticket, a player must follow the procedure in OAR 177-046-0060.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02

ADMINISTRATIVE RULES

177-094-0050

Drawings

(1) Win for Life drawings shall normally take place every Monday, Wednesday, and Saturday at approximately 7:30 P.M. or at other times as determined by the Director.

(2) Each drawing shall randomly select four, two-digit numbers from a possible seventy-seven numbers from one to seventy-seven which shall be the winning numbers. The winning numbers selected at each drawing shall be generated through the use of a computer-driven random number generator.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02

177-094-0060

Ticket Validation Requirements

(1) For a ticket to be valid and eligible to receive prize payment, the ticket must be validated in accordance with the provisions of OAR chapter 177.

(2) A game ticket containing a winning game play which was also wagered in subsequent, consecutive drawings may be validated prior to the occurrence of future drawings for which the game ticket was purchased. An exchange ticket shall be issued at the time the original game ticket is validated for the remainder of the drawings appearing on the validated game ticket. An exchange ticket shall also be issued at the time a previously issued exchange ticket is validated for the remainder of the drawings appearing on the validated exchange ticket.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS 461

Stats. Implemented: ORS 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02

177-094-0085

Retailer Selling Bonus

For the purposes of OAR 177-040-0025(3)(a), and notwithstanding OAR 177-040-0025(3)(b), a retailer who sells any winning and validated Win for Life top prize of \$1,000 per week for life shall receive a bonus of \$13,000 which is based on one percent (1%) of an estimated prize value of \$52,000 per year paid over a period of 25 years ($\$52,000 \times 25 = \$1,300,000 \times .01 = \$13,000$).

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4), ORS Ch 461

Stats. Implemented: ORS Ch 461

Hist.: LOTT 11-2000, f. & cert. ef. 12-1-00; LOTT 18-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 29-2002, f. & cert. ef. 11-25-02

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Adm. Order No.: LOTT 30-2002

Filed with Sec. of State: 11-25-2002

Certified to be Effective: 11-25-02

Notice Publication Date: 10-1-02

Rules Amended: 177-099-0000, 177-099-0010, 177-099-0020, 177-099-0030, 177-099-0040, 177-099-0050, 177-099-0060, 177-099-0080, 177-099-0090, 177-099-0100

Rules Repealed: 177-099-0035, 177-099-0110

Subject: The proposed amendments generally are housekeeping and correction of grammar. OAR 177-099-0035 and 177-099-0110 have been suspended for redundancy and are being incorporated into the new General Game rule division. OAR 177-099-0090 is being amended to allow the winner of the \$1,000,000 prize to elect a single lump sum payment instead of an annuity for 60 days after the date of validation instead of 60 days after the drawing.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-099-0000

Definitions

For the purposes of Keno, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Exchange ticket" means a computer-generated, printed paper issued by a terminal to replace a game Ticket that had been purchased for play in multiple drawings and was validated before the latest drawing appearing on the game Ticket. An exchange Ticket shall contain the exact game play and future drawing date(s) appearing on the validated game ticket it is replacing and shall have all other characteristics of a game ticket except as otherwise stated in these rules. An exchange ticket shall not contain a ticket price.

(2) "Game play" means the number or group of numbers appearing on a ticket for a particular spot which shall be compared to the winning numbers, selected at the drawing(s) appearing on the ticket, to determine the prize payment for which the ticket may be redeemed.

(3) "Game slip" or "play slip" means a paper form used by a player to select a game play, that indicates the amount the player will play on the ticket containing the game play, the number of drawings in which the ticket will be played, and the choice to play the Special Keno option. Only one game play may be marked on each game slip.

(4) "Game ticket" or "ticket" means a computer-generated, printed paper issued by a terminal as a receipt for the game play selected by a player and which contains the following: the caption "Keno", one game play, the date(s) of the drawing(s) in which the ticket may be played, the number of consecutive drawings in which the ticket may be played, the identifying number for each such drawing, the price of the ticket, a six-digit retailer number, a serial number, a bar code, and the phrase "Special Keno" if that option has been selected.

(5) "Quick Pick" means the random selection of numbers by a terminal which appear as the game play on a ticket.

(6) "Special Keno" means an optional variation of the Keno prize payment and odds structure as defined in OAR 177-099-0090 which may be selected by the player.

(7) "Spot" means the amount of numbers a player may play for a game play. A player may play from one spot, i.e., one number, to ten spots, i.e., ten different numbers.

(8) "Winning numbers" means the twenty numbers, from one to eighty, that are selected at each drawing that are used to determine winning game plays contained on the game tickets.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461.120(2)

Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240 & ORS 461.250

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LC 3-1997, f. 4-25-97, cert. ef. 4-27-97; LOTT 7-1998(Temp), f. & cert. ef. 11-13-98 thru 5-7-99; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02

177-099-0010

Game Description

Keno is a 20/80 Lottery game with set prize amounts. For each drawing, a player may choose to play from one to ten spots and a corresponding selection of number choices from one to eighty. That is the player's game play. The Lottery then selects twenty winning numbers from one to eighty. The Lottery awards prizes based on the extent to which the game play appearing on a player's ticket matches the winning numbers in a drawing for which the player's ticket was purchased.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461.120(2)

Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240 & ORS 461.250

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LC 3-1997, f. 4-25-97, cert. ef. 4-27-97; LOTT 7-1998(Temp), f. & cert. ef. 11-13-98 thru 5-7-99; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02

177-099-0020

Price

The price of a ticket shall be determined by the amount of money a player chooses to play on the game play selected, multiplied by the number of drawings in which the ticket will be played. A ticket may be purchased for one drawing or for multiple, consecutive drawings. A player may purchase a ticket for a single drawing for \$1.00 to \$5.00, in whole dollar amounts, \$10.00, or \$20.00. The price of a ticket for play in multiple, consecutive drawings shall be the price of a ticket for a single drawing, ranging from \$1.00 to \$5.00, \$10.00 or \$20.00 as selected by the player, multiplied by the number of consecutive drawings in which the ticket will be played. The minimum ticket price for multiple, consecutive drawings is \$2.00 ($\1×2 consecutive drawings = \$2); the maximum ticket price for multiple, consecutive drawings is \$100.00. A ticket purchased for multiple, consecutive drawings is limited solely to the following options: 1, 2, 3, 4, 5, 10, 20, 50, or 100 consecutive drawings so long as the price of a ticket does not exceed \$100.00. A game slip indicating a price greater than \$100 shall be automatically rejected by the terminal.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461.120(2)

Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240 & ORS 461.250

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LC 3-1997, f. 4-25-97, cert. ef. 4-27-97; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02

ADMINISTRATIVE RULES

177-099-0030

Ticket Purchase, Characteristics, and Restrictions

(1)(a) Keno tickets may be purchased every day of the year during the hours of operation of the Lottery's On-Line game system and a Lottery retailer's business hours.

(b) A player may purchase a ticket for play under either the Keno prize structure set forth in OAR 177-099-0080, or the Special Keno prize structure set forth in OAR 177-099-0090. If a player does not select the Special Keno option when purchasing a ticket, the ticket shall be played under the Keno prize structure.

(2)(a) Ticket purchase: Tickets may be purchased either from a terminal operated by a retailer, i.e., a clerk-operated terminal, or from a terminal operated by the player, i.e., a player-operated terminal. To play Keno, a player must complete a game slip for input into a terminal, request a Quick Pick from a clerk, or request a Quick Pick using a player-operated terminal.

(b) Completing a game slip: A player must choose a game play by one of two methods. A player may select from one to ten numbers from the eighty number choices contained on the game slip. Alternatively, the player may select the Quick Pick option. A player must also complete the selections on the game slip regarding the amount of money to be played on the ticket per drawing, the number of multiple, consecutive drawings in which to play the ticket and the price of the ticket. The player may select the Special Keno option.

(c) Purchasing a ticket from a clerk-operated terminal: After the player completes a game slip and submits it along with the price of the ticket to the clerk, the clerk shall use the terminal to issue a ticket to the player. The player may also request that a clerk, without using a game slip, electronically submit a request for a Quick Pick through the terminal with the player informing the clerk of the number of spots to be played, the amount of money to be played on the ticket per drawing, the number of multiple, consecutive drawings in which to play the ticket, and whether the player wants the Special Keno option.

(d) A player may purchase a ticket from a player-operated terminal by following the instructions appearing on the screen of the terminal. Once the player has completed the game slip and inserted it and paid the price of the ticket into the terminal, the terminal will issue a ticket to the player. The player may also request a Quick Pick without using a game slip by using the player-operated terminal. A player requesting a Quick Pick from a player-operated terminal without using a game slip must select either the Keno or Special Keno option, the number of spots to be played, the amount of money to be played on the ticket per drawing, and the number of multiple, consecutive drawings to be played.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461.120(2)

Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240 & ORS 461.250

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02

177-099-0040

Cancellation of Tickets

A player may cancel a Keno ticket for a single drawing or consecutive drawings. To cancel a ticket, a player must follow the procedure in OAR 177-046-0060.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461.120(2)

Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240 & ORS 461.250

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02

177-099-0050

Drawings

(1) Drawings shall take place at such times and upon such intervals as determined by the Director. Drawings shall normally take place at five minute intervals. The first drawing each day shall take place five minutes after the On-Line game system is activated. The last drawing shall take place at the end of the On-Line game system activation for the day.

(2) Each drawing shall randomly select twenty numbers from a possible eighty numbers which shall be the winning numbers. The winning numbers selected at each drawing shall be generated through the use of a computer-driven random number generator.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461.120(2)

Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240 & ORS 461.250

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LC 5-1996, f. & cert. ef. 4-1-96; LC 3-1997, f. 4-25-97, cert. ef. 4-27-97; LOTT 7-1998(Temp), f. & cert. ef. 11-13-98 thru 5-7-99; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02

177-099-0060

Ticket Validation Requirements

(1) For a ticket to be valid and eligible to receive prize payment, the ticket must be validated in accordance with the provisions of OAR chapter 177.

(2) A game ticket containing a winning game play and purchased for play in multiple, consecutive drawings may be validated prior to the occurrence of future drawings for which the game ticket was purchased. An exchange ticket shall be issued, at the time the original game ticket is validated, for the remainder of the drawings appearing on the validated game ticket.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461.120(2)

Stats. Implemented: ORS 461.210, ORS 461.220, ORS 461.230, ORS 461.240 & ORS 461.250

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02

177-099-0080

Keno Prizes

Section (1) of this rule specifies prizes for Keno drawings.

(1) Prizes for each drawing shall be determined and awarded based on how many number(s) contained in a game play on a ticket match the winning numbers selected at that drawing. Prizes are determined separately for each spot category. Prizes per one dollar wagered, based upon potential sales of \$8,911,711.18 per drawing, are as follows: [Table not included. See ED. NOTE.]

(2) The total prize amount for a winning ticket multiplies according to the amount wagered on that ticket. Except as provided in OAR 177-099-0100, the highest potential prize for any Keno ticket that does not contain the phrase "Special Keno" is \$200,000 per drawing. If a ticket shows a wager of 2, 3, 4, 5, 10, or 20 dollars per drawing on a winning game play, the prize shown above for a \$1 wager shall multiply, up to \$200,000, according to the wager amount shown on the winning ticket. For example, if a ticket shows a \$5 wager on the 8 spot category and the game play on the ticket matches 8 out of 8 of the winning numbers, the prize associated with that ticket is \$15,000 x \$5 = \$75,000. If a \$5 wager is played on the 9 spot category and the winning game play on the ticket matches 9 out of 9 of the winning numbers, the prize associated with that ticket is capped at \$200,000 regardless of the fact that \$50,000 x \$5 = \$250,000.

(3) A prize-winning player shall be paid in one lump sum.

(4) For each drawing, a player may receive (subject to the validation requirements set forth in OAR 177-099-0060) only the highest single prize for which a ticket containing a winning game play is eligible.

(5) Prize payments must be claimed, and shall be made, in accordance with the provisions of OAR 177-070-0025.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200,

Hist.: LC 3-1991, f. & cert. ef. 7-24-91; LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 3-2002(Temp), f. & cert. ef. 2-4-02 thru 8-2-02; LOTT 7-2002, f. & cert. ef. 4-29-02; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02

177-099-0090

Special Keno Prizes

(1) Special Keno increases the size of the prizes at the upper tier levels, and eliminates some prizes at the lower tiers of the prize structure when compared to the Keno prize structure.

(2) As described in OAR 177-099-0030, a player must indicate the choice to play under the Special Keno prize structure. When the Special Keno prize option is designated on a ticket the Keno prizes described in OAR 177-099-0080(2) are no longer applicable.

(3) Prizes for each drawing shall be determined and awarded based on how many number(s) contained in a game play on a ticket match the winning numbers selected at that drawing. Prizes are determined separately for each spot category. Prizes per one dollar wagered, based upon potential sales of \$8,911,711.18 per drawing, are as follows: [Table not included. See ED. NOTE.]

(4) Except as provided in OAR 177-099-0100, the highest potential prize for a Special Keno ticket per drawing is \$1,000,000. A \$1,000,000 Special Keno prize shall be paid either as a \$1,000,000 annuity paid in 20 equal annual payments, or be paid as the estimated present value cost of the annuitized prize paid as a single lump sum payment. The estimated present value cost of a \$1,000,000 annuitized prize is the amount of money that would be spent by the Oregon Lottery through the Oregon State Treasury using U.S. Treasury Zero Coupon Bonds to fund a \$1,000,000 annuity paid over 20 years.

(5) Special Keno prizes multiply according to the amount played per drawing. If a ticket shows a wager of 2, 3, 4, 5, 10, or 20 dollars per draw-

ADMINISTRATIVE RULES

ing on a winning game play, the prize shown above for a \$1 wager shall multiply, up to \$1,000,000, according to the wager amount shown on the winning ticket. If a prize is multiplied by the amount played and the aggregate prize amount exceeds the amount authorized in section (4) of this rule as the highest potential prize for Special Keno, the winner will receive the \$1,000,000 annuitized prize.

(6) If more than one winning ticket wins the \$1,000,000 annuitized prize per drawing, the \$1,000,000 annuitized prize will be divided among those winning tickets on a pro rata basis determined by the amount that each winning ticket played on the drawing in which the prize was won.

(7)(a) Upon the Lottery's determination that the ticket is a winning ticket, the winner of a \$1,000,000 annuitized prize has the option to receive the estimated present value cost of the annuitized prize paid in a single lump sum payment instead of the annuitized prize.

(b) Within 60 days of the date of validation of the \$1,000,000 ticket, the winner, prior to receiving any prize payment from the Lottery, may acknowledge in writing the winner's election to receive either the single lump sum payment or the annuitized prize payments. A winner's election is irrevocable once the winner's written election is received by the Lottery.

(c) The Lottery shall provide the annuitized prize winner with information explaining the methodology and the discount rate or annuity factor used to calculate the present value of the annuitized prize.

(d) Multiple \$1,000,000 annuitized prize winners, jointly claiming ownership of a ticket in accordance with OAR 177-046-0100(2), shall make individual determinations whether to exercise the option to receive their portion of the prize in the form of a single lump sum payment.

(e) In the event a \$1,000,000 annuitized prize winner does not exercise the option to receive a single lump sum payment within 60 days of the date of the validation of the ticket, the winner shall receive the annuitized prize.

(f) A \$1,000,000 annuitized prize winner is under no obligation to exercise the option made available by this rule to receive a single lump sum payment in lieu of receiving annuitized prize payments.

(8) All Special Keno prizes except for the \$1,000,000 annuitized prize will be paid in a single lump sum payment.

(9) For each drawing, a player may receive (subject to the validation requirements set forth in OAR 177-099-0060) only the highest single prize for which a ticket containing a winning game play is eligible.

(10) Prize payments must be claimed, and shall be made, in accordance with the provisions of OAR 177-070-0025.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200.

Hist.: LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 3-2002(Temp) f. & cert. ef. 2-4-02 thru 8-2-02; LOTT 7-2002, f. & cert. ef. 4-29-02; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02

177-099-0100

Keno Jackpot Bonus

(1) In addition to the prizes described in OAR 177-099-0080 and 177-099-0090, 2.10% of gross Keno sales for each drawing shall be allocated evenly between three prize pools held in reserve as an additional prize for winners of the top prize in the 6, 7, and 8 spot categories, i.e., 6 out of 6, 7 out of 7, and 8 out of 8 (see table below). A jackpot bonus prize shall be awarded when a ticket wins the top prize for either the 6, 7, or 8 spot under OAR 177-099-0080 or 177-099-0090. If the jackpot bonus prize pool for a specific spot is not won, the jackpot bonus prize pool for that spot continues to grow.

(2) If a game play on a ticket is for a 6, 7, or 8 spot, the ticket is automatically playing for the jackpot bonus prize, as well as a prize under either OAR 177-099-0080 or 177-099-0090. For example, if a Keno ticket with a 6 spot game play is the only Keno or Special Keno ticket to match 6 out of 6 of the winning numbers, that ticket, subject to ticket validation requirements, would win the top prize for the 6 spot under OAR 177-099-0080 (\$1,600) and the accumulated jackpot bonus prize for the 6 spot.

(3) The prize money in the jackpot bonus prize pool for a specific spot for any given drawing shall be divided by the number of tickets winning the top prize for that spot under either OAR 177-099-0080 or 177-099-0090. The jackpot bonus prize pool shall be divided among those winning tickets on a pro rata basis determined by the amount that each winning ticket played in the drawing in which the jackpot bonus prize was won. For example, if one Keno ticket wins the top prize for the 8 spot (\$15,000) in a drawing, and was purchased for ten drawings at \$3 per drawing, and one Special Keno ticket wins the top prize for the 8 spot (\$25,000) in the same drawing, and was purchased for one drawing at \$1, the holder of the Keno ticket would receive 75% of the prize in the jackpot bonus prize pool for the 8 spot and the holder of the Special Keno ticket would receive the remaining

25% of the prize in that jackpot bonus prize pool. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4) & ORS 461

Stats. Implemented: ORS 461.200

Hist.: LOTT 3-1999, f. 3-25-99, cert. ef. 4-4-99; LOTT 3-2002(Temp) f. & cert. ef. 2-4-02 thru 8-2-02; LOTT 7-2002, f. & cert. ef. 4-29-02; LOTT 19-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 30-2002, f. & cert. ef. 11-25-02

Public Utility Commission Chapter 860

Adm. Order No.: PUC 19-2002(Temp)

Filed with Sec. of State: 12-6-2002

Certified to be Effective: 12-6-02 thru 6-4-03

Notice Publication Date:

Rules Adopted: 860-014-0023

Subject: Defines "major proceeding" for purposes of ORS 756.518(2); describes other ways a case may qualify as a major proceeding; describes procedure for designating a case a major proceeding and for participation in oral argument.

Rules Coordinator: Lauri Salisbury—(503) 378-4372

860-014-0023

Major Proceeding

(1) For purposes of ORS 756.518(2), a "major proceeding" is defined as one which:

(a) Has a substantial impact upon utility rates or service quality for utilities having more than 50,000 customers; or

(b) Has a significant impact upon utility customers or the operations of a regulated utility for utilities having more than 50,000 customers.

(2) A party in a proceeding that does not meet the criteria in (1) above may petition the ALJ for major case status if the case:

(a) Is likely to result in a significant change in regulatory policy; or

(b) Raises novel questions of fact or law.

(3) When a docket is opened, any party may file a motion with the Administrative Law Judge (ALJ) requesting that the case be classified as a major proceeding. The motion shall:

(a) Set out with specificity how the case qualifies as a major proceeding under the criteria listed at (1) above; or

(b) Argue how the case qualifies as a major proceeding under (2) above.

(c) Answers to the motion are due within 10 days of filing.

(d) The ALJ shall rule on the motion within 15 days of filing.

(4) If a case is classified as a major proceeding, parties shall schedule a date for oral argument before the Commission at the prehearing conference or as soon thereafter as possible.

(5) Any party to a case may present argument before the Commission if the case is defined as a major proceeding.

(6) The ALJ shall determine the length of each party's presentation to the Commission, the right of any party to rebuttal of any other party's presentation, and the order of presentation.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759

Stats. Implemented: ORS 756.040 & 756.500 -756.575

Hist.: PUC 19-2002(Temp), f. & cert. ef. 12-6-02 thru 6-4-03

Adm. Order No.: PUC 20-2002

Filed with Sec. of State: 12-9-2002

Certified to be Effective: 12-9-02

Notice Publication Date: 10-1-02

Rules Amended: 860-012-0010

Subject: This rule deletes the designator "expert" before "witness" in describing the participation by former Commission employees in Commission proceedings in which the former employee took an active part on the Commission's behalf.

Rules Coordinator: Lauri Salisbury—(503) 378-4372

860-012-0010

Former Employees

(1) No former Commission employee may appear on behalf of other parties in a formal proceeding in which the former employee took an active part on the Commission's behalf.

(2) Except with the Commission's written permission, no former Commission employee shall appear as a witness on behalf of other parties

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in a formal proceeding in which the former employee took an active part on the Commission's behalf.

(3) Except with the Commission's written permission, no person now working for the Commission, who was formerly employed by a company subject to the jurisdiction of the Commission, or a company appearing before the Commission in a proceeding, or an affiliate of such company, shall appear as a witness on behalf of the Commission in a formal proceeding in which the person took an active part on the company's behalf as an employee of the company. Prior to giving its written permission to the person, the Commission shall notify the affected company and the other parties to the formal proceeding. The Commission shall allow the affected company an opportunity to object to the Commission granting permission to the person. The Commission will also allow the other parties to the formal proceeding an opportunity to respond to the affected company's objection, if any.

Stat. Auth.: ORS 183, ORS 756, ORS 757 & ORS 759
Stats. Implemented: ORS 756.040 & ORS 756.500 - ORS 756.575
Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 1-1985, f. & ef. 2-1-85 (Order No. 85-075); PUC 15-1997, f. & cert. ef. 11-20-97; PUC 3-2002, f. & cert. ef. 2-5-02; PUC 20-2002, f. & cert. ef. 12-9-02

Adm. Order No.: PUC 21-2002

Filed with Sec. of State: 12-9-2002

Certified to be Effective: 12-9-02

Notice Publication Date: 10-1-02

Rules Amended: 860-016-0050

Subject: Resolves an ambiguity in a subsection that previously read: "If requested, a hearing shall begin no later than 30 days after the complaint is filed." The amendment reads, "If a party requests a hearing, a hearing shall begin no later than 30 days after the complaint is filed."

Rules Coordinator: Lauri Salsbury—(503) 378-4372

860-016-0050

Petitions for Enforcement of Interconnection Agreements

(1) **Purpose of rule.** This rule specifies the procedure for a telecommunications provider, as defined in OAR 860-032-0001, to file a complaint for the enforcement of an interconnection agreement that was previously approved by the Commission. For purposes of this rule, the term "interconnection agreement" is an agreement executed pursuant to the Telecommunications Act of 1996 (the Act). This includes interconnection agreements, resale agreements, agreements for the purchase or lease of unbundled network elements (UNEs), or statements of generally available terms and conditions (SGATs), whether those agreements were entered into through negotiation, mediation, arbitration, or adoption of a prior agreement or portions of prior agreements. Subsection (11) of this rule specifies procedures for complaints alleging that telecommunications utilities have engaged in prohibited acts under ORS 759.455.

