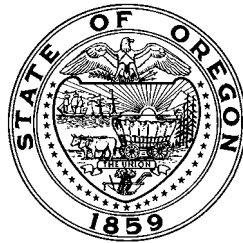


OREGON BULLETIN

Supplements the 2004 *Oregon Administrative Rules Compilation*

Volume 43, No. 3
March 1, 2004

For January 16, 2004–February 13, 2004



Published by
BILL BRADBURY
Secretary of State
Copyright 2004 Oregon Secretary of State

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

2003-2004 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 15, 2003	January 1, 2004
January 15, 2004	February 1, 2004
February 13, 2004	March 1, 2004
March 15, 2004	April 1, 2004
April 15, 2004	May 1, 2004
May 14, 2004	June 1, 2004
June 15, 2004	July 1, 2004
July 15, 2004	August 1, 2004
August 13, 2004	September 1, 2004
September 15, 2004	October 1, 2004
October 15, 2004	November 1, 2004
November 15, 2004	December 1, 2004

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.

© January 1, 2004 Oregon Secretary of State. All rights reserved. Reproduction in whole or in part without written permission is prohibited.

TABLE OF CONTENTS

	Page
Information and Publication Schedule	2
Table of Contents	3
Other Notices	4, 5
Notices of Proposed Rulemaking Hearings/Notices	
The citations and statements required by ORS 183.335(2)(b)(A) - (D) have been filed with and are available from the Secretary of State.	
Appraiser Certification and Licensure Board,	
Chapter 161.....	6
Board of Medical Examiners, Chapter 847.....	6
Board of Naturopathic Examiners, Chapter 850.....	7
Board of Nursing, Chapter 851	7
Board of Pharmacy, Chapter 855	8
Board of Tax Practitioners, Chapter 800.....	8
Columbia River Gorge Commission, Chapter 350.....	8
Department of Administrative Services, Chapter 125	8
Department of Agriculture, Chapter 603.....	9
Department of Consumer and Business Services,	
Building Codes Division, Chapter 918.....	9
Department of Environmental Quality, Chapter 340.....	9, 10
Department of Fish and Wildlife, Chapter 635	10
Department of Forestry, Chapter 629.....	10
Department of Human Services,	
Departmental Administration and	
Medical Assistance Programs, Chapter 410	11
Public Health, Chapter 333.....	11, 12
Seniors and People with Disabilities, Chapter 411	12
Vocational Rehabilitation Services, Chapter 582	12
Department of Justice, Chapter 137	12
Department of Oregon State Police,	
Office of State Fire Marshal, Chapter 837	12, 13
Department of Transportation, Chapter 731.....	13
Department of Transportation,	
Driver and Motor Vehicle Services Division,	
Chapter 735.....	13, 14
Highway Division, Chapter 734.....	14, 15
Rail Division, Chapter 741	15
Department of Veterans' Affairs, Chapter 274	15
Employment Department,	
Child Care Division, Chapter 414	15, 16
Health Licensing Office, Chapter 331	16, 17
Health Licensing Office,	
Board of Cosmetology, Chapter 817	17
Sanitarians Registration Board, Chapter 338	17
Land Conservation and Development Department,	
Chapter 660.....	17, 18
Oregon Department of Aviation, Chapter 738	18
Oregon Economic and Community Development	
Department, Chapter 123.....	18, 19
Oregon Housing and Community Services,	
Chapter 813.....	19
Oregon Public Employees Retirement System,	
Chapter 459.....	19
Oregon Student Assistance Commission,	
Office of Degree Authorization, Chapter 583	19
Oregon University System, Chapter 580	20
Oregon University System,	
University of Oregon, Chapter 571	20
Parks and Recreation Department, Chapter 736	20
Public Utility Commission, Chapter 860	20
Racing Commission, Chapter 462.....	20
Secretary of State,	
Archives Division, Chapter 166	20
Elections Division, Chapter 165.....	21
Administrative Rules	
The citations and statements required by ORS 183.335(2)(b)(A) - (D) have been filed with and are available from the Secretary of State.	
Appraiser Certification and Licensure Board,	
Chapter 161.....	22, 23
Board of Architect Examiners, Chapter 806.....	23
Board of Examiners for Engineering	
and Land Survey, Chapter 820	23-26
Board of Examiners for Speech Pathology	
and Audiology, Chapter 335	26-28
Board of Examiners of Nursing Home	
Administrators, Chapter 853.....	28
Board of Medical Examiners, Chapter 847.....	28-32
Board of Naturopathic Examiners, Chapter 850.....	32
Board of Nursing, Chapter 851	32-44
Board of Tax Practitioners, Chapter 800.....	44, 45
Construction Contractors Board, Chapter 812.....	45
Department of Agriculture, Chapter 603.....	46-49
Department of Agriculture,	
Oregon Grains Commission, Chapter 679	49-51
Oregon Hop Commission, Chapter 643	51
Department of Consumer and Business Services,	
Building Codes Division, Chapter 918	51, 52
Insurance Division, Chapter 836.....	52
Workers' Compensation Division, Chapter 436.....	53
Department of Corrections, Chapter 291	53-56
Department of Fish and Wildlife, Chapter 635	56-62
Department of Forestry, Chapter 629.....	63-66
Department of Human Services,	
Child Welfare Programs, Chapter 413.....	66-72
Departmental Administration and	
Medical Assistance Programs, Chapter 410	72-75
Public Health, Chapter 333.....	75-89
Self-Sufficiency Programs, Chapter 461	89, 90
Seniors and People with Disabilities,	
Chapter 411	90-94
Vocational Rehabilitation Services, Chapter 582	94-97
Department of Justice, Chapter 137	97-100
Department of Public Safety Standards	
and Training, Chapter 259.....	101, 102
Department of Transportation, Chapter 731	102, 103
Department of Transportation,	
Highway Division, Chapter 734	103
Department of Veterans' Affairs, Chapter 274	103-105
Health Licensing Office, Chapter 331.....	105-110
Landscape Contractors Board, Chapter 808.....	110-116
Office of Energy, Chapter 330.....	116-137
Oregon Economic and Community Development	
Department, Chapter 123.....	138-162
Oregon Liquor Control Commission, Chapter 845.....	162
Oregon Public Employees Retirement System,	
Chapter 459.....	162-165
Oregon Student Assistance Commission,	
Chapter 575.....	165, 166
Oregon Student Assistance Commission,	
Office of Degree Authorization, Chapter 583	166-173
Oregon Watershed Enhancement Board,	
Chapter 695.....	174-178
Public Utility Commission, Chapter 860	178-193
Secretary of State,	
Elections Division, Chapter 165.....	193
OAR Revision Cumulative Index	194-218