(2) **The complaint.** A complaint for enforcement of an interconnection agreement must contain the following:

(a) A statement of specific facts demonstrating that the complainant telecommunications provider conferred with defendant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

(b) A copy of a written notice to the defendant telecommunications provider indicating that the complainant intends to file a complaint for enforcement of the interconnection agreement, as described in section (3)(a) below;

(c) A copy of the interconnection agreement or the portion of the interconnection agreement that the complainant contends was or is being violated. If a copy of the entire interconnection agreement is provided, complainant must specify provisions at issue. If the interconnection agreement adopted a prior agreement or portions of prior agreements, the complaint must also indicate the provisions adopted in those agreements;

(d) A statement of the facts or a statement of the law demonstrating defendant's failure to comply with the agreement and complainant's entitlement to relief. The statement of entitlement to relief must indicate that the remedy sought is consistent with the dispute resolution provisions in the agreement, if any. Statements of facts must be supported by written testimony or one or more affidavits, made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits;

(e) The complaint may designate one additional person to receive copies of other pleadings and documents; and

(f) Complainant shall also file with the complaint, as a separate document, any motions for affirmative relief. Motions for injunctive or temporary relief must be clearly marked. Nothing in this subsection shall preclude complainant from filing a motion subsequent to the filing of the complaint if the motion is based upon facts or circumstances unknown or unavailable to complainant at the time the complaint was filed;

(g) Complainant shall also file with the complaint, as a separate document, an executive summary outlining the issues and relief requested. Such summary shall be no more than eight pages.

(3) **Service of the complaint.** The complaint for enforcement must be served as follows:

(a) At least ten days prior to filing a complaint for enforcement with the Commission, complainant must give written notice to defendant and the Commission that complainant intends to file a complaint for enforcement. The notice must identify the provisions in the agreement that complainant alleges were or are being violated and the specific acts or failure to act that caused or is causing the violation and whether the complainant anticipates requesting temporary or injunctive relief. The notice must be served in the same manner as set forth in subsections (b) and (c) below, except that complainant must also serve the notice on all persons designated in the interconnection agreement to receive notices;

(b) Complainant must serve a copy of the complaint for enforcement on defendant the same day the complaint is filed with the Commission. Service may be by fax or overnight mail, provided the complaint arrives at defendant's location on the same day the complaint is filed with the Commission. Service by fax must be followed by a hard copy the next day in overnight mail; and

(c) Complainant must serve a copy of the complaint for enforcement on defendant's authorized representative, attorney of record, or designated agent for service of process.

(4) **The answer.** An answer must comply with the following:

(a) The answer must contain a statement of specific facts demonstrating that the responding telecommunications provider conferred with complainant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

(b) The answer must respond to each allegation set forth in the complaint and must set forth all affirmative defenses;

(c) The answer must contain a statement of the facts or a statement of the law supporting defendant's position. Statements of facts must be supported by written testimony or one or more affidavits, made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits;

(d) The answer may designate one additional person to receive copies of other pleadings and documents;

(e) Any allegations raised in the complaint and not addressed in the answer are deemed admitted; and

(f) Defendant shall file with the answer, as a separate document, a response to any motion filed by complainant, and any motion defendant wishes to file that seeks affirmative relief. Nothing in this subsection shall preclude defendant from filing a motion subsequent to the filing of the answer if the motion is based upon facts or circumstances unknown or unavailable to defendant at the time the answer was filed.

(5) **Service of the answer.** The answer must be served as follows:

(a) Defendant must file a copy of the answer with the Commission within ten business days after service of the complaint for enforcement;

(b) Defendant must deliver a copy of the answer to complainant the same day the answer is filed with the Commission, in the manner set forth in sections (3)(b) and (3)(c) above;

(c) Defendant must serve a copy of the answer on the complainant's attorney, as listed in the complaint, or the person who signed the complaint, if complainant has no attorney.

(6) The reply. Complainant must file a reply to an answer that contains affirmative defenses within five business days after the answer is filed. The reply must be served in the manner set forth in sections (3)(b) and (3)(c) above. If the reply contains new facts or legal issues not raised in the complaint, the reply must also comply with section (2)(d) above.

(7) **Cross-complaints or counterclaims.** A cross-complaint or counterclaim shall be answered within the ten-day time frame allowed for answers to complaints.

(8) **Conference.** The Commission will conduct a conference regarding each complaint for enforcement of an interconnection agreement.

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(a) The Administrative Law Judge (ALJ) will schedule a conference within five business days after the answer is filed, to be held as soon thereafter as is practicable. At the discretion of the ALJ, the conference may be conducted by telephone;

(b) Based on the complaint and the answer, all supporting documents filed by the parties, and the parties' oral statements at the conference, the ALJ will determine whether the issues raised in the complaint can be determined on the pleadings and submissions without further proceedings or whether further proceedings are necessary. If further proceedings are necessary, the ALJ will establish a procedural schedule. The procedural schedule may include a mandatory mediation session. Either party may request that a person other than the ALJ preside over the mediation. Nothing in this subsection is intended to prohibit the bifurcation of issues where appropriate;

(c) In determining whether further proceedings are necessary, the ALJ will consider, but is not limited to, the positions of the parties; the need to clarify evidence through the examination of witnesses; the complexity of the issues; the need for prompt resolution; and the completeness of the information presented;

(d) The ALJ may make oral rulings on the record during the conference on all matters relevant to the conduct of the proceeding.

(9) **Discovery.** A party may file with the complaint or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue.

(10) **Expedited procedure.** When warranted by the facts, the complainant or defendant may file a motion requesting that an expedited procedure be used. The moving party shall file a proposed expedited procedural schedule along with its motion. The ALJ will schedule a conference to be held as soon after the motion is filed as is practicable, to determine whether an expedited schedule is warranted.

(a) The ALJ shall consider whether the issues raised in the complaint or answer involve a risk of imminent, irrevocable harm to a telecommunications provider and to the public interest;

(b) If a determination is made that an expedited procedure is warranted, the ALJ shall establish a procedure that ensures a prompt resolution of the merits of the dispute, consistent with due process and other relevant considerations. The ALJ shall consider, but is not bound by, the moving party's proposed expedited procedural schedule;

(c) An expedited procedure may be appropriate if the complainant shows that its ability to provide telecommunications services will be substantially harmed unless the Commission acts promptly. In general, the Commission will not entertain a motion for expedited procedure where the dispute solely involves the payment of money.

(11) **Procedures for complaints alleging violation of ORS 759.455:**

(a) An answer under subsection (4) of this rule shall be filed with the Commission and served on the defendant within ten calendar days after service of the complaint;

(b) A reply under subsection (6) of this rule shall be filed with the Commission and served on the defendant within five calendar days after the answer is filed;

(c) The ALJ shall schedule a conference to be held in person or by telephone not later than 15 calendar days after the complaint is filed;

(d) If a party requests a hearing, a hearing shall begin no later than 30 days after the complaint is filed;

(e) The ALJ may consult with the Commission Staff in the manner set forth in OAR 860-016-0030(6).

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: ORS 756.040, ORS 756.518, ORS 759.030(1), ORS 759.455, Ch. 1093, OL 1999 & 47 USC § 252

Hist.: PUC 7-1999, f. & cert. ef. 10-18-99; PUC 7-2000, f. & cert. ef. 5-3-00; PUC 21-2002, f. & cert. ef. 12-9-02

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Adm. Order No.: PUC 22-2002

Filed with Sec. of State: 12-9-2002

Certified to be Effective: 12-9-02

Notice Publication Date: 10-1-02

Rules Amended: 860-021-0335, 860-034-0250, 860-036-0080, 860-037-0075

Subject: This amendment prohibits utilities from refusing regulated services for nonpayment of unregulated charges. This responds to the changes with open access, deregulation, and equipment financing collected within utility bills. This rule change does not affect the utilities' rights with regard to the collection or denial of unregulated services.

Rules Coordinator: Lauri Salisbury—(503) 378-4372

860-021-0335

Refusal of Utility Service

(1) Except as provided in section (2) of this rule, an electric or gas utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to an Oregon prior account.

(2) Except for a residential customer or applicant who was disconnected for theft of service, an electric or gas utility shall provide service to a residential customer or applicant upon receiving payment equal to at least one-half of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, except deposits which must be paid in full, provided the customer or applicant has made reasonable partial payment on the account during the time service has been discontinued. The customer shall pay the balance of the amount owed to the gas or electric utility within 30 days of the date service is initiated. Upon failure to pay, the gas or electric utility may disconnect service after providing a five-day notice to the customer. The notice shall contain the information set forth in OAR 860-021-0405(2)(a),(b), (c), (f), and (g) and shall be served as required by OAR 860-021-0405(5). If a customer or applicant whose service was terminated applies for service within 20 days of the termination, the provisions of this rule apply.

(3) If electric or gas service is disconnected for a residential customer's failure to comply with the payment terms in section (2) of this rule, the utility may refuse to restore service until the utility receives full payment of any overdue obligation of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, including any reconnection fee, late payment fee, and past due bill.

(4) Refusal of service by a large telecommunications utility:

(a) A large telecommunications utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account except for telecommunications service applicants who are eligible for OTAP.

(b) A large telecommunications utility may refuse to provide service to a residential customer or applicant who is eligible for OTAP until the utility receives full payment of any overdue amount relating to a prior account for tariffed local exchange and price-listed services, excluding any toll charges.

(5) An energy or large telecommunications utility may refuse to provide service until the utility receives payment when all the following circumstances exist:

(a) An overdue balance has been incurred by a residential customer or applicant at a service address;

(b) A residential applicant for service resided at the service address described in subsection (5)(a) of this rule during the time the overdue balance was incurred; and

(c) The residential customer or applicant described in subsection (5)(a) of this rule will reside at the location to be served under the new application.

(6) Any energy or large telecommunications utility shall refuse to provide service if a customer or applicant has not complied with state and city codes and regulations governing service and with the utility's rules and regulations.

(7) An energy or large telecommunications utility shall reject an application for service or materially change service to a customer or applicant if, in the best judgment of the utility, the utility lacks adequate facilities to render the service applied for or if the desired service is likely to unfavorably affect service to other customers.

(8) An energy or large telecommunications utility shall refuse to serve a customer or applicant, if, in the best judgment of the utility, the facilities of the customer or applicant cannot provide safe and satisfactory service.

(9) When an energy or large telecommunications utility refuses to provide service, the utility shall notify the customer or applicant of the reasons for refusal and of the Commission's complaint process.

Stat. Auth.: ORS 183, ORS 756, ORS 757, ORS 759 & Ch. 290, OL 1987

Stats. Implemented: ORS 756.040, ORS 757.035, 757.225 & Ch. 290, OL 1987

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 6-1979, f. & ef. 10-6-79 (Order No. 79-680); PUC 5-1983, f. 5-31-83, ef. 6-1-83 (Order No. 83-284); Renumbered from 860-021-0060 and 860-021-0100; PUC 12-1983, f. & ef. 10-7-83 (Order No. 83-623); PUC 16-1990, f. 9-28-90, cert. ef. 10-1-90 (Order No. 90-1105); PUC 13-1997, f. & cert. ef. 11-12-97; PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 22-2002, f. & cert. ef. 12-9-02

860-034-0250

Refusal of Utility Service

(1) Refusal of utility service by a small telecommunications utility:

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(a) A small telecommunications utility may refuse to provide service to a customer or applicant until the utility receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account except for residential utility service applicants who are eligible for OTAP.

(b) A small telecommunications utility may refuse to provide utility service to a residential customer or applicant who is eligible for OTAP until the utility receives full payment of any overdue amount relating to a prior account for tariffed local exchange and price-listed utility services, excluding any toll charges.

(2) A small telecommunications utility may refuse to provide utility service until the utility receives payment when all the following circumstances exist:

(a) An overdue balance has been incurred by a residential customer or applicant at a service address;

(b) A residential applicant for utility service resided at the service address described in subsection (2)(a) of this rule during the time the overdue balance was incurred; and

(c) The residential customer or applicant described in subsection (2)(a) of this rule will reside at the location to be served under the new application.

(3) Any small telecommunications utility shall refuse to provide utility service if a customer or applicant has not complied with state and city codes and regulations governing service and with the small telecommunications utility's rules and regulations.

(4) A small telecommunications utility shall not provide utility service or materially change service to a customer if, in the utility's best judgment, the desired service is likely to unfavorably affect service to other customers.

(5) A small telecommunications utility shall refuse to serve a customer or applicant if, in the best judgment of the utility, the facilities of the customer or applicant cannot provide safe and satisfactory utility service.

(6) When the small telecommunications utility refuses to provide utility service, the small telecommunications utility shall notify the customer or applicant of the reasons for refusal and of the Commission's complaint process.

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

Stats. Implemented: ORS 759.045

Hist.: PUC 6-1993, f. & cert. ef. 2-19-93 (Order No. 93-185); PUC 17-1997(Temp), f. 12-11-97, cert. ef. 1-1-98 thru 6-29-98; PUC 5-1998, f. & cert. ef. 3-13-98; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 22-2002, f. & cert. ef. 12-9-02

860-036-0080

Refusal of Service

A water utility may refuse to provide service to a customer or applicant until it receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account except as provided below:

(1) Except for residential customers or applicants who were disconnected for theft of service, a water utility shall provide service to a residential applicant upon receipt of payment equal to at least one-half of any overdue amount. The balance of the amount owed to the utility shall be paid within 30 days of the date service is initiated. Except for the last payment, installments shall be the greater of \$30 or one-half the overdue amount. Upon failure to pay, the water utility may disconnect service after providing a written five-day notice. The notice shall contain the information and be served in the manner prescribed as provided in OAR 860-036-0245. When a customer whose service was terminated applies for service within 20 days of the termination, the provisions of this rule apply.

(2) If water service is disconnected for failure to comply with the payment terms set forth in section (1)(a) of this rule, the water utility may refuse to restore service until it receives full payment of any overdue obligation of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, including any reconnection fee, late payment fee, and past due bill.

(3) A water utility may refuse to provide service until payment is received when the following circumstances exist:

(a) A residential customer has incurred an overdue balance at a service address;

(b) A residential applicant for service resided at the service address described in subsection (1)(a) of this rule during the time the overdue balance was incurred; and

(c) The residential customer described in subsection (1)(a) of this rule will reside at the location to be served under the new application.

(4) Any water utility shall refuse to provide service if a customer or applicant has not complied with state and municipal codes and regulations governing service and with the rules and regulations of the water utility.

(5) A water utility shall refuse to serve a customer or applicant, if, in the best judgment of the water utility, the facilities of the customer or applicant are of such a character that safe and satisfactory service cannot be given.

(6) If service is refused, the water utility shall provide written notification within 10 working days to the customer or applicant of the reasons for refusal and of the Commission's complaint process. A copy of the notice shall also be sent to the Commission unless service was refused for non-payment.

(7) A water utility shall not accept an application for service or materially change service to a customer if it does not have adequate facilities or water resources to render the service applied for, or if the desired service is of a character that is likely to unfavorably affect service to other customers.

(a) If a water utility refuses service on the grounds of inadequate facilities or water resources, the water utility shall:

(A) Provide the customer or applicant with a written letter of refusal, a copy of which shall be sent to the Commission, stating:

(B) Provide the reason for the refusal;

(C) Inform the customer or applicant that he/she may request the details upon which the water utility's decision was based, including but not limited to current capacity and load measured in gallons or cubic feet per minute and pounds per square inch (psi);

(D) When capacity does not exist, provide the costs to provide capacity for the customer or applicant; and

(E) Inform the customer or applicant that he/she may challenge the water utility's refusal of service through the Commission's dispute resolution process pursuant to OAR 860-036-0025.

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

Stats. Implemented: ORS 756.040, ORS 757.035 & ORS 757.225

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 22-2002, f. & cert. ef. 12-9-02

860-037-0075

Refusal of Service

(1) A water/wastewater utility may refuse to provide wastewater service to an applicant applying for wastewater service until it receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account except as provided below:

(a) Except for residential customers or applicants who were disconnected for theft of service, a water/wastewater utility shall provide service to a residential applicant upon receipt of payment equal to at least one-half of any overdue amount of an Oregon tariffed or price-listed charge. The balance of the amount owed to the utility shall be paid within 30 days of the date service is initiated. Except for the last payment, installments shall be the greater of \$30 or one-half the overdue amount;

(b) Upon failure to pay, the water/wastewater utility may disconnect water service after providing a written five-day notice. The notice shall contain the information and be served in the manner prescribed as provided in OAR 860-036-0245. When a residential customer whose service was terminated applies for wastewater service within 20 days of the termination, the provisions of this rule apply.

(2) If water service is disconnected for failure to comply with the payment terms for wastewater service set forth in section (1)(a) of this rule, the water/wastewater utility may refuse to restore water service until it receives full payment of any overdue obligation of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, including any reconnection fee, late payment fee, and past due bill.

(3) A water/wastewater utility may refuse to provide wastewater service until payment is received when the following circumstances exist:

(a) A residential customer has incurred an overdue balance at a service address;

(b) A residential applicant for service resided at the service address described in subsection (1)(a) of this rule during the time the overdue balance was incurred; and

(c) The residential customer described in subsection (1)(a) of this rule will reside at the location to be served under the new application.

(4) Any water/wastewater utility shall refuse to provide wastewater service if a customer or applicant has not complied with state and municipal codes and regulations governing service and with the rules and regulations of the water/wastewater utility.

(5) A water/wastewater utility shall refuse to serve a customer or applicant, if, in the best judgment of the water/wastewater utility, the facilities of the customer or applicant are of such a character that safe and satisfactory service cannot be given.

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(6) If service is refused, the water/wastewater utility shall provide written notification within 10 working days to the customer or applicant of the reasons for refusal and of the Commission's complaint process. A copy of the notice shall also be sent to the Commission unless service was refused for nonpayment.

(7) A water/wastewater utility shall not accept an application for wastewater service or materially change service to a customer if it does not have adequate facilities or water/wastewater resources to render the service applied for, or if the desired service is of a character that is likely to unfavorably affect service to other customers.

(a) If a water/wastewater utility refuses wastewater service on the grounds of inadequate facilities or resources, the water/wastewater utility shall:

(A) Provide the customer or applicant with a written letter of refusal, a copy of which shall be sent to the Commission, stating the reason for the refusal;

(B) Inform the customer or applicant that he/she may request the details upon which the water/wastewater utility's decision was based, including but not limited to current capacity and demand;

(C) When capacity does not exist, provide the estimated costs to provide capacity for the customer or applicant; and

(D) Inform the customer or applicant that he/she may challenge the water/wastewater utility's refusal of wastewater service through the Commission's dispute resolution process pursuant to OAR 860-037-0025.

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

Stats. Implemented: ORS 756.040, ORS 757.005, ORS 757.035, ORS 757.061 & ORS 757.225

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 22-2002, f. & cert. ef. 12-9-02

Adm. Order No.: PUC 23-2002

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Notice Publication Date: 6-1-02

Rules Adopted: 860-032-0610, 860-032-0620, 860-032-0630, 860-032-0640, 860-032-0650, 860-032-0660

Subject: This rule outlines the processes for collecting OUSF amounts outstanding from telecommunications carriers and the process for establishing a liquidated debt when a company does not file a contribution report as required. Authority is established for penalties and interest to be assessed for failure to pay and failure to file. Parameters are established for audits and assessments, notice and hearing on proposed orders and assessments. Bookkeeping requirements are established.

Rules Coordinator: Lauri Salisbury—(503) 378-4372

860-032-0610

General Provisions

(1) For the purpose of these rules, each calendar year has four quarters as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

(2) For the purpose of OARs 860-032-0610 through 860-032-0660, the quarterly revenue worksheet identified as "OPUC OUS 2" shall be known as the "contribution report."

(3) A telecommunications provider may pay any amounts due to the Public Utility Commission (Commission) by electronic transfer.

(4) The Commission may add all costs incurred in collecting a past-due "Oregon universal service" (OUS) contribution amount. In the event the Commission refers the debt to the Department of Revenue or to a collection agency, the Commission may add to the debt the anticipated amount necessary to generate a net return to the Commission of the amount of the debt.

(5) The Commission shall impose a charge of \$25 for each payment returned for non-sufficient funds.

(6) In addition to any other penalty, obligation or remedy provided by law, the Commission may suspend or cancel the telecommunications provider's certificate of authority to provide telecommunications service in Oregon for its failure to file its contribution report or its failure to pay its contribution amount in full.

(7) Except as otherwise provided by law, if after an audit or review the Commission determines that the telecommunications provider has overpaid its OUS contribution amount, the Commission shall provide the telecommunications provider a credit in that amount against sums subsequently due from the telecommunications provider.

(8) In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event the time period runs until the end of the next day which is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

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

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

860-032-0620

Quarterly OUS Report: Filing and Payment

(1) For the purpose of the OUS fund, a telecommunications provider shall file its contribution report with the OUS Administrator. The contribution report is due on or before the 10th day of the second month after the close of each three-month quarter (i.e. approximately 40 days after the end of each three-month quarter). A telecommunications provider shall send its contribution report so that it is received in the OUS Administrator's offices no later than 5 p.m. on the date it is due.

(2) A telecommunications provider shall file the contribution report for each quarter with no exceptions, including when the contribution amount shown on the report is \$0.00.

(3) The amount shown on the contribution report is due and payable by the telecommunications provider on or before the 28th day of the second month after the close of each three-month quarter. Payment shall be made to the Commission. A telecommunications provider shall send payment (electronically or by mail) so that it is received in the Commission's offices by no later than 5 p.m. on the date it is due.

(4) If the contribution amount is less than \$100, a telecommunications provider may defer payment and accumulate it to the following quarter's contribution. This accumulation may continue interest-free until either the accumulated amount is greater than \$100 or four quarters have passed from the first deferral, whichever comes first.

(5) If a telecommunications provider fails to file a contribution report as required by these rules, the Commission shall impose a late report fee of \$100. The Commission shall not impose a late report fee until a contribution report is five business days past due.

(6) If a telecommunications provider files a contribution report but fails to pay the contribution amount in full on or before the day it is due, the Commission shall add a late payment fee equal to 9 percent of the unpaid amount of the contribution, up to a maximum of \$500. The Commission shall not impose a late payment fee until the required payment is five business days past due.

(7) If a telecommunications provider fails to pay the contribution amount in full on or before the day it is due, the Commission shall add interest on the unpaid contribution amount at the rate of 9 percent per annum from the day payment was due until paid.

(8) If the amount shown due on a contribution report is not paid on the due date, the Commission may issue a proposed order to set the sum due. The Commission may waive late payment fees if the evidence shows that the provider paid its contribution amount late due to circumstances beyond its control.

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

Stats. Implemented: ORS 756.040, 759.015 & 759.425

Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

860-032-0630

Estimated Report

(1) For any quarter for which a telecommunications provider fails to file a contribution report as required by these rules, the Commission may make a proposed contribution assessment based upon any information available to the Commission.

(2) The proposed assessment shall include a late payment fee equal to 9 percent of the proposed assessment amount, up to a maximum of \$500 for that quarter.

(3) Each proposed assessment shall bear interest on the amount proposed at the rate of 9 percent per annum from the day the contribution amount was originally due.

(4) The Commission's proposed assessment for a non-filed contribution report must be made no later than three (3) years after the contribution report's due date.

(5) Notwithstanding section (4) of this rule, if the telecommunications provider did not hold a certificate of authority, the Commission shall have an unlimited time to propose an assessment for the time period represented by the non-filed contribution report. The proposed assessment shall include all late payment fees and interest as specified in this rule.

ADMINISTRATIVE RULES

(6) Prior to the expiration of the period allowed for filing a petition for a hearing, the telecommunications provider may file its contribution report. The Commission shall accept the report and calculate late report fees, late payment fees, and interest in accordance with the original due date for that quarter's contribution report and payment, if any, accompanying the report.

Stat. Auth.: ORS 183, 192, 756 & 759
Stats. Implemented: ORS 756.040, 759.015 & 759.425
Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

860-032-0640

Commission Audit and Proposed Assessment

(1) For any quarter for which a telecommunications provider's contribution report was due, the Commission may audit the telecommunications provider as the Commission deems necessary and practicable.

(2) The Commission's audit must be commenced no later than three years after the quarter's contribution report's due date. After completion of its audit, the Commission may propose to assess an additional contribution amount due from the telecommunications provider.

(3) In the event the telecommunications provider failed to file a contribution report for the quarter, the Commission shall add to the proposed assessment a late payment fee equal to 9 percent of the amount of the proposed assessment, up to a maximum amount of \$500.

(4) Each proposed assessment shall bear interest on the additional amount proposed at the rate of 9 percent per annum from the day the original contribution amount was due.

(5) Notwithstanding section (2) of this rule, if the telecommunications provider did not hold a certificate of authority, the Commission shall have an unlimited time to audit the telecommunications provider for universal service charges.

Stat. Auth.: ORS 183, 192, 756 & 759
Stats. Implemented: ORS 756.040, 759.015 & 759.425
Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

860-032-0650

Notice and Hearing on Proposed Orders and Assessments

(1) The Commission shall provide written notice of the proposed order or proposed assessment to the telecommunications provider and allow the telecommunications provider an opportunity to request a hearing before the Commission.

(2) Within 30 days after service of the notice of proposed order or proposed assessment, a telecommunications provider may petition the Commission in writing for a hearing. If a petition is not filed within the 30-day period, the Commission shall enter a final order or assessment based upon information in the Commission's files. If a petition is filed within the 30-day period, the Commission shall grant the telecommunications provider a hearing and give the telecommunications provider at least 10 days notice of the time and place of the hearing.

(3) The telecommunications provider must specify in its petition all reasons it disputes the proposed order or the proposed assessment. The Commission shall conduct a hearing on the telecommunications provider's petition under its rules governing hearings and proceedings. Unless the telecommunications provider has filed an amended contribution report, the amount shown on the contribution report shall not be subject to challenge by the telecommunications provider.

(4) A Commission order deciding the petition shall become final after service of the Commission's order upon the petitioning telecommunications provider.

(5) A proposed assessment made by the Commission under these rules is due and payable on the 10th day after the Commission's order becomes final.

Stat. Auth.: ORS 183, 192, 756 & 759
Stats. Implemented: ORS 756.040, 759.015 & 759.425
Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

860-032-0660

OUS Record-keeping Requirements

(1) A telecommunications provider shall produce for inspection or audit upon request of the Commission or its authorized representative all records supporting its contribution reports. The Commission, or its representative, shall allow the telecommunications provider a reasonable time to produce the records for inspection or audit.

(2) A telecommunications provider must keep all records supporting each contribution report for three years, or until a Commission review or audit is complete, whichever is later.

(3) In addition to any other penalty allowed by law, the Commission may suspend or cancel a telecommunications provider's certificate of

authority to provide telecommunications service for its failure to produce for inspection or audit the records required by this rule.

Stat. Auth.: ORS 183, 192, 756 & 759
Stats. Implemented: ORS 756.040, 759.015 & 759.425
Hist.: PUC 23-2002, f. & cert. ef. 12-9-02

Racing Commission Chapter 462

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Subject: Changes include amendments to licensing, prohibited practices, duties of officials and licensees, and medication rules.

Rules Coordinator: Carol N. Morgan—(503) 731-4052

462-110-0010

General

The following definitions and interpretations shall apply in these rules unless otherwise indicated or text otherwise requires (Words of the masculine gender include the feminine and neuter. Words in the singular include the plural and vice versa.):

(1) "Authorized User": A person authorized by the Oregon Racing Commission to receive, to decode and to use for legal purposes the encrypted signal of racing events in Oregon.

(2) "Combined Pari-Mutuel Pools", "Combined Pools": The pari-mutuel wagers at one or more off-track wagering facilities being contributed into the pari-mutuel pools of an Oregon host race meet licensee.

(3) "Commission": Oregon Racing Commission. Commissioner is a member of the commission.

(4) "Day" "Race Day" and "Simulcast Day": Any 24 hour period beginning at 12:01 a.m. and ending at midnight. "Racing Day" is a day on which live races are conducted at a race track in Oregon. "Calendar Days" are those consecutive days counted irrespective of number of racing days. "Simulcast Day" is a day that races from an out-of-state track are being simulcast into a track in Oregon on a day that there is no live races being run at the Oregon track. Simulcast days may only occur on days within the live racing season of the Oregon track. Unless otherwise specified, use of the word "day" shall mean a calendar day. In calculating the average daily handle for race meets, any race day in which some of the day's races are canceled due to natural occurrences, as determined by the commission, will be counted as a partial race day in the same proportion as the number of races actually run by the number of races carded to be run in the day's racing program.

(5) "Decoder": A device and/or means to convert encrypted audiovisual signals and/or data into a form recognizable as the original content of the signals.

(6) "Drug": As defined in ORS 462.010(7).

(7) "Encryption", "Encrypted", "Encoded": The scrambling or other manipulation of the audiovisual signals to mask the original video content of the signal and so cause such signals to be indecipherable and unrecognizable to any person receiving such signal without using a decoder.

(8) "Exotic Wager": Any single wager where three or more separate wagering interests are required to be selected.

(9) "Host", "Host Association", "Host Track": The race track licensee conducting a licensed race meet when it is authorized by the Oregon Racing Commission to simulcast racing programs.

(10) "Intrastate Wagering": Pari-mutuel wagering at an off-track wagering facility on Oregon racing events being run at an Oregon host race meet licensee.

(11) "Licensee": Any person or entity holding a currently valid Oregon Racing Commission license to engage in racing or related regulated activities.

(12) "Month": A calendar month.

(13) "Off-Track Enclosure", "Enclosure-Public": All areas of the off-track wagering facility.

(14) "Off-Track Wagering": Pari-mutuel wagering conducted on a race at a location other than the race course where the race is actually held.

ADMINISTRATIVE RULES

(15) "Off-Track Wagering Facility", "Intrastate Wagering Facility", "Extended Wagering Facility": The physical premises, including parking areas, structures and equipment utilized by a race meet licensee for the conduct of pari-mutuel wagering on racing events being run elsewhere.

(16) "Out-of-State Wagering": Acceptance of wagers by a race meet licensee authorized by ORS 462.062 or 462.067 on a race or races run outside of the State of Oregon.

(17) "Person": Unless the context clearly shows otherwise, person as used in these rules includes individuals, partnerships, corporations, political subdivisions and municipal corporations.

(18) "Post Position": The starting position assigned to a horse/greyhound at the time the race is drawn.

(19) "Purse": The gross cash portion of the prize for which a race is run.

(20) "Race": An official contest among racing animals for purse or other prize at any recognized race meet and in the presence of the officials of the track as defined by ORS 462.020(6).

(21) "Race Meet Licensee": A person, partnership, corporation, or any other body conducting a licensed race meeting in Oregon.

(22) "Racecourse": The entire area licensed to the race meet licensee, as defined in ORS 462.010(5).

(23) "Recognized Race Meet": Any race meet which is under the jurisdiction of an official racing commission or other official racing body.

(24) "Runner": As used in many places designates either a horse or a greyhound.

(25) "Sending Track": The race track from which a simulcast emanates for interstate wagering.

(26) "Simulcast", "Simulcasting": Live audiovisual electronic signals emanating from a licensed race meeting and transmitted simultaneously with the running of the racing events at that meeting, and includes the transmission of pari-mutuel wagering odds, amounts wagered and payoff on such events, and other racing programming relating to the race animals or participants.

(27) "Simulcast Operator": A person with a contract with the host race meet licensee, and authorized by the Oregon Racing Commission to operate a simulcast wagering system.

(28) "Simulcast Service Supplier": A person engaged in providing service, supplies or equipment necessary to the operation of intrastate or out-of-state simulcast wagering for use by the host race meet licensee, authorized user, including pari-mutuel wagering terminals, television receivers and related equipment.

(29) "Suspension": The withdrawal of license privileges for a period of time. Suspensions also include denial of access to all areas of the racecourse and all off-track wagering sites in Oregon and all other areas under the jurisdiction of the commission unless otherwise stated in the order.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-110-0020

Horse Racing

The following definitions and interpretations shall apply in the rules unless otherwise indicated or text otherwise requires (Words of the masculine gender include the feminine and neuter. Words in the singular include the plural and vice versa.):

(1) "Added Money": Cash, exclusive of trophy or other award, added by the race meet licensee to stake fees paid by subscribers to form the total purse for a stakes race.

(2) "Age": The age of a horse is calculated as beginning on the first of January in the year in which the horse is foaled.

(3) "Allowance": Weights and other conditions of a race.

(4) "Allowance Race": A race where there are both allowances and penalties, according to the conditions of the race, on monies or races won.

(5) "Appropriate Horse Registry": For thoroughbreds, the registry office of the Jockey Club (Lexington, Kentucky); for quarter horses, the American Quarter Horse Association (Amarillo, Texas); for appaloosa horses, the Appaloosa Horse Club, Inc. (Moscow, Idaho); for paint horses, the American Paint Horse Association (Fort Worth, Texas); and for Arabians, the Arabian Horse Registry of America (Denver, Colorado).

(6) "Bleeder": Any horse known to have externally bled from its respiratory tract during a workout or race, and so designated by the commission veterinarian or any horse that has internal bleeding that is observed by the commission veterinarian through endoscopic examination.

(7) "Bleeder List": A tabulation of bleeders to be maintained by the commission.

(8) "Blocked": Where there is no feeling in an injured area.

(9) "Breakage": The odd cents by which the amount payable on each dollar wagered in a pari-mutuel pool exceeds a multiple to ten cents or to five cents in accordance with ORS 462.140.

(10) "Breeder": The owner of the dam of a horse at the time the horse was foaled. A horse is "bred" at the place of its foaling.

(11) "Carded": Scheduled and placed on the daily racing program.

(12) "Claim Certificate" (Open Claim Certificate): A written document issued by the commission which permits a person to enter a claim for a horse without having a foal certificate in the race office. Claim blank forms are obtained from the Horseman's Bookkeeper.

(13) "Claiming Race": A race in which all horses may be claimed and purchased for the amount specified in the conditions for that race by any person meeting the requirements of OAR 462-150-0030(2).

(14) "Complaint": A written allegation of a violation of these rules or ORS chapter 462.

(15) "Derby": A race exclusively for 3-year-olds, except for Arabians which is for 4-year-olds.

(16) "Divided Races": Stake and handicap races so designated by the stewards prior to the first day of the race meet.

(17) "Disqualification": An order of the stewards or commission revising the order of finish of a race.

(18) "Divided Race": A race in which there are so many entries that it is made into two separate races. A race becomes a divided race when it is announced by the racing secretary that he/she is dividing the race.

(19) "Drug": As defined in ORS 462.010(7).

(20) "Eligible": A horse which meets the conditions of the race.

(21) "Engagement": The obligation of a jockey or horse to participate in a race.

(22) "Equipment": As applied to a horse, it includes the whip, blinkers, tongue restraint, muzzle, hood, nose band, bit, shadow role, martingale, breast plate, bandages in excess of six inches in length, boots, tail tie, plates and other items as approved by the Oregon Racing Commission.

(23) "Foal Certificate" or "Registration Papers": A document issued by the appropriate horse registry used for the identification and proof of ownership of the horse.

(24) "Forfeit Money": Money due by a licensee because of error, fault, neglect of duty, or penalty imposed by order of the stewards.

(25) "Free Handicap": A race in which no liability for entrance money is incurred.

(26) "Futurity": A race for 2-year-olds, except Arabians which is for 3-year-olds, in which nominations are made a considerable time before the running of the race, often before the entered horse is born.

(27) "Handicap": A race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

(28) "Horse": Any horse (including and designated as a mare, filly, stallion, colt, ridgling, or gelding) registered for racing under the jurisdiction of the commission and which requires a jockey to race.

(29) "Ineligible": A horse or person not qualified under these rules or the conditions of a race to participate in a specified racing activity.

(30) "In Today Horse": Any horse which has an opportunity to run in a race and enters again on the next day that entries are taken.

(31) "Inquiry":

(a) Action initiated by the board of stewards involving determination as to whether or not a foul has occurred during the running of a race.

(b) Investigation by the board of stewards of a violation or as a result of objection, to determine if a violation occurred.

(32) "Invitational Handicap": A handicap race for which the racing secretary has selected the contestants and assigned the weights.

(33) "Lessee": A person who holds a contract for the racing of a horse in the person's (lessee's) name.

(34) "Lessor": A person who owns a horse and who leases part or all of it to another person.

(35) "Maiden": A horse which at the time of starting has never won a race on the flat in any country on a recognized track. A maiden which has been disqualified after finishing first is still a maiden.

(36) "Match Race": A private sweepstakes between two or more horses which are the property of different owners. If prior to the running of the race any of the horses entered in the match dies or if any owner dies, the match is void. It remains a match even if money or another award is added to the stakes.

(37) "Maturity": A stakes race for four-year-olds, or four years old or older, except Arabians which is for five-year-olds, or five years old or older.

(38) "Nerve": To cut or remove a portion of a nerve, usually in a horse's leg, to decrease sensation.

ADMINISTRATIVE RULES

- (a) "Digital Neurectomy (Heel Nerve)": An operation performed on the digital nerve between the fetlock and the foot.
- (b) "Volar Neurectomy (High Nerved)": An operation performed on the volar nerve that lies between the bottom of the knee and the fetlock joint.
- (39) "Nomination": The naming of a horse for a stakes race in advance of the race.
- (40) "Nominator": The person or persons who nominate a horse.
- (41) "Non-starter": A horse that was not in the starting gate when the stall doors open when the starter dispatches the horses, or in the opinion of the stewards, was prevented from receiving a fair start. The stewards may determine any horse to be a non-starter if in their opinion to do so would protect the best interest of racing.
- (42) "Objection":
- (a) Action initiated by the owner, trainer, or jockey of a horse, claiming foul against another horse or jockey in a race.
- (b) Action, initiated by licensee, to the stewards challenging the eligibility of an entered horse, or interpretation of a rule or policy.
- (43) "Oregon Bred": A horse which was foaled in Oregon.
- (44) "Overnight Race": A race for which entries close 96 hours or less before the time set for the first race of the day on which the race is to be run, and to which no fees are contributed by horsemen.
- (45) "Penalty": Depending upon the context:
- (a) The excess of weight a horse must carry in a race because of the race's conditions; or
- (b) The fining or suspension of a licensee by the stewards or the governing body having jurisdiction over the race meet.
- (46) "Post": The starting point of a race.
- (47) "Prize": The combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to the order of finish in a race.
- (48) "Produce Race": A race made of the progeny of certain nominated stallions.
- (49) "Purse Race": A race for money or any other prize to which the owners of the horses entered do not contribute.
- (50) "Racing Officials":
- (a) Commission officials include the presiding state steward, deputy state steward, commission veterinarians, photofinish operator, commission chief investigator, commission investigators, supervisor of licensing and pari-mutuels, commission auditors and any other commission employee designated by the commission or the executive director.
- (b) Race meet licensee officials include the race meet licensee steward, director of racing, racing secretary, paddock judge, patrol judge, jockey room supervisor, placing judges, identifier, starter, clocker, clerk of scales, stall superintendent, track superintendent, paymaster of purses, announcer, mutuel manager, odds maker, outriders, plate inspector, chief of security, TRPB agent and any other person designated by the commission or the executive director.
- (51) "Recognized Track": A track on which official results are published in the Daily Racing Form, or other racing publication approved by the commission.
- (52) "Restricted Area": Includes, but is not limited to, the office of the racing secretary, stable area enclosure, paddock area, the room occupied by the stewards, photofinish operator, video camera and control system, announcer, the pari-mutuel work areas, totalizer computer room, jockey room and weighing area, test barn area, and any other area designated as "RESTRICTED" by the commission.
- (53) "Ruled Off": The act of barring a person or horse from the grounds of a race meet licensee and denying all racing and other privileges.
- (54) "Rundown": A bandage on a horse's leg not exceeding six inches in height.
- (55) "Scratch": The act of withdrawing an entered horse from a race.
- (56) "Scratch Time": The time established and posted by the racing secretary after which no horses may be scratched, except by the stewards, or, when authorized, by the commission veterinarian or the starter.
- (57) "Stable": A place to house horses.
- (a) "Trainer Stable": One or more stalls assigned to a trainer.
- (b) "Stable Name": An assumed name licensed to one or more owners.
- (c) "Trainers Stable Name": Used for trainers advertising.
- (58) "Stakes Race": A race to which nominators of the entries contribute to a purse, to which money or any other award may be added. No overnight race shall be deemed a stakes race.

(59) "Starter": A horse which is in the starting gate when the stall doors open in front of it at the time the starter dispatches the horses. The stewards may, in their discretion, determine a horse to be a nonstarter.

(60) "Starter Allowance Race": An allowance race that includes the condition that a horse must have previously started for a specified claiming price. If a horse has been claimed, it is not eligible to enter a starter allowance race for the price at which it was claimed until it has started in a claiming race in which the claiming price does not exceed the price at which it was claimed.

(61) "Starter Race": A race based upon a horse having previously started for a specified claiming price.

(62) "Stewards": The persons employed or approved by the commission who are responsible for the proper conduct of a race meet. The terms stewards and board of stewards are used interchangeably.

(63) "Subscription": The act of nominating a horse to a stakes race.

(64) "Substitute Race": A race which replaces a race already carded, but abandoned because of insufficient entries or too many scratches.

(65) "Sweepstakes": Same as "stakes race".

(66) "Unauthorized Area": Includes the stewards' stand, test barn, jockeys' room, scale room, and mutuel work areas.

(67) "Wagering Interest": A single horse, or more than one horse joined as a "mutuel entry" or joined in the "mutuel field", on which a single pari-mutuel wager may be placed.

(68) "Weigh In": The presentation of a jockey to the clerk of scales for weighing after a race.

(69) "Weigh Out": The presentation of a jockey to the clerk of scales for weighing prior to a race.

(70) "Workout": A training exercise of a horse where the horse is asked for speed over a specific distance.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-120-0020

Search; Warrant/Warrantless

(1) Any person who applies for or is issued a license by the commission and any person who enters a restricted area is deemed to have given consent to a warrantless search by commission investigators or stewards/judges of the person's personal property (including clothing worn and items carried by the person), the person's vehicle and any premises which the person occupies while the person or the property is in any place under the jurisdiction of the commission, subject to the following:

(a) The investigators or stewards/judges may search during times that the race meet is licensed to conduct racing and for 15 days prior to the beginning and 15 days after the end of the race meet.

(b) The investigators or stewards/judges may search when they have a reasonable suspicion that the person possesses stolen property, a prohibited or injectable drug or medication, controlled substance, unauthorized hypodermic instrument, needle or syringe, unauthorized mechanical or electrical devices, unauthorized equipment, contraband (including illegal gambling paraphernalia), weapon or other evidence of a violation of racing statute or administrative rules.

(c) If the subject of the search is not an applicant for a license or licensed by the commission, the search may be conducted only if the person was given oral or written notice of this rule upon entering the restricted area, or if the person is a trespasser onto the restricted area.

(d) If the search concerns the person or the property of a licensee who is represented by an association pertaining to racing and recognized by the Oregon Racing Commission, the person will be informed that they have the right to have an association representative to witness the search, if one is available at that time or within 15 minutes of the time that the search is requested by the investigator or steward/judge. If the licensee is not informed of the right, it will not invalidate the search. If the representative is not immediately available, the subject of the search must be under the observation of the investigator or steward/judge until the representative arrives or fails to arrive in the prescribed time.

(e) Failure of any person to consent to a search in accordance with this rule will subject the person to appropriate discipline, including, if the person is a licensee, suspension and ruling-off by the judges/stewards, and possible revocation by the commission, or will subject the person to ejection and/or exclusion from places under the jurisdiction of the commission if an applicant or other unlicensed person. All persons to be searched shall be advised that failure to permit a search may result in revocation of their license (if a licensee) or exclusion from restricted premises (if not licensed).

ADMINISTRATIVE RULES

(f) Nothing in this rule prohibits the application for and the execution of an administrative or criminal search warrant if appropriate under the circumstances.

(2) No licensee may race any greyhound in Oregon unless it has been housed in a kennel licensed by the ORC or unless the kennel owner agrees in writing to submit to warrantless searches of the kennel premises and grounds.

(3) Any person in custody or control of any materials described in subsection (1)(b) of this rule shall immediately surrender those materials to an investigator upon request. Every race meet licensee and all officials and employees thereof shall give every possible aid and assistance to any department, bureau, division, officer, agent, inspector, or other person connected with the United States government or with the State of Oregon or other political subdivision who may be investigating or prosecuting any person suspected of possessing any drug, narcotic, stimulant, depressant, or local anesthetic, hypodermic syringes, hypodermic needles, or any electrical, mechanical, or other device which, in the opinion of the steward/judges, is of such character as could affect the racing condition of a horse/greyhound in a race. Upon the specific request of the individual being searched, a split sample of any suspected prohibited drug or medication, or controlled substance, or other material suspected of containing any of them shall be obtained unless there is insufficient specimen for a split sample. Any materials surrendered to an investigator pursuant to this rule will be returned, subject to amounts needed for analysis, if it is later found that the material was lawfully possessed.

Stat. Auth.: ORS 462.250

Stats. Implemented: ORS 462.450

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-120-0040

Types of Licenses

(1) Every person, in order to obtain and maintain his/her qualifications for any license held by him/her, shall attest to the knowledge of the rules and statutes, including all amendments.

(2) Each person described below must have a valid license issued by the commission before participating in or beginning employment at a licensed race meet:

(a) A race meet license is required of any person or corporation who conducts pari-mutuel racing.

(b) A horse owner's license is required of every person who is shown as an owner or lessee on the horse's registration papers or foal certificate, of every person who has a right to receive any share of a purse of a horse racing in Oregon, of any lessor of any horse racing in Oregon regardless of whether that person receives any share of the purses won by the leased horse(s), and of every person who owns or operates a stable which races horses in a licensed race meet in Oregon, and any person who has a right to receive any part of a stable owner's share of a purse of a horse racing in Oregon. However, a licensed employee of a stable may receive, as part of the employee's compensation, a percentage of the stable's earnings without having a horse owner's license and without being shown on the registration papers. The stable owner must disclose the employees' percentage to the commission in writing prior to any payment to the employees. A spouse of an owner does not need to be licensed unless the spouse's name appears on the horse's registration papers or foal certificate. No person is eligible for a horse owner's license unless the person has an officially documented ownership interest in a racehorse unless otherwise approved by the stewards.

(A) Licenses are personal in nature and expire upon the death of the licensee, and therefore are void and without effect as a pre-requisite for the entry of a horse.

(B) When the decedent was the owner either in part or in full the only mechanism by which the horse(s) may be entered or run before the property rights in those horses have been fully and completely transferred through legacy, intestate succession or authorized sale, is as follows: upon presentation of letter of administration or letters testamentary issued by a court of competent jurisdiction, or small estate affidavit, the person named in the letter or affidavit shall be licensed as an authorized agent of the estate of the decedent and allowed to enter the horse(s) formerly owned by the decedent, subject to any limitations imposed by the court.

(c) An owner's license/prospective owner's license with valid claim certificate is required of any person wishing to claim a horse if they do not have horses' registration papers in the race office.

(d) A greyhound owner's license is required of every person who is shown as an owner and/or lessor on the greyhound's NGA registration papers, and of every person who has a right to receive any share of a purse of a greyhound racing in Oregon, except kennel owners and their employees who are licensed in Oregon. A spouse of an owner does not need to be

licensed unless the spouse's name appears on the greyhound's NGA registration papers. If two or more individuals are listed on the greyhound's registration papers using the disjunctive (e.g. John Jones "or" Sam Smith) each individual is shown as an owner or lessee and each individual must be licensed.