OTHER NOTICES

NOTICE FOR COMMENT ON PROPOSED CLEANUP PACIFICORP YOUNGS BAY SITE

COMMENTS DUE: March 31, 2004

PROJECT LOCATION: north shore of Youngs Bay, Astoria
PROPOSAL: As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the proposed cleanup action for manufactured gas plant wastes (tar and lampblack) present on the PacificCorp property and adjacent shoreline and Bay areas. The proposed action includes excavation and off-site disposal of lampblack in upland soil, excavation of the more mobile portion of the tar waste present in Youngs Bay, capping of the remaining tar in the Bay and along the shoreline of the site, and long-term monitoring and maintenance of the cap.

HIGHLIGHTS: Between 1921 and 1954 the site was used for the manufacture of gas and power production. Waste coal tars and lampblack were placed in upland portions of the site and discharged into Youngs Bay. The tar and lampblack contain elevated concentrations of polycyclic aromatic hydrocarbons, some of which are carcinogens and may be toxic to aquatic life or pose threats via bioaccumulation in the food chain to fish that are eaten by wildlife and people.

The goals of the proposed action are to prevent exposure to and spread of the waste materials.

HOW TO COMMENT: The DEQ's staff report on the proposed cleanup action will be available for public review at the Astoria Public Library (450 10th St., Astoria), DEQ's North Coast Branch Office in Warrenton (65 N. Highway 101, Suite G), and DEQ's Northwest Region Office in Portland beginning March 1, 2004. To schedule an appointment to review files in DEQ's Northwest Region office, call (503) 229-6729. The DEQ Project Manager is Jennifer Sutter, (503) 229-6148. Written comments should be sent to the Project Manager at the DEQ, Northwest Region, 2020 SW 4th Ave., Portland, OR 97201 or sutter.jennifer@deq.state.or.us by March 31, 2004. A public meeting will be held on Thursday, March 11 from 5 to 7 pm in the Flag Room of the Astoria Public Library. A brief overview of the proposed action will be presented and opportunity provided to ask questions and provide comments.

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

PROPOSED APPROVAL OF CLEANUP AT JR SIMPLOT — COMPRESSOR PAD UMATILLA COUNTY, OREGON

COMMENTS DUE: March 31, 2004

PROJECT LOCATION: 79319 Simplot Road in Hermiston, Oregon

PROPOSAL: The Department of Environmental Quality is proposing to issue a "No Further Action" determination based soil excavation actions performed at the JR Simplot site located at 79319 Simplot Road in Hermiston, Oregon. The proposal is specific to the hydraulic oil release associated with the compressors located on a concrete pad adjacent to the southeast corner of the zero storage building and not to any other portion of the site.

HIGHLIGHTS: Petroleum contaminated soil, located adjacent to the compressor pad, was excavated and transported off-site for disposal. Confirmation soil samples collected following removal actions confirm remaining concentrations are less than DEQ's soil matrix level 2 cleanup standards. Soil is not expected to be contaminated beneath the concrete pad and heavy oil concentrations are likely to continue to decrease with depth 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 received by March

31, 2004 and sent to Katie Robertson, Project Manager, at the address listed above.

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

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

NOTICE OF SELECTED ENVIRONMENTAL REMEDY

PROJECT: South Waterfront Lot #3 (at RiverPlace)

LOCATION: The intersection of SW Harbor Way, SW River Parkway and SW Moody Avenue, north of the Marquam Bridge in Portland, Oregon

SELECTED CLEANUP METHOD: The Oregon Department of Environmental Quality (DEQ) finalized a Record of Decision on January 28, 2004 selecting a remedy to address petroleum-contaminated soil at the South Waterfront Lot #3 site. A remedial investigation and risk assessment was completed by the Portland Development Commission to evaluate concentrations of contaminants in soil and groundwater at the property. The main contaminants of concern are polynuclear aromatic hydrocarbons associated with petroleum, and the highest concentrations detected are in a black-stained layer of soil 14 to 25 feet beneath the site. The risk assessment indicates that contaminants are below concentrations that pose a significant risk to human health unless contaminated soil below 10 feet is excavated during future site development. Shallow groundwater beneath the site is not used and contaminants in groundwater have not migrated significantly off-site. To address soil and groundwater concerns DEQ will use an easement on the property that requires engineering and worker health and safety protections during site development, and offsite disposal at a permitted facility of any contaminated soil excavated below 10 feet. Groundwater use will also be restricted through the easement.

The Record of Decision and project file is available for public review at the DEQ Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201. To schedule an appointment contact Gerald Gamolo at 503-229-6729. The DEQ project manager is Tom Roick, 503-229-5502. Please notify DEQ if you need copies of written materials in an alternative format (e.g., Braille, large print, etc.). To make these arrangements, contact DEQ Public Affairs, 503-229-5317.

NOTICE OF PROPOSED NO FURTHER ACTION DETERMINATION, EAKINS PROPERTY 21111 SE BUTLER ROAD, GRESHAM, OREGON

COMMENT PERIOD: March 1 to March 31, 2004

COMMENTS DUE: March 31, 2004

PROJECT LOCATION: 21111 SE Butler Road, Gresham, Oregon.

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) invites public comment on the proposed approval of remedial actions including the removal of diesel and heavy oil impacted soil and DEQ's proposal to issue a no further action determination for this property.

Approximately 820 tons of impacted soil was excavated and transported to DEQ permitted landfill for disposal in July 2003. Diesel and heavy oil were not detected in confirmation soil samples. Total lead was detected at levels less than residential Preliminary Remedial Goals (PRGs). Groundwater sampling indicates benzene, bis(2-ethylhexyl)phthalate, arsenic, iron, and manganese detected in one or more wells exceeded tap water PRGs. A beneficial use survey of the site and surrounding area determined shallow groundwater is not used and that domestic use was not a complete pathway.