(e) A kennel owner's license is required of every person who owns or operates a kennel which races greyhounds in a licensed race meet in Oregon, and any person other than a licensed greyhound owner who has a right to receive part of a kennel owner's share of a purse of a greyhound racing in Oregon. However, a licensed employee of a kennel may receive, as part of the employee's compensation, a percentage of the kennel's earnings without having a kennel owner's license and without being shown on the NGA papers. The kennel owner licensee must disclose the employee's percentage to the commission in writing prior to any payment to the employee. A kennel owner's license also constitutes a license for the premises where the kennel's greyhounds are housed.

(f) A stable/kennel/assumed name owners license is required if the name appears as an owner on the foal certificate, NGA ownership or registration papers of any animal racing in Oregon.

(g) A trainer's license is required of persons employed by a racing animal owner or stable/kennel to condition and care for racing animals racing in Oregon. A kennel may have only one trainer.

(h) An assistant trainer's license is required of persons who assist trainers. Trainers and assistant trainers must be at least 18 years of age.

(i) Applicants for a greyhound trainer's license or assistant trainer's license, who have not been previously licensed as trainer or assistant trainer in the United States, must pass an examination given by the board of judges to demonstrate they have the knowledge and ability to handle the duties of their position. If such applicant has been licensed as trainer or assistant trainer in the United States previously but not in the last 36 months, the board of judges may require an examination demonstrating the applicant's knowledge and ability to handle the duties of the position. If any applicant fails the examination, the applicant must wait 30 days before reapplying. However, the board of judges may waive the 30 days waiting period for applicants who, in the opinion of the judges, narrowly failed the examination.

(j) Applicants for a horse trainer's license or assistant horse trainer's license may be required to pass a written examination given by the board of stewards to demonstrate they have the knowledge and ability to handle the duties of their position. Any person who has not been licensed as trainer in Oregon may be required to submit to a barn test given by a commission representative and/or a representative of the recognized horsemen's association for the breed with which the applicant wishes to work. The stewards shall consider any recommendation received from the commission representative or the horsemen's association representative. Applicants for a trainer's license must have held a license in a backside license category for a period of at least two years and must have the recommendation of at least 3 trainers currently licensed by the commission prior to being granted a trainer's license. Applicants for an assistant trainer's license must have been licensed in a backside license category for a period of at least one year prior to being granted an assistant trainer's license.

(k) A jockey license or apprentice jockey license is required of any person who rides a horse in a race. However, when there is doubt as to a jockey's experience or ability, the stewards may require an applicant for a jockey license or apprentice jockey license to demonstrate the ability to control a horse and to ride in two or more races before a license is issued. Also, the starter may require applicants to satisfactorily demonstrate their ability to control horses out of the gate. Notwithstanding OAR 462-120-0060 the temporary license may be for a period longer than 10 days in order for the stewards to evaluate the applicant's skill. A jockey or apprentice jockey must be at least 16 years of age. All jockeys must pass physical examinations once a year. A physical examination must include but is not limited to a vision test and urine and/or blood tests. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride until he/she successfully completes such examination. A physical card or physician's release will be seen as initial proof of such examination; however, the stewards may require additional information on the examination.

(l) An outrider license is required of any employee of the race meet licensee who is stationed on horseback around the track and must be at least 18 years of age.

(m) An exercise rider license is required of any persons, other than licensed jockeys or apprentice jockeys, who exercise or work out horses. An exercise rider must be at least 15 years of age. The stewards may require evidence of competency.

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(n) A pony rider license is required of any person who, while on horseback, leads horses to and from the stable area and paddock, or from the paddock to the starting gate. A pony rider must be at least 15 years of age. The stewards may require evidence of competency.

(o) A horseshoer license is required of any person who performs the usual services of a horseshoer on a racecourse. Farriers who have not been previously licensed by the commission must submit an application accompanied by the written recommendation of three trainers who are licensed by the commission, recommendation of the track plater or have a certificate of completion from an approved Farrier school. The recommendations must include a statement that the trainer knows the farrier to be qualified to be licensed as a farrier. All farriers not previously licensed by any racing jurisdiction may be subject to examination as directed by the stewards, prior to licensing.

(p) A groom's license is required of any person not licensed as an assistant trainer who works for a trainer. A groom, upon discontinued employment by a trainer, must surrender their license to security or commission licensing personnel within 10 days, to be returned when employed during the license period. A groom's license is not a freelance license.

(q) At a minimum the president and the vice president of adoption organizations.

(r) A public training track owner's license is required of every person who owns or manages a public training track.

(s) A veterinarian license is required of any veterinarian licensed by the Oregon Veterinary Medical Examining Board who performs veterinary services on a racecourse. A current copy of that license must be on file with the commission licensing office.

(t) A valet license is required of every person who assists or attends jockeys in the jockey room or saddling paddock.

(u) A morning line odds maker's license is required of any person employed or used by the race meet licensee to establish the final morning line odds in the daily racing program.

(v) Each owner, officer, director and all employees of the race meet licensee and its contractees must be licensed by the Oregon Racing Commission except:

(A) Contractees who perform most of their principal functions away from the racecourse such as certified accountants, attorneys, insurance brokers, advertising agents and other similar contractors.

(B) Other contractors or individuals designated by the commission.

(w) A vendor's license is required of any person who solicits the sale of goods or services (used to feed, care for, or equip racing animals) to racing animal owners, stable/kennel owners or trainers on a racecourse. Vendors must have a list of products they sell attached to the license application and a current copy of all state permits and licenses to dispense such products. Any changes must be approved by the commission veterinarian and/or stewards/judges.

(x) An authorized agent's license is required of authorized agents. A licensed owner may register an authorized agent by filing an application of authorized agent with the commission and by paying the fee set by the commission. No person shall be registered as an authorized agent who is ineligible for a license. An authorized agent may act for the registering owner as set forth in the application form. No authorized agent may sign on behalf of any owner the certificate of registration for any racing animal in the absence of a valid power of attorney authorizing such signature. A person may be an authorized agent for only one kennel.

(y) A public kennel owner's license is required of any person who rents or leases kennel space to more than one other person who is licensed to race greyhounds in Oregon. A public kennel owner's license also constitutes a license for the premises where the racing greyhounds are housed.

(z) A jockey agent's license is required of any person who makes engagements for or manages a jockey.

(aa) All racing officials and their assistants shall be licensed under the name of their official position.

(bb) An Oregon greyhound farm.

(cc) Compliance Officer(s).

(3) Working members of the media who are not employed by a race meet licensee do not need to be licensed in order to enter restricted areas. However, they must display a current valid "press" badge at all times when in a restricted area. Prior approval must be obtained from the stewards/judges or office of the race meet licensee during non-race time, and they must be escorted by a race meet licensee representative while in the restricted area.

Stat. Auth.: ORS 462.250

Stats. Implemented: ORS 462.020

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-120-0050

License Application Procedures; Requirements for Corporations and Partnerships; Stable/Kennel/Assumed Name

(1) License applications shall be made on forms furnished by the commission. An application is not complete until the application form has been filled out completely and signed by the applicant, the proper fee has been paid, and the applicant has submitted all documentation and information reasonably requested by the board of stewards/judges or the commission. An oral interview may be required in a particular case. Fingerprints may be required of all applicants whose fingerprints are not already on file with the commission, and updated fingerprints may be required on a case-by-case basis. In the case of a corporation or partnership, fingerprints may be required from the authorized agent and any other individual shareholder or owner the commission or its designated representative may deem appropriate. All licensees are required to maintain current information regarding themselves on file with the Oregon Racing Commission, including but not limited to their current address, telephone number and any information regarding rulings, arrests or convictions. The commission will send all forms of written communications, including notices, to the address the licensee has on file with the commission.

(2) The application must show the true name of the applicant, and must also disclose any other name used by the applicant during the past 10 years. An application for an owner's license must identify the true names of all other persons who have any ownership interest, leasehold interest, or other investment in any of the applicant's racing animal(s) which will be racing in Oregon. Greyhound owners must identify the name of the kennel out of which the applicants greyhounds will be racing in Oregon. All applicants should be aware that Oregon law prohibits any person from conducting business in Oregon under an assumed name or under any name other than the real and true name of each person conducting the business or having an interest therein, unless the assumed name is registered with the Office of the Secretary of State. Refer to ORS 648.010(1).

(3) The fee for the first category of licensure is \$10.00 per year. Any person who is required to be licensed under more than one category of license must indicate the desired categories on the application form and pay an additional fee of \$2 per year for each additional category. All licenses shall be for a three year period or the remaining portion of a three year period, and shall expire on June 30 every three years. The license fee shall be the annual fee for each category in which the person is licensed, multiplied by three years. If a person is licensed for any part of a fiscal year (July 1 through June 30), the entire annual fee is due for that year. A kennel owner who owns greyhounds and also leases greyhounds from other owners must be licensed as a greyhound owner and as a kennel owner.

(4) Dual licenses may be denied if, in the opinion of the stewards/judges or commission, there is a conflict of interest in holding more than one license.

(a) When an applicant applies for a license in more than one occupation, the stewards/judges or the commission shall consider whether the holding of such multiple licensing creates a conflict of interest (such as, but not limited to, a sudden change in ownership to immediate family members or a change in ownership without adequate consideration). If such appearance is created, the multiple license may be denied.

(b) The following dual licenses shall be prohibited:

(A) A person licensed as a jockey shall not be licensed in any other capacity.

(B) A person licensed as an owner shall not be licensed as a jockey agent, nor shall any person licensed as a jockey agent be licensed as an owner.

(C) A person licensed as a race track owner or operator or as a racing official shall not be licensed in another capacity during the race meeting which the person owns or operates or at which that person is serving as a racing official, except as provided in OAR 462-140-0050(6).

(D) A person licensed by the commission as a veterinarian shall not be licensed as an owner or trainer.

(c) A holder of a groom's license may be a hot walker. A trainer or an assistant trainer may also perform the duties of a groom or hot walker. An owner may also groom or hot walk only the horse(s) he/she owns. However, except for those license categories specifically mentioned herein, no licensee shall act in any capacity other than that for which he/she is licensed. Thus, for example:

(A) A pony person may not exercise horses if not licensed as an exercise rider.

(B) A groom may not perform the duties of a trainer if not licensed as a trainer.

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(C) A trainer may not pony or exercise a horse if not licensed as a pony person or an exercise person.

(5) Application fees are not refundable after the commission begins to process the application, even if the license is denied (except race meet licensees, as provided by statute), or a portion of the license is unused.

(6) All corporations, limited partnerships, partnerships and other entities (except natural persons) which apply for licenses shall attach to the application as applicable:

(a) A document, signed by the president and secretary of the corporation, listing the true name and address of all officers, directors, shareholders, general partners, limited partners, and other persons having a legal or beneficial interest in the horse, stable or other business sought to be licensed, and identifying the nature and amount of each person's interest; and

(b) For corporations, a copy of the certificate of incorporation, an affidavit signed by the president indicating whether any officer, director, or stockholder has been ruled off, denied a license, or is under suspension by any official body of any racing jurisdiction, and a written agreement to notify the commission within 30 days after there has been a change in any officer, director, or stockholder; or

(c) For partnerships, a copy of the written partnership agreement, an affidavit signed by a general partner indicating whether any partner has been ruled off, denied a license, or is under suspension by any official body of any racing jurisdiction, and a written agreement to notify the commission within 30 days after there has been a change in any partner. Persons who do not have a written partnership agreement may not be licensed under the partnership name; instead, each person must be individually licensed under his/her own name; and

(d) For claiming purposes, all corporations must have an authorized agent, who may be a corporate officer, and all partnerships and licensed stables must either designate an authorized agent to sign claim forms (who may be one of the partners) or else all partners must sign the claim form.

(7) All licensees, in accepting a license, or any person introducing an animal onto the confines of any racecourse, training track or facility upon or within which racing animals are housed, are considered to have granted permission to Oregon Racing Commission veterinarian, investigators, members of the board of judges/stewards, to enter upon those premises for the purpose of inspection to determine if those premises are suitable for the housing of animals, and to determine the health, safety and physical conditions of any animals contained therein.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.020

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-120-0100

Renewals; Reapplications; Duplicates; Change of Ownership

(1) Renewals. An application for renewal of a license is timely if a completed application is received by the commission within 12 months of the expiration date of the expired license, or before the person participates, whichever occurs first. The renewal fee is \$30.00 for the first category and \$6.00 for each additional category. If a renewal application is not received by the commission in a timely manner the applicant may be required to apply as a new applicant.

(2) Reapplication. Any person who has had a license application denied by the commission or stewards/judges must wait at least six months before reapplying for that category of license.

(3) Duplicates. If a license is lost or destroyed, the licensee must apply for a duplicate license by submitting to the commission a sworn statement explaining in detail the circumstances of the loss or destruction, and by payment of an amount equal to \$5.00 per year for the remaining number of years left in the original license's term.)

(4) Change of Ownership:

(a) After a greyhound has started in an official race in a race meet in Oregon, no change of ownership or leases between kennels will be permitted until the race meet is concluded, except in extraordinary circumstances with prior approval of the commission; however, a change of true ownership may, with the approval of the board of judges, occur during the race meet. Under extraordinary circumstances a dog owner may move a greyhound lease relationship from its current kennel to another booked kennel with approval from the board of judges.

(b) After a horse has been registered with the racing secretary, it may not be transferred (unless claimed during the race meet) without permission of the stewards. A notarized bill of sale from the registered owner is required before the stewards will give permission for the change of ownership, unless a commission official witnesses the signing of the bill of sale.

The share of a part owner of any horse may not be sold or assigned without the consent of the other owners. The commission and/or stewards may declare ineligible to race any horse for which the ownership or control is in question. No ownership change shall be made after scratch time for a race in which the horse is entered except as the discretion of the board of stewards.

(5) Change of Trainer:

(a) Before a kennel owner may change trainers, the kennel owner or authorized representative must submit a completed "Change of Trainer" request on forms furnished by the commission, and must obtain the approval of the board of judges. When a new trainer is needed immediately, the procedure set forth in OAR 462-140-0430(4) may be followed first. Afterwards, a "Change of Trainer" request form must be promptly submitted.

(b) A horse owner who wishes to change a trainer must notify the racing secretary, obtain a "Change of Trainer" form, fill out the form completely and have it signed by the stewards. Upon receipt of the completed and signed form by the racing secretary, the former trainer shall not be given any further access to the horse's papers. No trainer change shall be made after the horse is entered into a race.

(c) If an owner has horses with more than one trainer at a race meet, the owner must notify the race office and the stewards prior to the horses being entered into a race.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.020

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-130-0010

Prohibited Conduct; Investigations; Discipline

(1) No person (including licensees) shall:

(a) Incite, encourage, instruct, assist, or cause or attempt to cause another person to engage in any violation of ORS chapter 462 or any rule of the commission, or to commit any prohibited act in relation to racing in another racing jurisdiction.

(b) Offer or accept any form of compensation for cashing a pari-mutuel ticket for another.

(c) Direct any personally offensive language, profanity, obscenity, or abusive epithets toward any racing official or employee of the commission at any place under the jurisdiction of the racing commission.

(d) Take any action upon a racecourse that creates or causes a clear and present danger of violence.

(e) Initiate any physical altercation with another person on a racecourse.

(f) Threaten another person with physical harm or probable physical harm.

(g) Refuse to obey reasonable orders or directions of a racing official, security personnel of the race meet licensee or Oregon Racing Commission employees.

(h) Sell or offer to sell tip sheets or any other written, electronic or oral predictions as to the outcome of races at any place under the jurisdiction of the commission unless licensed to do so by the commission.

(i) Gamble, bet, or wager on a racecourse except as authorized by the State of Oregon.

(j) Possess on a racecourse during a race meet any device, machine, or paraphernalia normally used for gambling or gaming, except with written permission of the commission.

(k) Except for the race meet licensee, solicit any wagers from the public.

(l) Give or offer to give any bribe directly or indirectly, to any licensee, racing official, commission member or employee, or any other person having official duties in relation to any race, racecourse, or racing animal.

(m) Tamper or attempt to tamper with an animal, or apply or aid in applying to an animal or possess on a racecourse any electrical or mechanical device or prohibited medication intended to affect the performance of an animal.

(n) Use any lure except an artificial lure for training or racing a greyhound at any time.

(o) Possess a hypodermic needle or usable injectable syringe on which a needle may be attached on a racecourse, except veterinarians or veterinarian assistants licensed by the Oregon Racing Commission. On a racecourse, veterinarians may use only one-time disposable needles, and shall dispose of them off the racecourse. If a person has a medical condition which makes it necessary to have a syringe on the racecourse, that person must request permission of the stewards/judges in writing, furnish a letter from a licensed physician explaining why it is necessary for the person

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to have a syringe on the racecourse, and must comply with any conditions and restrictions set by the stewards/judges.

(p) Administer, offer to administer, or allow to be administered to any racing animal any prohibited drug or medication, or an unauthorized quantity of an approved drug or medication.

(q) Alter or forge a prescription for medication for a racing animal, or any legal document including but not limited to: a bill of sale, a claim blank, a license application, a treatment form, a registration certificate, ownership registration certificate, lease certificate, a check, or a license application.

(r) Impersonate any racing official, commission member or employee, or any other person having official duties in relation to any race, racecourse, or animal in any manner including forging any of these individuals names or initials on any document.

(s) Submit or knowingly allow to be submitted to the commission, commission personnel, racing secretary or any racing animal registry, any report or document or application which contains false or misleading information.

(t) Mar or alter any identification mark on a racing animal.

(u) Use any radio transmitter or other transmitting device on a racecourse during racing to transmit racing or wagering information unless authorized by the commission. All cell phones must be turned off in the paddock, jockeys' room, test barn enclosure/area and on the racing surface when the area is actively in use.

(v) Have any interest in more than one kennel racing greyhounds in Oregon

(w) Smoke inside the test barn/storage area, under the covered portion of the stables, including stalls, tack rooms, shedrow, or in designated "No Smoking" areas.

(x) Use any tobacco products or have food or beverages in the designated testing areas.

(y) Possess on a racecourse any deadly weapon or firearm, a BB gun, blow gun, pellet gun or similar device, except law enforcement officers, commission officials and security personnel.

(z) While employed by the race meet licensee, racing commission or acting as a racing official, wager at the racecourse where employed or working, while on duty, or ask any other person to place a bet on their behalf. This includes individuals working under contract with the race meet licensee during the racing program and the employees of contractors of the race meet licensee who are working during the racing program. This does not include individuals with kennel contracts.

(aa) Allow any person under the age of eighteen (18) years to place or collect a wager. Race meet licensee shall turn over to the proper civil authorities any person who violates this rule, to be punished upon conviction of any such violation, according to law. This rule shall be posted conspicuously at entrance gates and throughout wagering areas. The license of any employee participating in any transaction relative to wagering with persons under the age of eighteen (18) years may be summarily, suspended or revoked.

(bb) Move, nominate or enter to race a racing animal on a racecourse except with express permission of the trainer, racing secretary, owner, stall superintendent or the stewards/judges.

(cc) Submit any animal in their charge to cruel or inhumane treatment. Cruel or inhumane treatment includes, but is not limited to:

(A) Lack of adequate food, shelter and water;

(B) Neglect in any manner, including adequate veterinary care and attention when necessary;

(C) Conditions which cause an animal to give the appearance of physical pain or suffering;

(D) Prohibited conduct described in ORS 167.310 to 167.388 in the form the statute provided on the effective date of this rule.

(dd) Commit theft or buy, sell or possess any stolen property, or buy, sell or possess any illegal contraband.

(ee) Illegally influence or conspire, or attempt to influence or conspire, to affect the result of any race or manipulate the odds in which an animal participates.

(ff) Violate any written agreement entered into with the Oregon Racing Commission, the board of stewards, or the board of judges or any other commission employee as a result of an order of the commission, stewards or judges.

(2) No licensee shall:

(a) Enter for official racing, official schooling, start, cause or allow to be entered or start, a racing animal that the licensee knows or should know does not meet all entry requirements.

(b) Come onto a racecourse or participate in a race meet while suspended, excluded or ruled off by the official body of any racing jurisdiction unless otherwise ordered by the board of stewards/judges or the Oregon Racing Commission.

(c) Fail to immediately notify the racing secretary when the licensee discovers that any entry or starting requirement for a racing animal under the licensee's control is not met or is no longer being met.

(d) Allow or cause a scratch to become necessary, which could have been avoided by the exercise of reasonable care.

(e) Fail to request a scratch immediately upon learning that a scratch is necessary.

(f) Solicit, offer or accept any bribe in any form, directly or indirectly, to or from any person, in connection with any race meet in any racing jurisdiction which is a member of NAPRA and/or ARCI. A conviction is not required in order to prove a violation of this rule.

(g) Commit any corrupt, fraudulent, or unlawful act on any racecourse or in connection with any race meet in any racing jurisdiction which is a member of ARCI or NAPRA.

(h) Fail to cooperate with commission personnel, officials or security personnel when requested to comply with these statutes and rules relating to racing.

(i) Fail to report to the judges/stewards' office promptly upon request.

(j) Be intoxicated or under the influence of controlled substances in a restricted area or on duty.

(k) Lodge a frivolous complaint.

(l) Knowingly allow an unlicensed person to participate in a race meet if the licensee knows or should know that the person is required to be licensed.

(m) Fail to immediately report to the commission the unlicensed participation in a race meet of any person who the licensee knows or should know is required to be licensed.

(n) Fail to report promptly to a commission representative any possession or use of a prohibited drug, prohibited medication or prohibited paraphernalia.

(o) Fail to notify the commission in writing of a change of officer, director, stockholder (except for publicly traded corporations), or partner, within 30 days, if the change occurred during a race meet, or prior to the next race meet, if the change occurred after a race meet.

(p) Fail to pay a fine or civil penalty within 10 days of the effective date of an order or failure to obey any other order issued by the judges/stewards or the commission.

(q) Ride a horse on the racecourse without wearing an approved helmet.

(r) Retain any prize or purse money which the person has reason to know was paid in error or lost because of disqualification or commission action as a result of an appeal.(s) If an owner, assistant trainer, groom or other person having charge, custody or care of a racing animal, fail to protect the racing animal and guard it against the administration of unauthorized drugs or any other illegal conduct.

(t) Direct, by use of language, gesture or sign, any profanity, obscenity or abusive epithets toward the public at a racecourse.

(u) Allow anyone other than participating jockey, authorized racing officials, representatives of the commission, licensed valets and authorized licensed vendors in the jockey room between two hours before post time for the first race of the day and one hour after the last race without consent of the stewards for each time of entry.

(v) Other than a licensed jockey agent, make engagements for a jockey. A jockey may make his/her own engagements if not represented by a jockey agent.

(w) Engage in any dishonest or unprofessional conduct on a racecourse.

(3)(a) Alcohol Consumption: No licensee while on the grounds in any restricted area of any place under the jurisdiction of the commission shall have a blood alcohol content by weight of .08 percent or more as shown by analysis of the breath. No jockey or racing official, when acting in their official capacity, shall have a blood alcohol content by weight of .01 percent or more as shown by analysis of the breath. Acting with reasonable suspicion, the stewards/judges or a designated racing commission representative may direct any licensee observed in a restricted area or any racing official acting in their capacity to submit to a breathalyzer test or to submit a urine specimen for analysis. Such licensee shall when so directed submit to such examination. If the result of the test shows a percentage higher than permitted, or if the person refuses to be tested, or if the specimen was adulterated as reported by the laboratory, the person may be fined

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or suspended for a period not to exceed 30 days and further discipline may be imposed as described in this rule.

(b) **Drugs/Controlled Substances:** No licensee within any place under the jurisdiction of the racing commission shall have in the licensee's body any controlled substance or drug listed in Schedules I through V of 21 USC Section 812 except for a drug which was obtained or taken pursuant to a valid legal written prescription or order from a licensed physician acting in the course of the physician's professional conduct and which is produced by the licensee upon request.

(A) Acting with reasonable suspicion, the stewards/judges or a designated racing commission representative may direct any licensee to deliver in the presence of a steward/judge or the commission representative a sample of urine for laboratory analysis. If obtainable, sufficient specimen should be taken to provide a split sample at the licensees' request.