HOW TO COMMENT: As required by ORS 465.320, DEQ invites public comment on the proposed approval of the cleanup actions at

OTHER NOTICES

the Eakins Property. Written comments should be sent to Katie Robertson, DEQ, 700 SE Emigrant, Suite 330, Pendleton, OR 97801 by March 31, 2004. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

INFORMATION: The administrative record for the site is available for public review by appointment at DEQ's Northwest Region Office. To schedule an appointment call (503) 229-6729. For additional information regarding the cleanup at the site, contact DEQ Project Manager, Katie Robertson at (541) 278-4620 or by email at robertson.katie@deq.state.or.us. Additional information is also available at <http://www.deq.state.or.us/news/publicnotices/>.

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

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 pm 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.

ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving a proposed administrative rule's substantive goals while reducing negative economic impact of the rule on business.

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.

.....

Appraiser Certification and Licensure Board Chapter 161

Date:	Time:	Location:
4-12-04	9 a.m.	West Coast Bank 2nd Flr. Community Conf. Rm. 301 Church St. NE Salem, OR

Hearing Officer: Terry Bernhardt
Stat. Auth.: ORS 183.341(4), 674.305(8) & 674.310
Stats. Implemented: ORS 674.305(8) & 674.130
Proposed Amendments: 161-002-0000, 161-010-0080, 161-025-0000, 161-025-0005, 161-025-0010, 161-025-0030
Last Date for Comment: 4-12-04, Close of hearing
Summary: Proposed changes to Oregon Administrative Rules 161, Division 2 regarding definitions; Division 10 regarding appraiser assistants registration requirements; and Division 25 regarding scope of practice and procedures for State Licensed/Certified Appraisers and Appraiser Assistants.

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

Rules Coordinator: Karen Turnbow
Address: Appraiser Certification and Licensure Board, 1860 Hawthorne Ave NE, Suite 200, Salem, OR 97303
Telephone: (503) 485-2555

.....

Board of Medical Examiners Chapter 847

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.415
Proposed Adoptions: 847-010-0073
Last Date for Comment: 3-29-04
Summary: Per House Bill 2165 (2003), the proposed rule states that a licensee shall self-report to the Board within ten working days any official action or event taken against the licensee by a government agency or health care facility, and requires the Board to define the meaning of medical incompetence, unprofessional conduct and licensee impairment.
Rules Coordinator: Diana M. Dolstra

Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826
Telephone: (503) 229-5873, ext. 223

.....

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.132
Proposed Amendments: 847-010-0056, 847-010-0063
Last Date for Comment: 3-29-04

Summary: The proposed rules clarify that the paperwork for renewing a Limited License, Fellow should be submitted to the Board 30 days before expiring, and the current language on the Limited License, Medical Faculty in OAR 847-020-0140 updates the language in OAR 847-010-0063.

Rules Coordinator: Diana M. Dolstra
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826
Telephone: (503) 229-5873, ext. 223

.....

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.470, 677.474
Proposed Amendments: 847-015-0030
Last Date for Comment: 3-29-04

Summary: The administrative rules are being amended in response to Senate Bill 436 (2003), eliminating the requirement for a consulting physician opinion in certain circumstances. The Board is developing and will approve a material risk notice to provide to physicians who are treating intractable pain patients.

Rules Coordinator: Diana M. Dolstra
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826
Telephone: (503) 229-5873, ext. 223

.....

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.110
Proposed Amendments: 847-020-0170
Last Date for Comment: 3-29-04

Summary: The proposed administrative rules, effective July 9, 2004, would allow applicants an unlimited number of attempts to pass the United States Medical Licensing Examination (USMLE) Steps 1 and 2 or the National Board of Osteopathic Medical Examiners (NBOME) examination Level 1 and 2, but three attempts to pass Step 3 or Level 3. After the third failed attempt, the applicant must take a year of Board approved postgraduate training before taking Step 3 or Level 3 a fourth and final time.

Rules Coordinator: Diana M. Dolstra
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826
Telephone: (503) 229-5873, ext. 223

.....

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.545
Proposed Amendments: 847-050-0041
Last Date for Comment: 3-29-04

Summary: Per Senate Bill 647 (2003), the proposed rule allows physician assistants to be granted prescribing privileges for Schedule II medications if their supervising physician requests it on the practice description form, and the Board approves the request. The physician assistant must be certified by the National Commission on Certification of Physician Assistants (NCCPA).

Rules Coordinator: Diana M. Dolstra
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826
Telephone: (503) 229-5873, ext. 223

NOTICES OF PROPOSED RULEMAKING

Board of Naturopathic Examiners Chapter 850

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Proposed Amendments: 850-010-0215

Last Date for Comment: 3-29-04

Summary: This amendment clarifies authority to prescribe controlled substances.

Rules Coordinator: Anne Walsh

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

Telephone: (503) 731-4045

Board of Nursing Chapter 851

Date:
4-15-04

Time:
9 a.m.

Location:
800 NE Oregon St.
Rm. 120-C
Portland, OR 97232

Hearing Officer: Marguerite Gutierrez, Board President

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150 & 25.785

Proposed Adoptions: 851-001-0030

Proposed Amendments: 851-001-0005, 851-001-0006, 851-001-0007, 851-001-0015, 851-001-0020

Last Date for Comment: 4-15-04

Summary: These proposed rules are designed to either implement newly enacted legislation or clarify current practice. They specify that discovery orders in contested cases be limited to witnesses and documents each party intends to offer as part of their initial case. They specify that contested case hearings are closed to the public. They allow the agency to accept written statements in lieu of social security numbers for those individuals who have not yet been issued a social security number from the federal government.

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

Rules Coordinator: KC Cotton

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

Telephone: (503) 731-4754

Date:
4-15-04

Time:
9 a.m.

Location:
800 NE Oregon St.
Rm. 120-C
Portland, OR

Hearing Officer: Marguerite Gutierrez, Board President

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

Proposed Amendments: 851-002-0020

Last Date for Comment: 4-15-04, 9 a.m.

Summary: This rule amendment establishes a nurse practitioner dispensing authority initial application and renewal fee.

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

Rules Coordinator: KC Cotton

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

Telephone: (503) 731-4754

Date:
4-15-04

Time:
9 a.m.

Location:
800 NE Oregon St.
Rm. 120-C
(Willamette River Suite)
Portland, OR 97232

Hearing Officer: Marguerite Gutierrez, Board President

Stat. Auth.: ORS 678.021 & 678.031

Stats. Implemented: ORS 678.021 & 678.031

Proposed Amendments: 851-031-0006, 851-031-0090

Last Date for Comment: 4-15-04, 9 a.m.

Summary: These proposed rule amendments clarify options for meeting the practice requirements for licensure by endorsement and renewal. They also clarify the procedure for a licensee to change their name of record.

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

Rules Coordinator: KC Cotton

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

Telephone: (503) 731-4754

Date:
4-15-04

Time:
9 a.m.

Location:
800 NE Oregon St.
Rm. 120-C
Portland, OR 97232

Hearing Officer: Marguerite Gutierrez, Board President

Stat. Auth.: ORS 678.385

Stats. Implemented: ORS 678.375 & 678.385

Proposed Amendments: 851-050-0131

Last Date for Comment: 4-15-04, 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. This amendment adds the February, March and April 2004 updates to Drugs Facts and Comparisons to the formulary, with the 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

Date:
4-15-04

Time:
9 a.m.

Location:
800 NE Oregon St.
Rm. 120-C
Portland, OR 97232

Hearing Officer: Marguerite Gutierrez, Board President

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

Stats. Implemented: ORS 678.390 & 689.605

Proposed Adoptions: 851-050-0162, 851-050-0163, 851-050-0164

Proposed Amendments: 851-050-0000, 851-050-0004, 851-050-0006, 851-050-0138, 851-050-0140, 851-050-0155, 851-050-0170

Proposed Repeals: 851-050-0133, 851-050-0134, 851-050-0145, 851-050-0161

Last Date for Comment: 4-15-04

Summary: These rules implement Senate Bill 708 (2003 Legislative Session) establishing how nurse practitioners can obtain and utilize their drug dispensing authority. These rules also establish policies for nurse practitioners regarding drug dispensing, storage and accountability, maintenance of drug records and procedures for procurement of drugs. Finally, these rules delete the current authority of nurse practitioners to dispense drugs when employed by a college or university student health center and the provisions for emergency drug dispensing in accordance with Senate Bill 708.