(B) The licensee may request confirmation of laboratory results within 3 days of official notification of a positive test. The commission shall have the split sample or the remaining portion of the sample sent to a qualified laboratory in Oregon or in another jurisdiction. The Commission will not release the split sample to any representative of the licensee. All expenses for a confirmation test, including but not limited to transportation, analysis and personal testimony from the other laboratory shall be borne by the licensee. A copy of all written material which conducted the confirmation analysis shall be forwarded to the licensee. The commission or the stewards/judges may use the written material as evidence at any hearing.

(C) Acting with reasonable suspicion that the licensee is impaired, the stewards/judges or the commission representative may prohibit the licensee from participating in any racing activity until the result of the laboratory test is received. If the test is positive and no valid prescription is produced, or if the licensee refuses to be tested, or if the specimen was adulterated, the licensee may be suspended and further discipline may be imposed as described in this rule.

(c) **Alcohol and Controlled Substance Testing Expense:** Except for split samples, laboratory analysis will be performed at the racing commission's expense, unless pursuant to a prior order of the stewards/judges or commission reinstating the licensee, or the person produced an adulterated specimen, in which case retesting may be performed only after the person pays the cost of the first test to the commission.

(d) **Sanctions for Alcohol or Controlled Substance Violations:**

(A) A licensee's first violation shall result in a suspension for not less than 30 days, however, reinstatement shall not occur until the licensee has been evaluated by, and a current written report is received from a drug counselor certified by the State of Oregon and who is approved in advance by the commission or stewards/judges. The report must explain whether or not the licensee is addicted, is likely to unlawfully distribute drugs or alcohol to others, or is likely to be a danger to licensee or others if allowed to participate in racing. If any of those contingencies are answered in the affirmative, reinstatement shall not occur until the licensee presents documented proof of completion of an appropriate certified rehabilitation program approved in advance by the commission. Reinstatement is also subject to licensee producing at licensee's expense, a negative test from a laboratory approved in advance by the commission, and also subject to licensee agreeing in writing to submit urine specimens at the request of the stewards/judges or designated racing commission representative for not less than five years, or until no longer licensed.

(B) A licensee's second violation within five years of the first violation shall result in an indefinite suspension, but in no case less than six months, and reinstatement shall not occur until the licensee completes all of the contingencies listed above in subsection (A).

(C) A licensee's third violation within seven years of the second violation shall result in a 365-day suspension by the stewards/judges and immediate referral to the commission for consideration of exclusion and/or revocation of the license. The stewards/judges may not reinstate the licensee unless the laboratory analysis was proven to be incorrect or a fraud was perpetrated resulting in a mistaken judgment by the stewards/judges.

(e) **Prescription Medication:**

(A) Any licensee who has obtained a medical prescription for any drug listed in Schedules I through V of 21 USC Section 812 may be required to furnish the Commission or the stewards/judges written documentation from the issuing physician that the use of the prescribed drug will not impede the licensee from performing the duties for which they are licensed or threaten the safety or welfare of others or a racing animal.

(B) If, in the opinion of the board of stewards/judges, the use of any lawfully prescribed drug listed in Schedules I through V of 21 USC Section 812 would or could pose a threat to the health, safety or welfare of the licensee, others or a racing animal, the board of stewards/judges, after hav-

ing an appropriate hearing, can bar the licensee from entering a restricted area of any racecourse or their handling of any race animal subject to appeal.

(f) Knowledge of a person's voluntary and active participation in an approved rehabilitation program will not constitute grounds for "reasonable suspicion" under this rule.

(4) Any licensee who violates any provision of ORS chapter 462 or any rule adopted thereunder is subject to further discipline by the board of stewards/judges, up to the limits imposed by law, and also is subject to further discipline by the racing commission, including suspension, revocation, civil penalties, exclusion, probation, and such other discipline as may be appropriate in the case. An applicant may be refused a license for any conduct which could constitute grounds for suspension or revocation, and a license may be revoked if it is determined that the applicant could have been refused a license if the true facts were known at the time the license was issued. Whenever a licensed trainer or assistant trainer is suspended, the stewards/judges have the commission's authority to also exclude him or her. Any other licensee or non-licensee who, in the opinion of the stewards/judges, should be subject to exclusion shall be referred to the commission for its decision on the matter.

(5) When grounds exist for suspension of a license, the stewards/judges or commission may also impose other appropriate sanctions including, but not limited to, forfeiture of purse, return of prizes, ruling off, or forbidding entry of racing animals.

(6) When a license is suspended, it may be suspended for all categories licensed, including reciprocity suspensions.

(7) **Ejection.** The race meet licensee may eject any person from the race course for any reasons and in any manner that is not contrary to law. The race meet licensee shall notify the commission within 24 hours of any ejection or arrest occurring on the racecourse, including the details thereof.

(8) All licensees shall report any known irregularities or wrong doings by any person immediately to a commission employee and cooperate in subsequent investigations.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-130-0050

Appeal to the Commission; Stay Pending Appeal

(1) Any person who is the subject of any order or ruling of the stewards/judges may appeal to the commission for a review of the order or ruling, other than as to the extent of disqualification for a foul in a race. The appeal must be in writing and filed with the commission offices at Portland State Office Building, Suite 310, 800 NE Oregon Street # 11, Portland, Oregon 97232, within ten days from the effective date of the order or ruling unless a different time is expressly specified. Any appeal concerning the board of stewards/judges decision regarding a claim of foul or inquiry must be filed with the commission offices at the Portland State Office Building, Suite 310, 800 NE Oregon Street # 11, Portland, Oregon 97232, within 72 hours of the action or inaction which provides the basis of the appeal. The appeal must be signed by the appealing party and shall set forth clearly and concisely the following information:

(a) The order, ruling, or decision to be reviewed and the date thereof.

(b) The specific acts or failure to act which gave cause to the appeal and the dates thereof.

(c) The reasons for the appeal.

(d) The address to which any notices from the commission may be mailed to the appealing party.

(2) An appeal from an order or ruling of the stewards/judges to the commission shall not affect such decision until the appeal has been acted upon by the commission, unless otherwise ordered by the commission or by a court of competent jurisdiction.

(3) At the time a licensee submits a written appeal to the commission, the licensee may request in writing that the commission stay the effective date of any penalty or sanction imposed by the stewards. The request should state any good cause that supports the request. The executive director or commissioner in the absence of the executive director may, in his/her discretion, grant the stay for good cause shown.

(4) An appeal may not be withdrawn except with the approval of the executive director.

(5) Appeals to the commission shall be heard within 90 days from the date the appeal request is received in the commission's main office, unless a continuance is requested by the licensee or the assistant attorney general and approved by the executive director or the hearings officer.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.405

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Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-140-0030

Vendor

No vendor shall dispense, sell or furnish any feed supplement, tonic, veterinary preparation, medication or any other substance containing a prohibited drug to any person within the enclosure unless there is a label specifying the name of the dispensing veterinarian, the name of the animal or the purpose for which the said preparation or medication is dispensed, or is otherwise labeled as required by law. Any substance containing a prohibited drug shall be labeled, "Caution. Contains Prohibited Drug. Not to be used on race day."

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-140-0040

Veterinarian

(1) No one shall practice veterinary medicine on a racecourse unless licensed by the Oregon Board of Veterinary Medical Examiners, with a current copy annually of said license on file with the Oregon Racing Commission, as well as licensed with the Oregon Racing Commission. Veterinary assistants shall only perform their duties under the supervision of a licensed veterinarian.

(2) Veterinarians performing services on a racecourse shall report all animals nerved, all treatments and all medicines given and prescribed each day on forms provided by the commission. These reports shall be mailed or placed daily in the locked receptacle provided by the commission veterinarian. In the case of lasix, treatments may be recorded on a program provided by the race meet licensee.

(3) Veterinarians on a racecourse shall use one-time disposable needles and shall dispose of all medical waste, i.e., needles, syringes, used bottles and/or other medication containers, etc., off the racecourse.

(4) No veterinarian shall dispense, sell or furnish any feed or nutritional supplement, tonic, veterinary preparation, medication, or any other substance containing a prohibited drug to any person within the racecourse unless there is a label specifying: name of client and identification of animal(s); date dispensed; complete directions for use; name and strength of drug; manufacturer's expiration date; name of prescribing veterinarian and veterinary medical facility; or is otherwise labeled as required by law. Any substance containing a prohibited drug shall be labeled, "Caution. Contains Prohibited Drug. Not to be used after entry".

(5) Every racing animal which suffers a breakdown on the race track in training or in competition and is destroyed, and every other racing animal which expires while on a racecourse under the jurisdiction of the commission, shall undergo a postmortem examination to the extent reasonably necessary to determine the injury or sickness which resulted in euthanasia or natural death:

(a) The postmortem examination required under this rule will be conducted by a licensed veterinarian employed by the owner or trainer in consultation with the commission veterinarian, who may be present at such postmortem examination.

(b) Test samples must be obtained from the carcass as directed by the commission veterinarian during the postmortem examination and sent to a laboratory approved by the commission for testing for foreign substances or their metabolites and natural substances at abnormal levels. When practical, samples shall be taken from the racing animal prior to euthanasia.

(c) The cost of laboratory testing of postmortem samples shall be borne by the commission.

(6) All veterinarians must conform their practice, at the least, to the minimum standards of the Oregon Veterinary Practice Act.

(7) Maintain reasonable security of controlled substances.

(8) All veterinarians shall provide the commission veterinarian and track security with current office and emergency telephone numbers five (5) days before the opening of each race meet at which they intend to practice.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-140-0100

Commission Investigator(s)

(1) The Oregon Racing Commission investigative staff will consist of a chief investigator, investigators and off-track monitors.

(2) The investigative staff have the authority to investigate all violations of ORS chapter 462 and administrative rules as they pertain to racing and pari-mutual wagering. The investigative staff shall be granted immediate access to all areas of the racecourse, off-track wagering sites, greyhound farms/kennels, and licensed training tracks.

(a) The investigative staff have the authority to conduct background investigations on any licensee or person requesting to be licensed.

(b) The investigative staff will investigate any matter referred to it by the Oregon Racing Commission, executive director or board of stewards/judges.

(3) The investigative staff will enforce all of the laws and rules specified in ORS chapter 462 and administrative rules as they pertain to racing.

(4) The investigative staff will collect and preserve evidence in all matters in which the Oregon Racing Commission is or may be a party of interest.

(a) For purpose of OAR 462-130-0010(3)(a) the investigative staff are designated racing commission representatives for the purpose of directing any licensee to submit to a breathalyzer test or to submit a urine specimen for analysis.

(b) For purpose of OAR 462-130-0010(3)(b) the investigative staff are designated racing commission representatives for the purpose of directing any licensee to deliver in the presence of a steward or commission representative a sample of urine for laboratory analysis.

(5) The investigative staff will refer all matters which may be a violation of ORS chapter 462 or rules of racing to the appropriate board, hearing officer or commission upon the completion of an investigation.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-140-0130

Race Meet Licensee

(1) License Application. Applications for racing dates must be in the office of the commission when required by the commission.

(2) Racing Officials. The race meet licensee shall hire all necessary racing officials and shall submit to the commission for approval the names of all proposed racing officials and their assistants, except commission employees, at least 45 days prior to the proposed race meet. This deadline may be waived by the commission for good cause. Substitutions of racing officials may be made from time to time as provided in OAR 462-140-0060(10). The race meet licensee shall provide the commission, for confirmation, timely updates of the list of officials and their assistants when changes are made. The commission may appoint an employee of the commission to serve as a racing official for any race meet and may require the race meet licensee to pay the employee's compensation.

(3) Safe and Clean Facilities. The race meet licensee shall provide all facilities necessary for the proper conduct of the race meet and shall take every reasonable precaution to make all areas of the racecourse safe and shall ensure that the paddocks, starting gate, test barn and other equipment with which racing animals may come in contact are kept in a clean condition and free of dangerous surfaces. The race meet licensee shall keep the grounds of the racecourse in a clean condition.

(4) Commission Offices. The race meet licensee shall provide adequate office space properly equipped and maintained for the use of the commission and its designated representatives. Office space includes, but is not limited to, general offices and stewards' office. Upon request, the race meet licensee shall furnish suitable space and accommodations for fingerprinting and photographing license applicants.

(5) First Aid. During racing hours the race meet licensee shall provide and equip a first aid room within the racecourse and shall have present on the premises a licensed physician or registered nurse or, during extraordinary circumstances, a paramedic within five minutes call:

(a) The race meet licensee shall provide an ambulance with standard medical equipment and with licensed attendants for protection of patrons and racing personnel during the conduct of a race meet, including work-outs, and during the training period preceding the official opening of the race meet.

(b) The race meet licensee shall also provide a horse ambulance approved by the commission veterinarian, with a tractor or vehicle attached during racing hours for the immediate removal of a crippled animal from the racecourse.

(6) Every race meet licensee shall operate its own pari-mutuel department, and in no event shall subcontract or let to concessionaires the operation of the pari-mutuel department or any part thereof without commission approval.

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(7) Totalizator. The race meet licensee shall maintain a satisfactory totalizator system, including a tote board.

(8) Post-Race Test Area. The race meet licensee shall furnish a post-race receiving area approved by the commission veterinarian, with sufficient facilities to safely collect, store and secure saliva, urine, and/or blood samples from racing animals.

(9) The race meet licensee shall provide adequate racing silks, saddle-cloths, head numbers, lead weights, and other standard equipment.

(10) Photofinish; Timing Devices. The race meet licensee shall provide a sufficient amount of light at the finish line for nighttime and twilight racing and shall install two automatic timing devices approved by the commission, and shall provide a photofinish booth meeting standards set by the commission. (The cost of photofinish services for pari-mutuel races shall be an expense of the commission)

(11) Tip Sheets. The race meet licensee may contract with no more than two persons to sell tip sheets on the racecourse during a race meet. Tip sheets obtained from out-of-state host tracks which are part of the race meet licensee's simulcast program shall not count against the limit of two tip sheets. The race meet licensee shall provide booths and utilities for the tip sheet sellers, and may charge a reasonable fee for their use. The race meet licensee shall not allow anyone to sell tip sheets who is not licensed by the commission and shall not allow tip sheets to be sold in wagering areas. Tip sheets must be sold from a booth, and the previous day's sheets and outcomes must be displayed on the front of each booth. Tip sheets must be independently handicapped, and each handicapper must sign and deliver such sheet at least one hour before post time to the commission office located on the racecourse.

(12) Security. The race meet licensee shall provide a sufficient number of security personnel to provide adequate security for all areas of the racecourse, including parking lot, test barn, and stable areas, and shall ensure that unlicensed individuals do not enter restricted areas. The race meet licensee and its security personnel shall cooperate with local authorities and with commission personnel in enforcing the rules of racing and the laws of this state, and shall promptly inform commission stewards of all violations of ORS chapter 462 and the rules of racing. All security reports and records will be made available in a timely manner to commission investigators, the board of stewards and/or the executive director.

(13) Commission Access. Members, employees, and representatives of the commission shall be given full and complete access to any and all areas of the racecourse at which a race meet is being held.

(14) Transmission. Any person desiring to broadcast, televise or transmit from the track by press wire pertinent information relating to any feature race run at the track shall first file with the commission, for its approval, an application stating the particular feature races and dates that it desires to broadcast, televise or transmit, together with the name and address of the representative of the public press, radio, or television authorized to broadcast, televise or transmit the requested information. Other than at approved off-track wagering facilities, shall the exact odds be announced, nor shall pay off of winners be given until the result of the race has been declared "official".

(15) Attendance Report. The race meet licensee shall make a daily attendance report to the commission, unless otherwise authorized by the commission.

(16) Conflict of Interest. No employee, officer, or director of a race meet licensee shall be permitted to own, lease, or have any other interest in any racing animal entered for racing on the race meet licensee's racecourse, unless approved by the commission.

(17) Waste Disposal. The race meet licensee shall provide, secure and maintain medical waste containers as approved by the commission or commission designee.

(18) Parking Permits. When requested by the commission, the race meet licensee shall designate a parking area for commission members, employees, and special guests who are in possession of parking permits issued by the commission. Parking in the designated area shall be free.

(19) Communication System. The race meet licensee shall provide an adequate on track/outside communication system as required by the commission.

(20) Stenographer. Upon request of the stewards/judges the race meet licensee shall provide an experienced secretary to work temporarily under their supervision.

(21) Stalls. The race meet licensee shall attempt to be fair and equitable in assigning stall space, and shall provide receiving stalls for horses which are brought onto the racecourse from outside stable space for a race.

(22) Records of Horse Movements. The race meet licensee shall maintain a record of arrival and departure of all horses from the stable area.

(23) Numbered Buildings. All stables, barns and stalls shall be numbered or otherwise clearly identified.

(24) Track Kitchen. The race meet licensee, or other person approved by the race meet licensee, may maintain and supervise a kitchen in the stable area and shall supervise any other area where food or drink is dispensed. All food service facilities shall comply with state and local health and sanitation requirements. No person shall be permitted to enter or exit the racing enclosure through the track kitchen or through any building which forms a portion of the track enclosure.

(25) Distance Pole Markers. Distance pole markers must be 10 feet from the rail and shall be painted as follows:

(a) 1/4 poles — red and white;

(b) 1/8 poles — green and white;

(c) 1/16 poles — black and white.

(26) Horseshoes. The race meet licensee shall prior to the race notify the public in a manner approved by the stewards as to the type of shoes (other than plain shoes) that each horse is wearing, and as to any horse that will race without shoes.

(27) Horseman's Accounts. Unless otherwise authorized by the commission, the race meet licensee shall keep a separate account, to be known as the "horseman's account", with sufficient funds to cover all monies due horsemen in regard to purses, stakes, rewards, claims, and deposits. Only those persons in whose name the account is established, or their duly authorized agent, may make withdrawals from the account. Any person authorized to withdraw money from the account must be bonded in an amount approved by the commission.

(28) Race Track Safety Standards. Any racetrack on which a licensed race meet is conducted must meet the following standards unless otherwise authorized by the commission for good cause:

(a) Rails. All racing surfaces must have inner and outer rails of a design and construction approved by the commission:

(A) Permanent rails must be made of a material which will take the impact of a horse without breaking away. All rail posts must be set in concrete at least 6 inches below the surface and at least 24 inches deep. The height of the rail must be 40 inches plus or minus 2 inches from the top of the cushion to the top of the rail. The top rail must be bolted or welded to the posts and should be smooth with no jagged edges.

(B) For race meets or continuous race meets that are licensed to run 25 days or more per fiscal year, the inside rail shall be permanent of goose-neck design and have no less than 24-inch overhang with a continuous smooth elevated cover which entirely covers the overhang.

(C) For race meets or continuous race meets which are licensed to run for 24 days or less during a fiscal year, the design of the rail is subject to the approval of the commission during the licensing hearing, with consultation from the executive director, the stewards, the race meet licensee(s), and the jockeys riding at the meet or their representative. In order to facilitate this provision the executive director, the director or racing for the race meet(s), the stewards and the jockeys or their representative shall discuss needed improvements for the next year's race meet during or at the conclusion of each meet.

(b) Gates (Gaps). No gate openings in a rail may be over 10 feet long without a center support. The top rail of the gate must be secured to the top of the rail. Gate openings should not look any different from the rest of the rail. All gates, other than the "On" and the "Off" gates during training, must be closed during racing and training. "On" and "Off" gates for horse access during training should be placed at least 50 feet apart.

(c) Morning Starting Gate. The starting gate used for morning schooling shall be placed far enough from the "On" and "Off" gates (gaps) so that horses coming on and going off the track will not interfere with or distract morning schooling or breaking from the gate.

(d) Obstacles. No obstacle or device, such as distance pole markers, electrical boxes, timers, starter's stands, patrol judge's stands, etc. shall be placed within 10 feet of the back of the bottom of the rail post unless made flexible or break-away.

(e) Drainage Ditches or Holes. Any drainage ditch or hole behind the inside rail must be covered with soft material level with the ground surface.

(f) Lighting. All race track lighting systems for nighttime racing must have an operational emergency generator or battery back-up system which is serviced and tested at least once a month during the track's racing season. Servicing and testing of the emergency lighting system must be documented in writing and available to the commission staff upon request.

(g) Ambulance. During racing the ambulance shall follow the field either on the track or in the infield unless otherwise directed by the stewards. The ambulance must be staffed by certified paramedics or EMTs, be properly equipped and otherwise be suitable for transporting an injured per-

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son from the track to a roadworthy ambulance for transport to a hospital. A back-up ambulance is to be in attendance during the absence of the main ambulance.

(h) Safety Committee. Any race track location which has 15 or more race days per year, regardless of the number of race meet licensees, will have a safety committee. The safety committee will be made up of two (2) representatives from the management of the race meet licensee, two (2) representatives from the jockeys riding at the track, two (2) representatives from the horsemen with papers in the race office at the track, and at least one (1) of the state stewards. This committee will be responsible for addressing unsafe conditions on the racing enclosure and recommending solutions to the conditions to the race meet licensee management, the racing commission executive director and/or the commission.

(29) Assistant Starters. The race meet licensee shall ensure that there is one assistant starter per horse in the race plus at least one assistant starter to shut the tailgates.

(30) Valets. There shall be at least one valet for every two horses in the maximum field size approved by the commission. (Assistant starters may also work as valets, if so licensed.)

(31) Fire Safety in Stable Areas:

(a) Every race meet licensee shall cause to be posted in the stable area of its premises the fire regulations applicable on its grounds and such posted notice shall also state the location of the nearest fire alarm box and the telephone number of the fire department or other pertinent instructions as to the method for reporting a fire in the area. Such notices shall be posted no more than one hundred (100) feet apart or as approved by the local fire authority. No race meet licensee, management or person shall violate the posted fire regulations specified by the commission.

(b) All trainers or their assistants and all concessionaires or their assistants shall acquaint themselves with and brief their employees as to the following:

(A) Smoking regulations.

(B) Location of fire notification system in immediate area of assigned barn.

(C) Location of all fire extinguishers and extinguishing equipment in assigned barn area.

(D) Regulations regarding occupancy, use of extension cords for extending electrical circuits, and use of electrical appliances.

(E) Regulations regarding storage and use of feed, straw, tack, and supplies.

(F) Track regulations with regard to fire and security, copies of which shall be provided to all trainers or their assistants and concessionaires or their assistants. These regulations shall be used in instructing members of the trainers' and concessionaires' staffs assigned to the barn area.

(c) Signs shall be posted in every barn and associated buildings dealing with the following information:

(A) Location of manual fire alarm stations, emergency telephones, or other methods of fire alert.

(B) Location of fire protection first-aid appliances.

(C) Emergency procedures specific to the particular track facilities.

(D) Location of nearest medical waste disposal containers.

(d) No open burning shall be permitted in the barn area.

(e) Smoking shall be prohibited except in designated safe areas.

Proper warning signs shall be posted.

(f) Use of any portable electrical appliance shall be restricted to the following conditions:

(A) Multiple-outlet adapters shall be prohibited.

(B) Not more than one continuous extension cord shall be used to connect one appliance to the fixed receptacle, and such cord shall be listed for hard service and properly sized for the intended application.

(g) Extension cords shall not be supported by any metal object such as nails, screws, hooks, and pipes.

(h) Portable cooking and heating appliances shall be used only in spaces designated for such use provided they are separated from the stabling and storage areas of the barn.

(i) Portable electrical heating and cooking appliances shall be of a type that automatically interrupts electrical current to the heating element when the appliance is not in the normal operating position (tip-over disconnect).

(j) Use of exposed element heating appliances such as immersion heaters shall be prohibited.

(k) The storage of flammable and combustible liquids, except those used for medicinal purposes, shall be prohibited.

(l) The water supply shall be capable of providing pressure and discharge capacity required for automatically supplying sprinklers, hydrants, and hose lines.

(m) Fire protection must meet the local fire regulations.

(32) The race meet licensee shall have available current telephone numbers for twenty-four (24) hour emergency veterinarian care. The race meet licensee shall post an established procedure, approved by the commission veterinarian, for providing emergency veterinarian care five (5) days prior to until five (5) days past their race meet.

(33) Any race meet licensee failing to enforce these rules may be subject to fine or revocation of license.

Stat. Auth.: ORS462.250

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-140-0250

Starter

(1) The starter is responsible for the horses from the moment they enter the designated racing surface from the paddock, and may scratch a horse for good cause. The starter shall immediately notify the stewards of any scratch.

(2) The starter shall give order to secure a fair start. If a horse is prevented from obtaining a fair start or a gate malfunctions, the starter shall immediately notify the stewards who will notify the mutuel department.

(3) The starter shall supervise the schooling of horses which are first time starters or horses which require further schooling out of the gate. If a horse is unmanageable at the starting gate or refuses to break properly, the starter may disqualify the horse from starting again by placing the horse on the starter's list until the horse has had satisfactory schooling. The starter shall notify the racing secretary in writing when horses are placed on or removed from the starter's list. The starter shall also notify the racing secretary in writing of the names of each horse that has been schooled sufficiently to participate in a race and its approved equipment. The starter shall establish and publish schooling procedures.

(4) The starter may appoint assistants, must verify that they are licensed by the commission, and shall assign their positions at the starting gate. The positions of the assistant starters shall be changed daily by the starter, but without notice to them until the horses have appeared on the track for the first race. The starter shall leave the paddock as the last horses leaves the paddock for each race and shall observe the horses during the post parade, warm up, and at the gate.

(5) No starter or assistant starter shall wager, directly or indirectly, on any race in which they perform official duties.

(6) The starter shall ensure that the starting gate is functioning properly at least three days before the beginning of the race meet, and shall make sure the gate is properly maintained throughout the race meet.

(7) Horses shall take their positions in the starting gate in post position order (beginning at the inside rail) unless the starter has reasonable cause to alter the order of loading.

(8) No person shall give to any starter or assistant starter, nor shall any starter or assistant starter receive, money, or other compensation, gratuity or reward, in connection with the running of any race or races; except such compensation as salaries received from race meet licensees.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-140-0370

Jockey Agent

(1) No person other than the jockey with no agent or a licensed jockey agent properly employed by the jockey shall make engagements for or manage a jockey. A jockey agent must apply to the commission for a license and the application shall bear the signatures of the riders that the jockey agent represents.

(2) No jockey agent shall be permitted to contract riding engagements for more than two jockeys and one apprentice jockey unless authorized in writing by the board of stewards. Each jockey agent shall maintain accurate records of all engagements and shall make those records available for examination by the stewards at all times:

(a) No jockey agent shall name his/her jockey on a horse without first having a call from the owner, trainer or authorized agent.

(b) The jockey agent shall not give out more than one first call and one second call for his/her jockey in any race.

(c) A jockey agent is the authorized representative of a jockey if he/she is registered with the stewards as his/her representative by the

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employing jockey. Jockeys are bound by engagements made on their behalf by their agents.

(d) The officials may require that the jockey agent file his/her first, second calls with the racing secretary and may require the jockey agent to display his/her record of engagements. A trainer or owner may demand a written confirmation of an engagement from a jockey or his/her agent. Conflicting claims for the service of a jockey shall be decided by the stewards.

(3) When a jockey dismisses a jockey agent, the jockey shall give immediate notice to the stewards in writing setting forth the reasons for dismissal of the jockey agent.

(4) Jockey agents are not permitted to:

(a) Enter the paddock, winner's circle, an unauthorized area or jockey room during racing hours, except with permission of the stewards.

(b) Communicate with any jockey in the jockey room during racing hours without permission of the stewards.

(c) Hold any other license as long as he/she holds a jockey agent license or perform any other duties unless written permission is granted by the stewards.

(5) No jockey agent shall wager on any horse in a race in which he or she is an agent for a rider, other than on the horse ridden by the jockey for whom he or she is the agent.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-150-0010

Workouts; Exercise; Schooling

(1) An official workout must be under the supervision of the clocker. The galloping or ponying of horses for exercise, and unofficial schooling out of the gate, are not official workouts.

(2) Before anyone may give a horse an official workout, the trainer shall ensure that someone checks in with the clocker and properly identifies the horse. Mandatory schooling must be under the supervision of the appropriate racing official, who must keep a record of the results of the schooling. Official workouts must be timed and recorded. Official workouts may be accepted from other training tracks if the track and clocker are approved and licensed by the commission, and may be accepted from a race meet or licensed public training track in another state if reported by a licensed clocker of the other state to the licensed clocker in Oregon or reported in the Daily Racing Form, or other approved publications.

(3) For all official workouts, the person responsible for properly identifying the horse to the clocker is the horse's trainer.

(4) No devices other than authorized riding equipment may be used for any workout, and no horse shall be worked out while under the influence of a prohibited drug or an unauthorized quantity of an allowed drug. The stewards or commission veterinarian may require any horse to be tested for drugs after a workout.

(5) A thoroughbred horse that has never run in a recognized race must have a minimum of two official workouts within 30 days before being eligible to start in an official race. Any thoroughbred horse that has not run in a recognized race in the 30 days prior to the race in which it is sought to be entered must have at least one official workout before being eligible to race in an official race. A quarter horse, appaloosa horse, paint horse or Arabian horse that has never run in a recognized race must have a minimum of two official workouts within 45 days before being eligible to start in an official race. The first time a horse races around a turn it must have not less than 1 work around the turn within the past 45 days.

(6) No horse may be worked out during pari-mutuel racing hours without prior permission from the paddock judge and the stewards.

(7) Before accepting the entry of any horse, the stewards may require the horse to have additional official workouts. Also the stewards or the commission veterinarian may, for good cause, order a horse to be worked at a specific distance and effort.

(8) No workout other than an official workout which has been recorded by a licensed clocker shall be submitted for publication in the Daily Racing Form, or other approved publications

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-150-0050

Forming the Race; Weights, Penalties, and Allowances; Scratches

(1) The racing secretary, in conjunction with the race meet licensee, shall set the conditions of all races. For each racing day, the racing secretary shall use every reasonable effort to card the number of thoroughbred, quarter horse, appaloosa, paint, and Arabian races listed in the license appli-

cation and approved by the commission. Also, for each racing day the racing secretary shall card one race which is limited to Oregon-bred thoroughbred horses. If there are not enough available horses of that class on any day, the race may be replaced with the approval of the stewards. If the race is reopened to allow other horses to enter, preference at the draw shall be given to the Oregon-bred thoroughbred horses. If feasible, an Oregon-bred thoroughbred race which does not fill shall be carried over to a subsequent day's racing program. The stewards shall report to the commission the reasons for the cancellation of an Oregon-bred thoroughbred race.

(2) After entries have closed, the racing secretary shall compile a list of the entries without delay and post the list in a conspicuous place.

(3) In determining the number of horses that can be drawn into a race the width of the track shall be at least the total of 10 feet for the first horse plus 5 feet for each additional horse.

(4) If the number of entries in any race exceeds the number of horses that will be allowed to start, the starters for the race shall be determined by lot. Persons who made the entry shall be given an opportunity to attend the drawing for starting positions. Post positions shall be determined by lot. A steward or designated representative shall be present at the draw.

(5) If the number of entries in any one race is sufficient to reasonably assure that two separate races will fill from those entries, the racing secretary may divide the race. If an overnight race is divided and a trainer has entered two horses in the race, the horses will be placed in separate divisions of the race for the draw. They will be drawn in the separate divisions of the race with both horses retaining their preferences.

(6) If any race is canceled because of insufficient entries, the racing secretary may divide any overnight race, subject to the same conditions, with entries in each race drawn by lot. In cases where a trainer has entered two or more horses in a divided race, those races will be handled as outlined in OAR 462-150-0050(5).

(7) When a scratch time is provided, a list of horses not to exceed four may be drawn from the overflow entries and listed as eligible to start if any horse which was originally carded is scratched. When an originally carded horse is scratched, horses from the "Also Eligible" list shall fill the race in the order in which they were originally drawn. The owner or trainer of any horse on the "Also Eligible" list which is drawn into a race must notify the racing secretary not later than scratch time if he or she does not intend the horse to start. Any "Also Eligible" horse which does not start when drawn into a race shall forfeit all preferences.

(8) In all races, horses which fill a race from the "Also Eligible" list shall take the outside post positions in the order that they are drawn from the original draw. In all races run on the straight-away, except thoroughbred races, an "Also Eligible" horse shall take the post position of the horse which was scratched.

(9) Unless a preference system is used, the racing secretary shall keep a list of all horses excluded from races because of too many entries, and those horses shall have preference in the next race in accordance with a system established by the racing secretary. This list shall be known as the "Preferred List".

(10) When a horse on the "Preferred List" is entered in a subsequent race, a claim of preference must be made at the time of entry and noted on the entry form, or the preference will be lost and the horse will be removed from the list.

(11) If a race overfills, any "In Today Horse" which has been entered shall be given no preference. A horse on the "Also Eligible" list shall not be considered an "In Today Horse" until it has actually been given a position in a race.

(12) In all races that have filled over the number of starters and "Also Eligible", an "In Today Horse" shall receive no future preference if it is drawn in as an "Also Eligible". A maiden horse shall have preference over an "In Today Horse" but not over the second choice of an entry to the exclusion of a winner. The second choice of an entry or an "In Today Horse" on the race's "Also Eligible" list shall have no preference over any other "Also Eligible" horses. A horse on the "Also Eligible" list that is scratched will receive no preference, regardless of any scratches in the race itself. This horse shall not be considered an "In Today Horse".

(13) If through error an "In Today Horse" or a horse lacking preference is drawn into a race that has overfilled, the horse shall be scratched if the error is discovered before scratch time, enabling another horse to be drawn into the race. No horse having started any race shall be deemed ineligible because of the error.

(14) In earlier closing stakes race which have nominations, entry, and starting fees, a coupled interest may be entered and permitted to draw into a race without a declaration of preference. In high weighted races, high

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weights will have preference to the draw. In all races determined by time trials, the fastest times shall have preference to the draw.

(15) No race which has closed shall be canceled except by the stewards.

(16) Weights, Penalties, and Allowances:

(a) Fillies two years old shall have an allowance of three pounds, except in handicaps and races where the conditions expressly state to the contrary. Fillies and mares three years old and older shall have an allowance of five pounds between January 1 and August 31, and three pounds between September 1 and December 31.

(b) To be eligible for weight allowances they must be claimed at the entry. Except sex allowances, which are mandatory, all other allowances are optional. Failure to claim any allowance, except for sex allowance, is not a cause for disqualification. No sex allowances will be given in straight-away races.

(c) A horse shall start with only the allowance to which it is entitled at the time of starting, regardless of its allowance at the time of entry. Horses incurring penalties for a race shall not be entitled to any of the weight allowances for that race. Penalties are mandatory.

(d) Horses not entitled to the first allowance in a race shall not be entitled to the second, and so on. Penalties and allowances are not cumulative unless specified in the conditions of the race.

(e) No horse shall incur a weight penalty for a placement from which it is disqualified, but a horse winning through a disqualification of another horse shall incur the weight penalties of that placement. No placement of a horse moved up shall make that horse ineligible for a race which has already been run.

(f) The racing secretary shall append to the weight for every handicap, the hour and day in which winners will be liable to a penalty. No alteration shall be made after publication except for erroneous omissions of the name or weight of a horse duly entered. In that case, the racing secretary may correct the omission with permission of the stewards.

(g) In all overnight races of four (4) furlongs or over, except handicaps, an apprentice jockey weight allowances may be claimed per OAR 462-140-0350(5).

(h) In all overnight races, except handicaps, the minimum weight, subject to sex and apprentice allowances, shall be 112 pounds for thoroughbreds, 116 pounds for quarter horses, and for all other breeds of horses shall be as designated by the commission.

(i) The racing secretary shall publish in the condition book the criteria for eligibility for horses running at the meet.

(j) Winnings shall include all money won for first place finishes up to the time appointed for the start, shall apply to all races in any country, and shall include walkover or forfeit money. The value of any prize not of money or not paid in money shall not be included. Winnings during the year shall be computed from January 1 of that year. In estimating the net value of a race to the winner, all sums contributed by the horse's owner or nominator shall be deducted from the amount won. The earnings of a winning horse shall be computed on the net value to the winner. The winner of certain sum shall mean the winner of single race of that value unless otherwise expressed in the conditions. In estimating the value of a series of races in which an extra sum of money is won by winning two or more of the series, the extra amount shall be estimated in the last race by which it was finally won.

(k) The following rules shall apply to quarter horse, appaloosa, Arabian and paint racing:

(A) In straight-away races no weight allowances will be given for sex or apprentice jockeys, whereas in races run around a turn, the same allowances for sex which are granted in thoroughbred races will be in effect.

(B) Horses which gain a position in a race from the "Also Eligible List" shall take the outside post positions in order that they are drawn from the "Also Eligibles", except in the case of races run on the straight-away, in which case, the "Also Eligible" shall take the post position of the horse declared out or scratched.

(C) The respective breed's chart book shall be the official chart for each breed's horse racing.

(17) Scratches:

(a) Scratches from stakes races will close 60 minutes before post time for the first race. If a scratch time is provided, scratches from all other races must be made prior to the "scratch time" designated by the racing secretary. The field may be scratched down to the number as stated in the condition book by the racing secretary. If the field has already been scratched down to the minimum number, the scratch will not be allowed except for medical reasons verified by the commission veterinarian, or as approved by the

stewards. If more than one horse is competing for the last available non-medical scratch, the right to scratch shall be determined by lot. "Also Eligibles" shall have the same scratch privileges as regularly carded horses.

(b) If any of a horse's owners is not properly licensed it shall be scratched by the board of stewards 15 minutes prior to post of the race.

(c) No horse may be scratched until the owner, trainer, or authorized agent has notified the racing secretary in writing prior to scratch time, except for medical reasons discovered after scratch time and approved by the commission veterinarian. If a horse is stabled off the racecourse a valid request to scratch the horse may be accepted from the trainer by telephone if the trainer provides his or her Oregon Racing Commission license number for identification purposes. A scratch made by telephone must be confirmed in writing if required by the stewards. If the scratch is for medical or physical reasons, the trainer must submit a letter from a licensed veterinarian explaining the reason and necessity for the scratch.

(d) The stewards may scratch any horse from a race when it appears that there has been a violation of the rules of horse racing. Any racing official who has knowledge of a violation must report it immediately to the stewards.

(e) The commission veterinarian may scratch a horse at any time for reasons as per OAR 462-140-0070(4).

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-150-0070

Post Parade; Start; Race

(1) All horses shall parade from paddock to post carrying their respective weights and, to the extent feasible, shall pass the stewards' stand in numerical order. Any horse failing to do so without good cause may be disqualified by the stewards. After passing the stand once, horses may break formation and canter, warm up, or go as they please to the post.

(2) Jockeys shall remain on their mounts whenever reasonably possible. In case of an emergency, the stewards or the starter may permit all jockeys to dismount and all horses to be attended during the delay.

(3) The post parade shall last no more than 12 minutes, unless approved by the stewards. When the horses have reached the post, they shall be started without unnecessary delay.

(4) If the starters for a stakes race exceed the capacity of the starting gate, but do not exceed the capacity of the track, the remaining horses may be started from outside the gate if approved by the stewards.

(5) A jockey shall exert every effort to ride his/her horse to the finish in the best and fastest run of which the horse is capable. No jockey shall ease up or coast to a finish, without adequate cause, even if the horse has no apparent chance to win prize money.

(6) In a straight-away race, every horse must maintain position as nearly as possible in the lane in which it starts. Every horse in the race is entitled to racing room. A horse which drifts out of its lane or lugs in or out, and interferes with, or impedes another horse in a manner which, in the opinion of the board of stewards, could have affected the outcome of the race, may be disqualified by the stewards.

(7) In a race run around a turn, a horse that is in the clear may be taken to any part of the track. However, a horse which weaves back and forth in front of another horse and/or drifts out of its lane, lugs in or out, and interferes with or impedes another horse in a manner which, in the opinion of the board of stewards, could have affected the outcome of the race, may be disqualified by the stewards.

(8) Jockeys shall not ride their mount in such a manner as to deliberately pocket another horse.

(9) Jockeys in a straight-away race shall make every effort to prevent their horse from drifting out of its lane.

(10) Jockeys shall make every effort to prevent their horse from lugging in or out in a manner which interferes with another horse.

(11) Jockeys shall make every effort to prevent their horse from weaving back and forth in front of another horse.

(12) Jockeys shall not ride in such a manner as to endanger another horse or jockey.

(13) Jockeys must be in full control of their horse before applying the whip. No jockey shall use the whip more than is reasonably necessary under the circumstances, or ever strike a horse on the head. In all races where a jockey will not ride with a whip an announcement shall be made over the public address system of such fact. No jockey carrying a whip during a race shall fail to use the whip in a manner consistent with using his/her best efforts to win. Jockeys are prohibited from whipping a horse upon the

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head, or during the post parade except when necessary to control the horse, or excessively or brutally.

(14) No jockey shall willfully strike or touch another jockey or another jockey's horse or equipment. No jockey shall interfere with, impede, or endanger another horse or jockey.

(15) Jockeys shall not unnecessarily cause or allow their horse to shorten its stride. Jockeys shall ride out their horse in every race.

(16) If a horse leaves the designated racing surface after leaving the paddock and prior to the finish of the race, it may be scratched or disqualified.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-150-0080

Order of Finish; Weighing In; Objections and Disqualification

(1) The winner of a race shall be the horse whose nose first reaches the finish line with the jockey aboard, unless the horse is disqualified by the stewards for ineligibility or other good cause. The decision of the board of stewards as to the order of finish shall be final.

(2) When two or more horses reach the finish line at the same time, or the photofinish photographs do not clearly establish which of the horses reached the finish line first, the stewards may declare a dead heat. When horses run a dead heat, all money and prizes to which the horses would have been entitled if it were not a dead heat shall be divided equally among them. When a dead heat is for first place, each horse finishing first in the dead heat shall be deemed a winner, and shall be liable as a winner for any penalty which attaches to the winning of the race, but only in the amount of winnings actually received.

(3) If the dividing owners cannot agree as to which of them is to have a cup or other prize which cannot be divided, the question shall be determined by lot in the presence of one or more of the stewards.

(4) The time recorded for the first horse to cross the finish line shall be the official time of the race.

(5) If there is a mechanical failure of the gate, and horses are allowed leave at irregular intervals instead of all horses leaving at one time, the stewards shall decide whether the race is official or whether to declare "no race", and which horses, if any, will be deemed non-starters. In the event of a mechanical failure, interference during the running of the race which affects the majority of the horses in such race, or any other unusual circumstance or situation that the stewards determine resulted in an unfair race for the majority of the horses in the race, the stewards may declare the race as "no race". When in the opinion of the stewards a race cannot be commenced before midnight or cannot be conducted in accordance with the rules and regulations of the commission, they shall cancel and call off such race. Any wagers on such races called off, canceled or declared as "no race" shall be refunded, and no purse, prize or stakes shall be awarded. A race shall be canceled if no horse finishes the race.

(6) Weighing In, Unsaddling:

(a) Weigh In. Upon completion of a race each jockey shall ride promptly to the winners circle and dismount. He/she shall then present himself/herself to the clerk of scales to be weighed in. If a jockey is prevented from riding his/her mount to the winner's circle because of accident or illness either to himself/herself or his/her horse he/she may walk or be carried to the scales unless excused by the stewards.

(b) Unsaddling. Each jockey upon completion of a race must return to the winners circle and must unsaddle his/her own horse, unless excused by the stewards.

(c) Removing Horse's Equipment. No person except the valet-attendant for each mount is permitted to assist the jockey in removing the horse's equipment that is included in the jockey's weight, unless the stewards permit otherwise. To weigh in each jockey shall carry to the scales all pieces of equipment with which he/she weighed out. Thereafter he/she may hand the equipment to the valet-attendant.

(d) Under Weight. When any horse places first, second or third in a race, or is coupled in any form of multiple exotic wagering, and thereafter the horse's jockey is weighed in short by more than two pounds of the weight of which he/she was weighed out, his/her mount may be disqualified and all purse monies forfeited.

(e) Over Weight. No jockey may be weighed in more than two pounds over his/her declared weight but consideration shall be given for excess weight caused by rain or mud.

(f) If a jockey does not present himself or herself to be weighed in, is guilty of any fraudulent practice with respect to weight or weighing, or if unless the jockey or horse is ill, injured, or disabled, the jockey dismounts before reaching the scales or dismounts without permission, or if the jock-

ey touches (except accidentally) any person or thing other than the jockey's own equipment before weighing, the clerk of scales shall report it to the stewards, and the stewards may disqualify the horse and place it last, and the jockey and any other licensee involved may be fined or suspended.

(7) Objections, Inquiries and Disqualification's:

(a) Objections which can be made prior to a race must be made to the stewards in writing, must be signed by the objector, and must be filed with the stewards prior to post time. No objection based upon the distance of a race shall be made after the start of the race.

(b) Objections based upon an occurrence during the running of a race must be made before the order of finish has been declared "official." Objections as to what occurs in a race with respect to the performance of a horse or jockey must be made by the owner, trainer, or jockey of the horse which is aggrieved. However, the stewards may take any appropriate action even if no formal objection is made.

(c) Permission of the stewards is necessary before an objection may be withdrawn.

(d) The stewards may disqualify any horse which is the subject of fraudulent or corrupt practices, or any horse whose jockey has committed a violation of the rules of horse racing. A horse which interferes with, impedes or intimidates another horse may be disqualified by the stewards unless the impeded horse or jockey was partly at fault or the interference was wholly caused by some other horse or jockey.

(e) If a horse which has won or been placed in a race is disqualified after a valid objection or otherwise, the stewards shall declare a new order of finish as, in their sole discretion, they deem just.

(f) The stewards must decide every objection properly filed which pertains to a race. In cases of fraud or willful deception, the time limitations for filing objections shall not apply. Appeals to the commission from a decision on an objection/inquiry must be filed in writing within 72 hours after the race is run in accordance with OAR 462-130-050.

(g) If a horse is disqualified, any other horse in the race owned wholly or in part by the same interest or trained by the same trainer may also be disqualified.

(h) Pending a decision on an objection/inquiry, any prize which the horse subject to the objection/inquiry may have won, and any money held by the race meet licensee as the price of a horse claimed in the race (if involved in the determination of the objection/inquiry) shall be withheld until the objection/inquiry is determined.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-160-0010

Permitted Medications

Non-Steroidal Anti-Inflammatory Drug (NSAID) and Dimethylsulfoxide (DMSO).

(1) The only non-steroidal anti-inflammatory drug permitted by this rule is phenylbutazone (butazolidin).

(2) Phenylbutazone shall be authorized medication at race meets at which the average daily gross mutual wagering during the preceding year exceeded \$150,000. If a race meet with average daily gross mutual wagering during the preceding year of \$150,000 or less desires phenylbutazone be authorized medications at their race meet they may petition the commission to approve the use of phenylbutazone at their race meet. The commission may approve the use of phenylbutazone at such race meet, if in the opinion of the commission the race meet can provide for the necessary qualified staffing, security and for the additional laboratory analysis costs and any other controls necessary to administer the program adequately. Dimethylsulfoxide (DMSO) shall be permitted medication at any race meet if applied topically.

(3) Phenylbutazone is permitted only in horses three years of age or older. Phenylbutazone is prohibited in two year old horses.