**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

NOTICES OF PROPOSED RULEMAKING

Board of Pharmacy Chapter 855

Date: 4-14-04 **Time:** 9 a.m. **Location:** 800 NE Oregon St.
#140
Portland, OR 97232

Hearing Officer: Board Members
Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.205
Proposed Amendments: 855-021-0005, 855-021-0010, 855-021-0025, 855-021-0030, 855-021-0050
Proposed Repeals: 855-021-0015, 855-021-0035
Last Date for Comment: 4-14-04
Summary: Modifies and clarifies requirements for Pharmacists continuing professional education.
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Karen Maclean
Address: Board of Pharmacy, 800 NE Oregon St. - Suite 425, Portland, OR 97232
Telephone: (503) 731-4032, ext. 223

Board of Tax Practitioners Chapter 800

Date: 3-31-04 **Time:** 9 a.m. **Location:** 3218 Pringle Road SE
#120
Salem, OR 97302

Hearing Officer: Monica J. Leisten
Stat. Auth.: ORS 673.605-673.740 & 673.990
Stats. Implemented: ORS 673.605-673.740&673.990
Proposed Amendments: 800-020-0020
Last Date for Comment: 4-15-04, 5 p.m.
Summary: The Oregon Administrative Rule revisions the Board of Tax Practitioners is proposing are to:
1) Change the required passing score of the tax consultant's examination from 75% to 70%.

2) Add a provision to specify the currently required 75% passing score for the consultant's state-only examination which is administered to individuals who hold an active treasury card verifying they are enrolled to practice before the Internal Revenue Service.

The proposed amendments to OAR 800-020-0020 will allow the board to conform to the "norm" in industry standards and the practices of other state licensing agencies without lowering the complexity of the tax consultant's examination currently being administered. In addition, the proposed amendments will provide clarification on the examination passage requirements for individuals who qualify for the consultant's state-only examination as an enrolled agent.

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

Rules Coordinator: Monica J. Leisten
Address: Board of Tax Practitioners, 3218 Pringle Rd. SE - Room 120, Salem, OR 97302-6308
Telephone: (503) 378-4034

Columbia River Gorge Commission Chapter 350

Date: 4-13-04 **Time:** 9 a.m. **Location:** Rock Creek Recreation Ctr.
Stevenson, WA

Hearing Officer: Staff
Stat. Auth.: ORS 196.150; Other Auth.: RCW 43.97.015, 16 U.S.C. § 554c(b)
Stats. Implemented: ORS 196.150
Proposed Amendments: 350-012-0008
Last Date for Comment: 4-12-04

Summary: The Columbia River Gorge Compact Art. I, § a and the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 554c(b) require the Gorge Commission to maintain regulations relating to public records disclosure that are consistent with the more restrictive statutory provisions of either state. In 2003, Oregon adopted changes to its public records disclosure rules. These amendments make those changes effective to the Gorge Commission.
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Nancy A. Andring
Address: Columbia River Gorge Commission, #1 Town and Country Square, P.O. Box 730, White Salmon, WA 98672
Telephone: (509) 493-3323

Date: 4-13-04 **Time:** 9 a.m. **Location:** Rock Creek Recreation Ctr.
Stevenson, WA

Hearing Officer: Staff
Stat. Auth.: ORS 196.150 ; Other Auth.: RCW 43.97.150, 16 U.S.C. § 554c(b)
Stats. Implemented: ORS 196.150
Proposed Amendments: 350-011-0006
Last Date for Comment: 4-12-04

Summary: The Columbia River Gorge Compact Art. I, § a and the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544c(b) require the Gorge Commission to maintain regulations relating to open meetings that are consistent with the more restrictive statutory provisions of either state. In 2003, Oregon adopted changes to the Oregon Open Meeting Act to keep certain utility security informational confidential. This rule makes those changes effective to the Gorge Commission.
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Nancy A. Andring
Address: Columbia River Gorge Commission, #1 Town and Country Square, P.O. Box 730, White Salmon, WA 98672
Telephone: (509) 493-3323

Department of Administrative Services Chapter 125

Date: 3-15-04 **Time:** 3 p.m. **Location:** Bid Rm. B, 2nd Flr.
1225 Ferry St. SE, U140
Salem, OR 97301-4285

Hearing Officer: Karen Hartley
Stat. Auth.: ORS 184.305(2), 279.712(3)(b); Other Auth.: Attorney General's Law Manual Procedures 2003
Stats. Implemented: ORS 180.235 & 279.712(3)(b)
Proposed Amendments: 125-020-0610
Last Date for Comment: 3-15-04, 5 p.m.