(4) No horse utilizing phenylbutazone may be entered into a race unless the presence of the phenylbutazone in the horse is stated on the entry form at the time of entry. Errors may be corrected up until scratch time. If no scratch time is used, errors must be corrected by noon following entry.

(5) Phenylbutazone shall be administered to the horse at least 24 hours before scheduled post time.

(6) Violations:

(a) Maximum dosage is such dosage amount that the test sample shall contain not more than five (5) micrograms of phenylbutazone or, its metabolites or analogs per milliliter of blood plasma:

(A) The first violation by the trainer during a 365 day period, if the test sample contains more than five (5) and ten (10) or less micrograms of phenylbutazone, or oxyphenylbutazone, or the sample does not show

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phenylbutazone or oxyphenylbutazone when the horse was entered to run on phenylbutazone shall result in a fine of \$200.00 without loss of purse.

(B) The second violation and each additional violation by the same trainer during a 365 day period, if the test sample contains more than five (5) and ten (10) or less micrograms of phenylbutazone, or oxyphenylbutazone or the sample does not show phenylbutazone or oxyphenylbutazone, a fine of \$300.00 to the horse's trainer, without loss of purse.

(C) A test sample with a phenylbutazone to oxyphenylbutazone ratio of greater than 3.1 shall be a rebuttable presumption of administration less than 24 hours before scheduled post time.

(D) If any test sample contains more than 10 micrograms of phenylbutazone or oxyphenylbutazone, a fine of \$300.00 to the horse's trainer and may result in a loss of purse.

(b) If phenylbutazone is detected in the urine or in any other specimen taken from a horse not stated to have phenylbutazone in its system on the entry form and/or program, the violation will result in a fine of \$250.00 and may result in loss of purse.

(c) If the same horse has three (3) overages of phenylbutazone during a 365 day period the commission veterinarians shall issue a ruling to rule the horse off phenylbutazone.

(7) Horses on phenylbutazone will be designated on the overnight and the daily racing program with a "B". Errors in the listing of phenylbutazone in the program, when discovered, shall be announced to the public and will not result in the horse being scratched.

(8) Dimethylsulfoxide. (DMSO) may be administered to a animal as an external topical application. No authorization or written approval from the commission veterinarians representing the commission is required for the external application of DMSO by either the horse's owner or trainer or licensed veterinarian.

(9) Sulfa drugs. Non-interfering levels of sulfa drugs in urine tests shall not be considered a violation of the prohibited medication statutes or rules. Non-interfering level shall be considered to be anything less than 1 microgram per milliliter.

(10) The following shall be a prohibited substance for possession and/or use for all persons coming onto the racecourse:

(a) In all forms and/or substitutes, Erythropoietin (EPO), Darbopoietin, and all drugs, substances or medications for which a recognized analytical method has not been developed to detect and confirm its administration; or the use of which may endanger the health and welfare of the animal, or the safety of the rider, if any.

(b) Any drug, substance or medication that has not been approved by the United States Food and Drug Administration for use in the United States.

(11) Extracorporeal Shock Wave Therapy (ESWT). ESWT shall only be performed on the racecourse by a licensed veterinarian. Any ESWT device brought onto the racecourse must be registered with a commission veterinarian. Any animal receiving ESWT shall be placed on the Vet's List, ineligible for 14 days from the last treatment and restricted from entry until a commission veterinarian receives a certificate from a licensed veterinarian stating:

- (a) The name, age, sex, color and tattoo of the horse;
- (b) The name, address, phone number and signature of the veterinarian performing the treatment(s);
- (c) Dates of first and last treatment(s);
- (d) The fitness of the animal to resume racing;
- (e) The name of referring veterinarian, if any.

Stat. Auth.: ORS 462.270(3)
Stats. Implemented: ORS 462.270 & ORS 462.415
Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-160-0020

Epistaxis Treatments

(1) Horses to run on epistaxis treatments must be so noted on the entry form at the time of entry. Errors may be corrected up until scratch time. If no scratch time is used, errors must be corrected by noon following entry.

(2) The commission veterinarian shall establish and publish reasonable procedures pertaining to use of the epistaxis treatment. A copy of the established procedure shall be posted in the office of the racing secretary under the direction of the commission veterinarian.

(3) Horses that are entered to race with epistaxis treatment must be administered furosemide at least four hours prior to but not more than five hours prior to post time of the horse's scheduled race. The maximum dosage of furosemide which may be administered is 250 milligrams and the minimum dosage shall be that which can be detected in the horse's urine sample. (At 4 hours prior to post 150 milligrams can be detected). The commission may approve the use of epistaxis treatments at any race meet, if in

the opinion of the commission the race meet can provide the necessary qualified staffing, security and for the additional laboratory analysis costs and any other controls necessary to administer the program. A licensed veterinarian must administer the epistaxis treatment.

(4) If the authorized epistaxis medication is not detected in the horse's urine or in any other specimen taken from the animal either prior to or following the race, a fine of up to \$250.00 and may be imposed upon the horse's trainer and may result in loss of purse.

(5) Unauthorized use of epistaxis treatment will result in a fine of up to \$250.00 to the horse's trainer and may result in loss of purse.

(6) Horses entered to race with epistaxis medication will be designated on the overnight and the daily racing program with a lasix or "L". If the race is the first race the horse is to run in on lasix, it shall be designated in the daily racing program with a "1-L". If the race is the first race the horse runs without lasix after running one or more races with lasix it shall be designated in the program by "O-L".

(7) When discovered prior to the race, errors in the listing of epistaxis treatments in the program shall be announced to the public.

(8) The decision of whether to scratch a horse which has been entered incorrectly or is incorrectly treated shall be left to the discretion of the commission veterinarian.

Stat. Auth.: ORS 462.270(3)
Stats. Implemented: ORS 462.270 & ORS 462.415
Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

462-160-0030

Testing Procedures; Consequences

(1) The board of stewards or commission veterinarian may require any horse to be tested for drugs prior to removal from any list, after any race or workout, or whenever they have a reasonable suspicion that an illegal drug or excessive quantity of authorized drug has been used in a horse. Upon the specific request of a horse's trainer or other designated representative, a split sample shall be obtained unless there is insufficient specimen for a split sample.

(2) Whenever requested by the commission stewards, or commission veterinarian, any horse on a racecourse shall be immediately submitted by the horse's owner or trainer authorized agent to the commission veterinarian or designated representative for examination or testing. If the horse is not on the racecourse, it must be promptly returned to the racecourse. An extension of time may be granted if good cause is given at the time the request is made.

(3) If urine sample is not obtained within one hour of the time the horse started walking, the commission veterinarian may administer the diuretic furosemide to the horse. The needle and syringe used for the diuretic shall be labeled and attached to the urine sample's container. The quantity of diuretic administered shall be indicated on all portions of the urine tag.

(4) The horse's trainer shall be present in the testing area when a urine or other specimen is taken from a horse, unless the horse's owner or authorized representative who is at least 15 years old is present, and shall remain until the sample tag is signed by the trainer or other representative as witness to the taking of the specimen. Failure to be present at or refusal to allow the taking of any specimen, or refusal to sign the specimen tag, or any act or threat to impede or prevent or interfere with the taking of a specimen is a violation and shall be reported to the stewards.

(5) Any test or examination made by the commission veterinarian may be witnessed by any commission representative and by the owner, trainer, or authorized agent of the horse.

(6) When laboratory analysis confirms the presence of an unauthorized drug, the commission investigators shall immediately conduct a thorough investigation of the incident. Within a reasonable time after receipt of the lab results and investigative report, the stewards shall hold or request the commission to hold a hearing to determine if the horse raced with an unauthorized drug and/or an excessive amount of an authorized drug in its system, and if so, who was responsible for the horse's condition.

(7) Laboratory analysis of saliva, urine, blood, or other sample taken from a horse after a race which indicates the presence of an unauthorized drug or an excessive quantity of an authorized drug shall be conclusive evidence that the horse contained that drug or quantity of drug during the running of the race.

(8) The owner or trainer or authorized agent of the horse may request confirmation of the lab results within 3 days of official notification to the trainer of a positive test. The commission shall have forwarded the remaining portion of the horse's specimen or the split sample to a qualified Association of Official Racing Chemists laboratory in another racing jurisdiction. The commission will not release a horse's specimen to any repre-

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sentative of the horse. All expenses for a confirmation test, including but not limited to transportation, analysis, and personal testimony from the other laboratory shall be borne by the horse's trainer. A copy of all written material received from the laboratory which conducted the confirmation analysis shall be forwarded to the horse's representative. The commission or stewards may use the written material as evidence at any hearing.

(9) If a horse is found to have raced in violation of the medication statutes and rules, excluding those statutes and rules governing the use of non-steroidal anti-inflammatory drugs or with trace levels of therapeutic medications as determined by the commission as authorized by ORS 462.415(7), its owners shall not participate in the purse distribution of that race and the horse shall be disqualified. Those owners shall promptly return any portion of the purse, together with any trophy. When a horse is disqualified in a race because of this rule, the eligibility of other horses which ran in the race and which have started in a subsequent race before announcement of the disqualification shall not be affected. If the ruling or order disqualifying a horse is appealed to the commission, all horses involved in the race shall participate in future races based upon the original order of finish of the race in question until final disposition of the appeal by the commission.

(10) If laboratory analysis detects any substance in quantities that interfere with the true and accurate testing and analysis of blood, saliva, urine or other samples taken from the racing animals, the laboratory shall perform alternate testing procedures to determine if any other prohibited drugs are present. The cost incurred by this additional testing shall be borne equally by the commission and the licensee. If another prohibited or unauthorized drug is found, the sanctions for the use of such drug shall apply.

Stat. Auth.: ORS 462.270(3)
Stats. Implemented: ORS 462.270 & ORS 462.415
Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-6-02, cert. ef. 1-1-03

Secretary of State, Elections Division
Chapter 165

Adm. Order No.: ELECT 9-2002(Temp)

Filed with Sec. of State: 12-5-2002

Certified to be Effective: 12-5-02 thru 6-3-03

Notice Publication Date:

Rules Amended: 165-014-0005, 165-020-0005

Subject: Measure 26, adopted by the people of Oregon at the November 5, 2002, General Election amended the Oregon Constitution to prohibit the compensation or receipt of compensation on a per-signature basis for signatures obtained on an initiative or referendum petition. The State and County Initiative and Referendum Manuals and City and District Election Manuals, including forms, are produced by the Secretary of State to assist chief petitioners with initiative and referendum election processes and procedures. The manuals and forms will be revised in order to implement Measure 26. In order to comply with Measure 26 a new form, revision of existing forms and revision of manual language will be adopted. Form SEL 301 is a new form to be signed by all chief petitioners of an initiative or referendum petition, upon filing and upon completion, that includes an attestation swearing that the chief petitioners did not compensate circulators on a per-signature basis. Language will be added to the instructions for circulators, indicating the prohibition on accepting compensation on a per-signature basis, on existing Forms SEL 310, SEL 370 and the State and Local Cover Sheet Samples. Language has been added to the circulator's certification swearing that they have not accepted compensation on a per-signature basis to forms SEL 312, SEL 314, SEL 371 and SEL 373 in addition

tion to a Date Signed field. The text of the State and County Initiative and Referendum Manuals and City and District Election Manuals will be revised to reflect the application of Measure 26 to the state and local initiative and referendum processes.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0005

Designating the Initiative, Referendum and Recall Manuals and Forms

(1) ORS 246.150 requires the Secretary of State to adopt rules to facilitate correctness, impartiality and efficiency in administering election laws.

(2) ORS 250.015 requires that the Secretary of State designate the form of a prospective petition.

(3) The Secretary of State designates the *2002 State Initiative and Referendum Manual* and associated forms (as amended by temporary rule dated December 5, 2002), as the procedures and forms to be used for the state initiative and referendum process.

(4) The Secretary of State designates the *2002 Recall Manual* and associated forms as the procedures and forms to be used for the recall process.

(5) The Secretary of State designates the *2002 County Initiative and Referendum Manual* and associated forms (as amended by temporary rule dated December 5, 2002), as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the county initiative and referendum process.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 264.120, ORS 246.150 & ORS 250.015

Stats. Implemented: ORS 246.120, ORS 246.150 & ORS 250.015

Hist.: SD 120, f. & ef. 12-21-77; SD 7-1979(Temp), f. & ef. 11-5-79; SD 31-1980, f. & ef. 3-6-80; SD 10-1984, f. & ef. 6-19-84; SD 21-1984(Temp), f. & ef. 10-8-84; SD 4-1986, f. & ef. 2-26-86; ELECT 33-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1989(Temp), f. & cert. ef. 8-11-89; ELECT 4-1991 (Temp), f. & cert. ef. 3-18-91; ELECT 10-1992(Temp), f. & cert. ef. 4-9-92; ELECT 19-1992(Temp), f. & cert. ef. 7-1-92; ELECT 39-1992, f. & cert. ef. 12-17-92; ELECT 3-1993 (Temp), f. & cert. ef. 1-22-93; ELECT 10-1993, f. & cert. ef. 3-25-93; ELECT 35-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03

165-020-0005

Designating the City and District Elections Manuals and Forms

(1) ORS 246.120 requires the Secretary of State to prepare and distribute to each county clerk detailed and comprehensive written directives and instructions on elections procedures.

(2) ORS 246.150 requires the Secretary of State to adopt rules to facilitate correctness, impartiality and efficiency in administering election laws.

(3) The Secretary of State designates the *2002 City Elections Manual* and associated forms (as amended by temporary rule dated December 5, 2002), as the procedures and forms to be used for city elections processes.

(4) The Secretary of State designates the *2002 District Elections Manual* and associated forms (as amended by temporary rule dated December 5, 2002), as the procedures and forms to be used for district elections processes.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 246.120 & ORS 246.150

Stats. Implemented: ORS 246.120 & ORS 246.150

Hist.: SD 33-1980, f. & ef. 3-6-80; SD 47-1980, f. & ef. 10-17-80; SD 12-1984, f. & ef. 6-20-84; SD 40-1985, f. & ef. 11-15-85; SD 12-1986, f. & ef. 4-3-86; ELECT 34-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1991(Temp), f. & cert. ef. 3-18-91; ELECT 11-1992(Temp), f. & cert. ef. 4-14-92; ELECT 33-1992, f. & cert. ef. 10-8-92; ELECT 36-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1998, f. & cert. ef. 11-3-98; ELECT 4-1999, f. & cert. ef. 3-1-99; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03

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141-085-0630	1-15-03	Amend	1-1-03	141-089-0290	1-15-03	Adopt	1-1-03
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141-089-0110	1-15-03	Adopt	1-1-03	177-010-0065	11-25-02	Repeal	1-1-03
141-089-0115	1-15-03	Adopt	1-1-03	177-010-0070	11-25-02	Repeal	1-1-03
141-089-0120	1-15-03	Adopt	1-1-03	177-010-0080	11-25-02	Amend	1-1-03
141-089-0125	1-15-03	Adopt	1-1-03	177-010-0085	11-25-02	Amend	1-1-03
141-089-0130	1-15-03	Adopt	1-1-03	177-010-0096	11-25-02	Repeal	1-1-03
141-089-0135	1-15-03	Adopt	1-1-03	177-010-0100	11-25-02	Amend	1-1-03
141-089-0140	1-15-03	Adopt	1-1-03	177-010-0110	11-25-02	Amend	1-1-03
141-089-0145	1-15-03	Adopt	1-1-03	177-010-0120	11-25-02	Amend	1-1-03
141-089-0150	1-15-03	Adopt	1-1-03	177-010-0300	11-25-02	Repeal	1-1-03

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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
177-040-0025	11-25-02	Amend	1-1-03	177-070-0025	11-25-02	Amend	1-1-03
177-040-0040	11-25-02	Amend	1-1-03	177-070-0035	11-25-02	Amend	1-1-03
177-040-0050	11-25-02	Amend	1-1-03	177-070-0055	11-25-02	Repeal	1-1-03
177-040-0051	11-25-02	Adopt	1-1-03	177-070-0060	11-25-02	Repeal	1-1-03
177-040-0052	11-25-02	Adopt	1-1-03	177-070-0065	11-25-02	Repeal	1-1-03
177-040-0055	11-25-02	Amend	1-1-03	177-070-0070	11-25-02	Repeal	1-1-03
177-040-0105	11-25-02	Amend	1-1-03	177-070-0075	11-25-02	Repeal	1-1-03
177-046-0010	11-25-02	Adopt	1-1-03	177-070-0080	11-25-02	Amend	1-1-03
177-046-0020	11-25-02	Adopt	1-1-03	177-075-0000	11-25-02	Amend	1-1-03
177-046-0030	11-25-02	Adopt	1-1-03	177-075-0005	11-25-02	Amend	1-1-03
177-046-0040	11-25-02	Adopt	1-1-03	177-075-0010	11-25-02	Amend	1-1-03
177-046-0050	11-25-02	Adopt	1-1-03	177-075-0015	11-25-02	Amend	1-1-03
177-046-0060	11-25-02	Adopt	1-1-03	177-075-0020	11-25-02	Amend	1-1-03
177-046-0070	11-25-02	Adopt	1-1-03	177-075-0027	11-25-02	Amend	1-1-03
177-046-0080	11-25-02	Adopt	1-1-03	177-075-0030	11-25-02	Amend	1-1-03
177-046-0090	11-25-02	Adopt	1-1-03	177-075-0035	11-25-02	Amend	1-1-03
177-046-0100	11-25-02	Adopt	1-1-03	177-075-0045	11-25-02	Repeal	1-1-03
177-046-0110	11-25-02	Adopt	1-1-03	177-075-0050	11-25-02	Repeal	1-1-03
177-046-0120	11-25-02	Adopt	1-1-03	177-081-0000	11-25-02	Amend	1-1-03
177-046-0130	11-25-02	Adopt	1-1-03	177-081-0010	11-25-02	Amend	1-1-03
177-046-0140	11-25-02	Adopt	1-1-03	177-081-0020	11-25-02	Amend	1-1-03
177-046-0150	11-25-02	Adopt	1-1-03	177-081-0030	11-25-02	Amend	1-1-03
177-046-0160	11-25-02	Adopt	1-1-03	177-081-0035	11-25-02	Repeal	1-1-03
177-046-0170	11-25-02	Adopt	1-1-03	177-081-0040	11-25-02	Amend	1-1-03
177-050-0000	11-25-02	Repeal	1-1-03	177-081-0050	11-25-02	Amend	1-1-03
177-050-0002	11-25-02	Amend	1-1-03	177-081-0060	11-25-02	Amend	1-1-03
177-050-0010	11-25-02	Repeal	1-1-03	177-081-0080	11-25-02	Amend	1-1-03
177-050-0020	11-25-02	Amend	1-1-03	177-081-0090	11-25-02	Repeal	1-1-03
177-050-0021	11-25-02	Repeal	1-1-03	177-094-0000	11-25-02	Amend	1-1-03
177-050-0023	11-25-02	Repeal	1-1-03	177-094-0010	11-25-02	Amend	1-1-03
177-050-0025	11-25-02	Amend	1-1-03	177-094-0020	11-25-02	Amend	1-1-03
177-050-0027	11-25-02	Amend	1-1-03	177-094-0030	11-25-02	Amend	1-1-03
177-050-0037	11-25-02	Amend	1-1-03	177-094-0035	11-25-02	Repeal	1-1-03
177-050-0045	11-25-02	Repeal	1-1-03	177-094-0040	11-25-02	Amend	1-1-03
177-050-0051	11-25-02	Repeal	1-1-03	177-094-0050	11-25-02	Amend	1-1-03
177-050-0055	11-25-02	Repeal	1-1-03	177-094-0060	11-25-02	Amend	1-1-03
177-050-0065	11-25-02	Repeal	1-1-03	177-094-0085	11-25-02	Amend	1-1-03
177-050-0075	11-25-02	Repeal	1-1-03	177-094-0090	11-25-02	Repeal	1-1-03
177-065-0000	11-25-02	Repeal	1-1-03	177-094-0095	11-25-02	Repeal	1-1-03
177-065-0005	11-25-02	Amend	1-1-03	177-099-0000	11-25-02	Amend	1-1-03
177-065-0015	11-25-02	Amend	1-1-03	177-099-0010	11-25-02	Amend	1-1-03
177-065-0020	11-25-02	Amend	1-1-03	177-099-0020	11-25-02	Amend	1-1-03
177-065-0025	11-25-02	Amend	1-1-03	177-099-0030	11-25-02	Amend	1-1-03
177-065-0030	11-25-02	Amend	1-1-03	177-099-0035	11-25-02	Repeal	1-1-03
177-065-0035	11-25-02	Amend	1-1-03	177-099-0040	11-25-02	Amend	1-1-03
177-065-0040	11-25-02	Amend	1-1-03	177-099-0050	11-25-02	Amend	1-1-03
177-065-0045	11-25-02	Amend	1-1-03	177-099-0060	11-25-02	Amend	1-1-03
177-065-0055	11-25-02	Amend	1-1-03	177-099-0080	11-25-02	Amend	1-1-03
177-065-0065	11-25-02	Amend	1-1-03	177-099-0090	11-25-02	Amend	1-1-03
177-065-0075	11-25-02	Amend	1-1-03	177-099-0100	11-25-02	Amend	1-1-03

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220-005-0010	1-1-03	Amend	1-1-03	333-536-0020	2-1-03	Adopt	1-1-03
259-008-0000	11-18-02	Amend	1-1-03	333-536-0025	2-1-03	Adopt	1-1-03
259-008-0005	11-18-02	Amend	1-1-03	333-536-0030	2-1-03	Adopt	1-1-03
259-008-0010	11-21-02	Amend	1-1-03	333-536-0035	2-1-03	Adopt	1-1-03
259-008-0020	11-18-02	Amend	1-1-03	333-536-0040	2-1-03	Adopt	1-1-03
259-008-0035	11-18-02	Amend	1-1-03	333-536-0045	2-1-03	Adopt	1-1-03
259-008-0060	11-21-02	Amend	1-1-03	333-536-0050	2-1-03	Adopt	1-1-03
259-008-0062	11-18-02	Repeal	1-1-03	333-536-0055	2-1-03	Adopt	1-1-03
259-008-0063	11-18-02	Repeal	1-1-03	333-536-0060	2-1-03	Adopt	1-1-03
259-008-0065	11-18-02	Amend	1-1-03	333-536-0065	2-1-03	Adopt	1-1-03
259-008-0070	11-18-02	Amend	1-1-03	333-536-0070	2-1-03	Adopt	1-1-03
259-008-0080	11-18-02	Amend	1-1-03	333-536-0075	2-1-03	Adopt	1-1-03
259-008-0085	11-18-02	Amend	1-1-03	333-536-0080	2-1-03	Adopt	1-1-03
259-008-0087	11-18-02	Repeal	1-1-03	333-536-0085	2-1-03	Adopt	1-1-03
259-009-0000	11-18-02	Adopt	1-1-03	333-536-0090	2-1-03	Adopt	1-1-03
259-009-0005	11-18-02	Adopt	1-1-03	333-536-0095	2-1-03	Adopt	1-1-03
259-009-0010	11-18-02	Adopt	1-1-03	337-010-0030	11-18-02	Amend	1-1-03
259-009-0020	11-18-02	Adopt	1-1-03	337-010-0060	11-18-02	Amend	1-1-03
259-009-0025	11-18-02	Adopt	1-1-03	337-021-0040	11-18-02	Amend	1-1-03
259-009-0030	11-18-02	Adopt	1-1-03	337-021-0070	11-18-02	Adopt	1-1-03
259-009-0035	11-18-02	Adopt	1-1-03	337-021-0080	11-18-02	Adopt	1-1-03
259-009-0062	11-18-02	Adopt	1-1-03	345-026-0390	12-3-02	Amend	1-1-03
259-009-0063	11-18-02	Adopt	1-1-03	410-001-0030	11-22-02	Adopt	1-1-03
259-009-0067	11-18-02	Adopt	1-1-03	410-121-0300	12-1-02	Amend(T)	1-1-03
259-009-0070	11-18-02	Adopt	1-1-03	410-121-0300(T)	12-1-02	Suspend	1-1-03
259-009-0072	11-18-02	Adopt	1-1-03	411-015-0000	12-6-02	Amend(T)	1-1-03
259-009-0080	11-18-02	Adopt	1-1-03	411-015-0005	12-6-02	Amend(T)	1-1-03
259-009-0085	11-18-02	Adopt	1-1-03	411-015-0010	12-6-02	Amend(T)	1-1-03
259-009-0087	11-18-02	Adopt	1-1-03	411-015-0015	12-6-02	Amend(T)	1-1-03
259-009-0090	11-18-02	Adopt	1-1-03	411-015-0100	12-6-02	Amend(T)	1-1-03
259-009-0100	11-18-02	Adopt	1-1-03	414-600-0000	11-24-02	Adopt	1-1-03
259-025-0000	11-21-02	Amend	1-1-03	414-600-0010	11-24-02	Adopt	1-1-03
333-050-0010	12-13-02	Amend	1-1-03	414-600-0020	11-24-02	Adopt	1-1-03
333-050-0020	12-13-02	Amend	1-1-03	414-600-0030	11-24-02	Adopt	1-1-03
333-050-0030	12-13-02	Amend	1-1-03	414-600-0040	11-24-02	Adopt	1-1-03
333-050-0040	12-13-02	Amend	1-1-03	414-600-0050	11-24-02	Adopt	1-1-03
333-050-0050	12-13-02	Amend	1-1-03	414-600-0060	11-24-02	Adopt	1-1-03
333-050-0060	12-13-02	Amend	1-1-03	414-600-0070	11-24-02	Adopt	1-1-03
333-050-0080	12-13-02	Amend	1-1-03	414-600-0080	11-24-02	Adopt	1-1-03
333-050-0090	12-13-02	Amend	1-1-03	414-600-0090	11-24-02	Adopt	1-1-03
333-050-0100	12-13-02	Amend	1-1-03	414-600-0100	11-24-02	Adopt	1-1-03
333-050-0130	12-13-02	Amend	1-1-03	436-105-0003	12-11-02	Amend(T)	1-1-03
333-050-0140	12-13-02	Amend	1-1-03	436-105-0500	12-11-02	Amend(T)	1-1-03
333-157-0045	1-1-03	Amend	1-1-03	436-105-0510	12-11-02	Amend(T)	1-1-03
333-162-1005	1-1-03	Adopt	1-1-03	442-004-0010	12-6-02	Amend(T)	1-1-03
333-500-0010	12-10-02	Amend	1-1-03	459-035-0000	11-18-02	Amend	1-1-03
333-500-0050	12-10-02	Amend	1-1-03	459-035-0001	11-18-02	Amend	1-1-03
333-500-0056	12-10-02	Adopt	1-1-03	459-035-0010	11-18-02	Amend	1-1-03
333-500-0057	12-10-02	Adopt	1-1-03	459-035-0020	11-18-02	Amend	1-1-03
333-505-0005	12-10-02	Amend	1-1-03	459-035-0030	11-18-02	Amend	1-1-03
333-510-0045	12-10-02	Amend	1-1-03	459-035-0040	11-18-02	Amend	1-1-03
333-515-0060	12-10-02	Amend	1-1-03	459-035-0050	11-18-02	Amend	1-1-03
333-536-0000	2-1-03	Adopt	1-1-03	459-035-0070	11-18-02	Amend	1-1-03
333-536-0005	2-1-03	Adopt	1-1-03	459-035-0080	11-18-02	Amend	1-1-03
333-536-0010	2-1-03	Adopt	1-1-03	459-035-0090	11-18-02	Amend	1-1-03

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459-035-0210	11-18-02	Repeal	1-1-03	629-625-0700	1-1-03	Adopt	1-1-03
459-035-0220	11-18-02	Adopt	1-1-03	629-630-0100	1-1-03	Amend	1-1-03
461-135-0730	1-1-03	Amend(T)	1-1-03	629-630-0150	1-1-03	Adopt	1-1-03
461-145-0540	11-19-02	Amend(T)	1-1-03	629-630-0500	1-1-03	Amend	1-1-03
461-155-0295	1-1-03	Amend(T)	1-1-03	635-005-0045	11-20-02	Amend(T)	1-1-03
462-110-0010	1-1-03	Amend	1-1-03	635-005-0045	11-25-02	Amend(T)	1-1-03
462-110-0020	1-1-03	Amend	1-1-03	635-005-0045	12-6-02	Amend(T)	1-1-03
462-120-0020	1-1-03	Amend	1-1-03	635-005-0045(T)	12-6-02	Suspend	1-1-03
462-120-0040	1-1-03	Amend	1-1-03	635-007-0501	11-22-02	Amend	1-1-03
462-120-0050	1-1-03	Amend	1-1-03	635-007-0502	11-22-02	Adopt	1-1-03
462-120-0100	1-1-03	Amend	1-1-03	635-007-0503	11-22-02	Adopt	1-1-03
462-130-0010	1-1-03	Amend	1-1-03	635-007-0504	11-22-02	Adopt	1-1-03
462-130-0050	1-1-03	Amend	1-1-03	635-007-0505	11-22-02	Adopt	1-1-03
462-140-0030	1-1-03	Amend	1-1-03	635-007-0506	11-22-02	Adopt	1-1-03
462-140-0040	1-1-03	Amend	1-1-03	635-011-0101	1-1-03	Amend	1-1-03
462-140-0100	1-1-03	Amend	1-1-03	635-013-0003	1-1-03	Amend	1-1-03
462-140-0130	1-1-03	Amend	1-1-03	635-013-0004	1-1-03	Amend	1-1-03
462-140-0250	1-1-03	Amend	1-1-03	635-014-0080	1-1-03	Amend	1-1-03
462-140-0370	1-1-03	Amend	1-1-03	635-014-0090	1-1-03	Amend	1-1-03
462-150-0010	1-1-03	Amend	1-1-03	635-016-0080	1-1-03	Amend	1-1-03
462-150-0050	1-1-03	Amend	1-1-03	635-016-0090	1-1-03	Amend	1-1-03
462-150-0070	1-1-03	Amend	1-1-03	635-017-0080	1-1-03	Amend	1-1-03
462-150-0080	1-1-03	Amend	1-1-03	635-017-0090	1-1-03	Amend	1-1-03
462-160-0010	1-1-03	Amend	1-1-03	635-018-0080	1-1-03	Amend	1-1-03
462-160-0020	1-1-03	Amend	1-1-03	635-018-0090	1-1-03	Amend	1-1-03
462-160-0030	1-1-03	Amend	1-1-03	635-019-0080	1-1-03	Amend	1-1-03
471-010-0054	12-1-02	Amend(T)	1-1-03	635-019-0090	1-1-03	Amend	1-1-03
471-030-0080	11-24-02	Amend	1-1-03	635-021-0080	1-1-03	Amend	1-1-03
543-040-0040	12-16-02	Amend(T)	1-1-03	635-021-0090	1-1-03	Amend	1-1-03
589-020-0270	12-4-02	Adopt(T)	1-1-03	635-021-0100	1-1-03	Repeal	1-1-03
603-052-1200	12-10-02	Amend	1-1-03	635-023-0080	1-1-03	Amend	1-1-03
603-057-0410	12-4-02	Amend(T)	1-1-03	635-023-0090	1-1-03	Amend	1-1-03
603-059-0055	1-1-03	Adopt	1-1-03	635-039-0080	1-1-03	Amend	1-1-03
603-059-0070	1-1-03	Adopt	1-1-03	635-039-0090	1-1-03	Amend	1-1-03
603-059-0080	1-1-03	Adopt	1-1-03	734-070-0020	12-13-02	Adopt	1-1-03
603-059-0100	1-1-03	Adopt	1-1-03	734-070-0020(T)	12-13-02	Repeal	1-1-03
629-600-0100	1-1-03	Amend	1-1-03	734-071-0010	12-13-02	Amend	1-1-03
629-606-0200	1-1-03	Amend	1-1-03	735-010-0045	11-18-02	Amend	1-1-03
629-606-0600	1-1-03	Amend	1-1-03	735-050-0110	1-1-03	Amend	1-1-03
629-623-0000	1-1-03	Adopt	1-1-03	735-050-0115	1-1-03	Adopt	1-1-03
629-623-0100	1-1-03	Adopt	1-1-03	735-050-0120	1-1-03	Amend	1-1-03
629-623-0200	1-1-03	Adopt	1-1-03	735-074-0005	1-1-03	Adopt	1-1-03
629-623-0250	1-1-03	Adopt	1-1-03	735-074-0010	1-1-03	Amend	1-1-03
629-623-0300	1-1-03	Adopt	1-1-03	735-074-0020	1-1-03	Amend	1-1-03
629-623-0400	1-1-03	Adopt	1-1-03	735-090-0000	11-18-02	Amend	1-1-03
629-623-0450	1-1-03	Adopt	1-1-03	735-090-0010	11-18-02	Repeal	1-1-03
629-623-0500	1-1-03	Adopt	1-1-03	735-090-0020	11-18-02	Amend	1-1-03
629-623-0550	1-1-03	Adopt	1-1-03	735-090-0030	11-18-02	Repeal	1-1-03
629-623-0600	1-1-03	Adopt	1-1-03	735-090-0040	11-18-02	Amend	1-1-03
629-623-0700	1-1-03	Adopt	1-1-03	735-090-0050	11-18-02	Repeal	1-1-03
629-623-0800	1-1-03	Adopt	1-1-03	735-090-0060	11-18-02	Repeal	1-1-03
629-625-0100	1-1-03	Amend	1-1-03	735-090-0070	11-18-02	Repeal	1-1-03
629-625-0200	1-1-03	Amend	1-1-03	735-090-0080	11-18-02	Repeal	1-1-03
629-625-0310	1-1-03	Amend	1-1-03	735-090-0090	11-18-02	Repeal	1-1-03
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735-150-0060	11-18-02	Amend	1-1-03	808-003-0055	12-4-02	Amend	1-1-03
738-001-0035	12-1-02	Amend	1-1-03	808-003-0070	12-4-02	Amend	1-1-03
738-010-0025	12-1-02	Amend	1-1-03	808-003-0075	12-4-02	Amend	1-1-03
738-020-0020	12-1-02	Amend	1-1-03	808-003-0081	12-4-02	Adopt	1-1-03
738-020-0025	12-1-02	Amend	1-1-03	808-003-0085	12-4-02	Adopt	1-1-03
738-020-0030	12-1-02	Amend	1-1-03	808-003-0100	12-4-02	Amend	1-1-03
738-020-0040	12-1-02	Amend	1-1-03	808-004-0120	12-4-02	Adopt	1-1-03
738-020-0045	12-1-02	Amend	1-1-03	808-004-0180	12-4-02	Amend	1-1-03
738-030-0015	12-1-02	Amend	1-1-03	808-004-0200	12-4-02	Am. & Ren.	1-1-03
738-030-0020	12-1-02	Amend	1-1-03	808-004-0250	12-4-02	Amend	1-1-03
738-030-0025	12-1-02	Amend	1-1-03	808-004-0260	12-4-02	Adopt	1-1-03
738-040-0010	12-1-02	Amend	1-1-03	808-004-0320	12-4-02	Amend	1-1-03
738-040-0020	12-1-02	Amend	1-1-03	808-004-0340	12-4-02	Amend	1-1-03
738-040-0040	12-1-02	Amend	1-1-03	808-004-0440	12-4-02	Amend	1-1-03
738-050-0020	12-1-02	Amend	1-1-03	808-004-0450	12-4-02	Adopt	1-1-03
738-050-0060	12-1-02	Amend	1-1-03	808-004-0460	12-4-02	Amend	1-1-03
738-050-0070	12-1-02	Amend	1-1-03	808-004-0480	12-4-02	Amend	1-1-03
738-050-0090	12-1-02	Amend	1-1-03	808-004-0500	12-4-02	Amend	1-1-03
738-060-0050	12-1-02	Amend	1-1-03	808-004-0520	12-4-02	Amend	1-1-03
738-070-0010	12-1-02	Amend	1-1-03	808-004-0540	12-4-02	Amend	1-1-03
738-070-0020	12-1-02	Amend	1-1-03	808-004-0550	12-4-02	Amend	1-1-03
738-070-0040	12-1-02	Amend	1-1-03	808-004-0560	12-4-02	Amend	1-1-03
738-070-0060	12-1-02	Amend	1-1-03	808-004-0580	12-4-02	Am. & Ren.	1-1-03
738-070-0070	12-1-02	Amend	1-1-03	808-004-0600	12-4-02	Amend	1-1-03
738-070-0080	12-1-02	Amend	1-1-03	808-005-0020	12-4-02	Amend	1-1-03
738-070-0100	12-1-02	Amend	1-1-03	808-005-0030	12-4-02	Amend	1-1-03
738-070-0160	12-1-02	Amend	1-1-03	808-009-0020	12-4-02	Amend	1-1-03
738-070-0170	12-1-02	Amend	1-1-03	808-009-0070	12-4-02	Amend	1-1-03
738-070-0180	12-1-02	Amend	1-1-03	808-009-0100	12-4-02	Amend	1-1-03
738-070-0210	12-1-02	Amend	1-1-03	808-009-0120	12-4-02	Amend	1-1-03
738-070-0230	12-1-02	Amend	1-1-03	808-009-0160	12-4-02	Amend	1-1-03
738-080-0030	12-1-02	Amend	1-1-03	808-009-0220	12-4-02	Amend	1-1-03
738-090-0030	12-1-02	Amend	1-1-03	808-009-0400	12-4-02	Amend	1-1-03
738-090-0040	12-1-02	Amend	1-1-03	808-009-0420	12-4-02	Amend	1-1-03
738-090-0050	12-1-02	Amend	1-1-03	808-009-0430	12-4-02	Adopt	1-1-03
738-100-0010	12-1-02	Amend	1-1-03	808-009-0440	12-4-02	Amend	1-1-03
738-100-0035	12-1-02	Amend	1-1-03	809-050-0030	12-2-02	Suspend	1-1-03
740-035-0200	11-18-02	Amend	1-1-03	812-004-0360	11-20-02	Amend	1-1-03
740-035-0210	11-18-02	Repeal	1-1-03	812-004-0540	11-20-02	Amend	1-1-03
740-035-0220	11-18-02	Repeal	1-1-03	812-004-0560	11-20-02	Amend	1-1-03
740-035-0230	11-18-02	Repeal	1-1-03	812-004-0560(T)	11-20-02	Repeal	1-1-03
740-035-0240	11-18-02	Repeal	1-1-03	812-008-0072	11-20-02	Amend	1-1-03
740-035-0250	11-18-02	Amend	1-1-03	812-009-0020	11-20-02	Amend	1-1-03
740-035-0260	11-18-02	Amend	1-1-03	812-009-0160	11-20-02	Amend	1-1-03
740-200-0010	11-18-02	Amend	1-1-03	812-010-0100	11-20-02	Amend	1-1-03
740-200-0020	11-18-02	Amend	1-1-03	812-010-0100(T)	11-20-02	Repeal	1-1-03
740-200-0040	11-18-02	Adopt	1-1-03	812-010-0110	11-20-02	Amend	1-1-03
806-010-0095	12-12-02	Amend	1-1-03	812-010-0110(T)	11-20-02	Repeal	1-1-03
808-001-0020	12-4-02	Amend	1-1-03	812-010-0120	11-20-02	Amend	1-1-03
808-001-0030	12-4-02	Amend	1-1-03	812-010-0120(T)	11-20-02	Repeal	1-1-03
808-002-0220	12-4-02	Amend	1-1-03	812-010-0220	11-20-02	Amend	1-1-03
808-002-0290	12-4-02	Adopt	1-1-03	812-010-0420	11-20-02	Amend	1-1-03
808-002-0670	12-4-02	Amend	1-1-03	812-010-0440	11-20-02	Amend	1-1-03
808-002-0670	12-4-02	Renumber	1-1-03	812-010-0440(T)	11-20-02	Repeal	1-1-03
808-002-0680	12-4-02	Amend	1-1-03	813-008-0005	12-5-02	Amend	1-1-03

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813-008-0015	12-5-02	Amend	1-1-03	813-205-0051	12-13-02	Adopt	1-1-03
813-008-0020	12-5-02	Amend	1-1-03	813-205-0060	12-13-02	Adopt	1-1-03
813-008-0025	12-5-02	Amend	1-1-03	813-205-0060(T)	12-13-02	Repeal	1-1-03
813-008-0030	12-5-02	Amend	1-1-03	813-205-0070	12-13-02	Adopt	1-1-03
813-008-0040	12-5-02	Adopt	1-1-03	813-205-0070(T)	12-13-02	Repeal	1-1-03
813-047-0001	11-20-02	Amend(T)	1-1-03	813-205-0080	12-13-02	Adopt	1-1-03
813-047-0005	11-20-02	Amend(T)	1-1-03	813-205-0080(T)	12-13-02	Repeal	1-1-03
813-047-0006	11-20-02	Adopt(T)	1-1-03	813-205-0090	12-13-02	Adopt	1-1-03
813-047-0010	11-20-02	Amend(T)	1-1-03	813-205-0090(T)	12-13-02	Repeal	1-1-03
813-047-0015	11-20-02	Amend(T)	1-1-03	813-280-0000	12-13-02	Adopt	1-1-03
813-047-0020	11-20-02	Amend(T)	1-1-03	813-280-0000(T)	12-13-02	Repeal	1-1-03
813-047-0025	11-20-02	Amend(T)	1-1-03	813-280-0010	12-13-02	Adopt	1-1-03
813-140-0000	11-25-02	Adopt	1-1-03	813-280-0010(T)	12-13-02	Repeal	1-1-03
813-140-0000(T)	11-25-02	Repeal	1-1-03	813-280-0020	12-13-02	Adopt	1-1-03
813-140-0010	11-25-02	Adopt	1-1-03	813-280-0020(T)	12-13-02	Repeal	1-1-03
813-140-0010(T)	11-25-02	Repeal	1-1-03	813-280-0030	12-13-02	Adopt	1-1-03
813-140-0020	11-25-02	Adopt	1-1-03	813-280-0030(T)	12-13-02	Repeal	1-1-03
813-140-0020(T)	11-25-02	Repeal	1-1-03	813-280-0040	12-13-02	Adopt	1-1-03
813-140-0030	11-25-02	Adopt	1-1-03	813-280-0040(T)	12-13-02	Repeal	1-1-03
813-140-0030(T)	11-25-02	Repeal	1-1-03	813-280-0050	12-13-02	Adopt	1-1-03
813-140-0040	11-25-02	Adopt	1-1-03	813-280-0050(T)	12-13-02	Repeal	1-1-03
813-140-0040(T)	11-25-02	Repeal	1-1-03	813-280-0060	12-13-02	Adopt	1-1-03
813-140-0050	11-25-02	Adopt	1-1-03	813-280-0060(T)	12-13-02	Repeal	1-1-03
813-140-0050(T)	11-25-02	Repeal	1-1-03	813-280-0070	12-13-02	Adopt	1-1-03
813-140-0060	11-25-02	Adopt	1-1-03	813-280-0070(T)	12-13-02	Repeal	1-1-03
813-140-0060(T)	11-25-02	Repeal	1-1-03	820-010-0305	12-3-02	Amend	1-1-03
813-140-0070	11-25-02	Adopt	1-1-03	833-020-0015	12-16-02	Amend(T)	1-1-03
813-140-0070(T)	11-25-02	Repeal	1-1-03	833-020-0040	12-16-02	Amend(T)	1-1-03
813-140-0080	11-25-02	Adopt	1-1-03	833-020-0060	12-16-02	Amend(T)	1-1-03
813-140-0080(T)	11-25-02	Repeal	1-1-03	833-020-0090	12-16-02	Amend(T)	1-1-03
813-140-0090	11-25-02	Adopt	1-1-03	833-020-0111	12-16-02	Amend(T)	1-1-03
813-140-0090(T)	11-25-02	Repeal	1-1-03	833-020-0130	12-16-02	Suspend	1-1-03
813-140-0100	11-25-02	Adopt	1-1-03	833-025-0001	12-16-02	Amend(T)	1-1-03
813-140-0100(T)	11-25-02	Repeal	1-1-03	833-025-0005	12-16-02	Amend(T)	1-1-03
813-140-0110	11-25-02	Adopt	1-1-03	833-025-0006	12-16-02	Amend(T)	1-1-03
813-140-0110(T)	11-25-02	Repeal	1-1-03	833-040-0001	12-16-02	Amend(T)	1-1-03
813-200-0000	11-20-02	Am. & Ren.(T)	1-1-03	833-040-0010	12-16-02	Amend(T)	1-1-03
813-200-0001	11-20-02	Adopt(T)	1-1-03	836-011-0100	11-27-02	Amend	1-1-03
813-200-0010	11-20-02	Amend(T)	1-1-03	836-011-0110	11-27-02	Amend	1-1-03
813-200-0020	11-20-02	Amend(T)	1-1-03	836-011-0120	11-27-02	Amend	1-1-03
813-200-0030	11-20-02	Amend(T)	1-1-03	836-011-0130	11-27-02	Amend	1-1-03
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
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836-011-0525	11-27-02	Adopt	1-1-03	837-020-0040	12-6-02	Amend	1-1-03
836-011-0530	11-27-02	Adopt	1-1-03	837-020-0050	12-6-02	Amend	1-1-03
836-011-0535	11-27-02	Adopt	1-1-03	837-020-0060	12-6-02	Amend	1-1-03
836-011-0540	11-27-02	Adopt	1-1-03	837-020-0080	12-6-02	Amend	1-1-03
836-011-0545	11-27-02	Adopt	1-1-03	837-020-0125	12-6-02	Amend	1-1-03
836-011-0550	11-27-02	Adopt	1-1-03	850-010-0055	12-6-02	Adopt(T)	1-1-03
836-012-0000	11-27-02	Amend	1-1-03	850-010-0210	12-10-02	Amend	1-1-03
836-012-0011	11-27-02	Amend	1-1-03	860-012-0010	12-9-02	Amend	1-1-03
836-012-0021	11-27-02	Amend	1-1-03	860-014-0023	12-6-02	Adopt(T)	1-1-03
836-012-0031	11-27-02	Amend	1-1-03	860-016-0050	12-9-02	Amend	1-1-03
836-012-0041	11-27-02	Amend	1-1-03	860-021-0335	12-9-02	Amend	1-1-03
836-012-0051	11-27-02	Amend	1-1-03	860-032-0610	12-9-02	Adopt	1-1-03
836-012-0060	11-27-02	Amend	1-1-03	860-032-0620	12-9-02	Adopt	1-1-03
836-012-0070	11-27-02	Amend	1-1-03	860-032-0630	12-9-02	Adopt	1-1-03
836-012-0080	11-27-02	Amend	1-1-03	860-032-0640	12-9-02	Adopt	1-1-03
836-012-0090	11-27-02	Amend	1-1-03	860-032-0650	12-9-02	Adopt	1-1-03
836-012-0100	11-27-02	Amend	1-1-03	860-032-0660	12-9-02	Adopt	1-1-03
836-020-0900	11-27-02	Am. & Ren.	1-1-03	860-034-0250	12-9-02	Amend	1-1-03
836-052-0142	12-13-02	Amend	1-1-03	860-036-0080	12-9-02	Amend	1-1-03
836-053-0021	11-27-02	Amend	1-1-03	860-037-0075	12-9-02	Amend	1-1-03
836-053-0430	11-27-02	Amend	1-1-03	918-480-0010	1-1-03	Amend	1-1-03
836-053-0440	11-27-02	Amend	1-1-03	918-480-0010(T)	1-1-03	Repeal	1-1-03