Summary: Under ORS 180.235, the Oregon Attorney General may authorize a public officer or agency to retain its own general or special counsel, other than the Department of Justice. This Permanent Rule governs the process, together with the OAR division 20 rules and with exceptions of OAR 125-020-0210, OAR 125-020-0220, OAR 125-020-0300, OAR 125-020-0310, OAR 125-020-0320, OAR 125-020-0330, OAR 125-020-0335, OAR 125-020-0340, OAR 125-020-0520(3) (6) and (7), and OAR 125-020-0530. This Permanent Rule adopts the Temporary Rule that expires on March 28, 2004.

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

Rules Coordinator: Kristin Keith
Address: Department of Administrative Services, 155 Cottage St. NE U90, Salem, OR 97301-3972
Telephone: (503) 378-2349, ext. 325

NOTICES OF PROPOSED RULEMAKING

Department of Agriculture Chapter 603

Date: 3-23-04 **Time:** 9 a.m. **Location:** 635 Capitol St. NE
Salem, OR

Hearing Officer: Clark Cooney

Stat. Auth.: ORS 633

Stats. Implemented: ORS 633.461(2)(a)

Proposed Amendments: 603-059-0020

Last Date for Comment: 4-6-04

Summary: Increase the inspection fee for fertilizer, agricultural amendment and agricultural mineral products from \$0.10 per ton of material to \$0.35 per ton.

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

Rules Coordinator: Sherry Kudna

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97310

Telephone: (503) 986-4619

Date: 3-24-04 **Time:** 7 p.m. **Location:** 1143 Chetco Ave.
Brookings, OR

3-26-04 10 a.m. ODA
635 Capitol St. NE
Salem, OR

Hearing Officer: Robert A. Mitchell

Stat. Auth.: ORS 561.510 & 561.540

Stats. Implemented: ORS 561.510

Proposed Amendments: 603-052-1230

Last Date for Comment: 4-2-04

Summary: The amended rule (Quarantine *Phytophthora ramorum*) adds a new host species to the list of regulated commodities, redefines the area under quarantine by adding a 0.5 mile buffer zone, extends the quarantine boundary by two square miles, requires treatment of infected hosts by property owner and provides property owners with a right to request a hearing regarding required treatments.

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

Rules Coordinator: Sherry Kudna

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97310

Telephone: (503) 986-4619

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

Date: 3-18-04 **Time:** 10 a.m. **Location:** 1535 Edgewater NW
Salem, OR 97304

Hearing Officer: Richard J. Baumann

Stat. Auth.: ORS 455; Other Auth.: Ch. 675, 2003 OL

Stats. Implemented: ORS 455

Proposed Adoptions: 918-030-0200

Last Date for Comment: 3-20-04, 5 p.m.

Summary: Section 62 of 2003 Senate Bill 906 created new statutory provisions for individuals licensed under the elevator, electrical, boiler/pressure vessel and plumbing statutes and rules. This rule requires individuals performing elevator, boiler/pressure vessel or plumbing work which requires a license, to wear and visibly display their license.

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

Rules Coordinator: Richard J. Baumann

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97309-0404

Telephone: (503) 373-7559

Date: 3-18-04 **Time:** 9:30 a.m. **Location:** 1535 Edgewater NW
Salem, OR 97304

Hearing Officer: Richard J. Baumann

Stat. Auth.: ORS 455.020, 479.540, 479.560, 479.730 & 479.870; Other Auth.: Ch. 299 & Ch. 222, OL

Stats. Implemented: ORS 455.020, 479.540, 479.560, 479.610, 479.730, 479.760 & 479.870

Proposed Adoptions: 918-261-0036, 918-261-0037, 918-261-0038, 918-261-0039

Proposed Amendments: 918-251-0090, 918-306-0010, 918-306-0340, 918-306-0350, 918-306-0360, 918-306-0380, 918-306-0390, 918-306-0400, 918-306-0410, 918-309-0000, 918-309-0040, 918-309-0210, 918-309-0220

Proposed Repeals: 918-306-0370

Last Date for Comment: 3-21-04, 5 p.m.

Summary: 2003 House Bill 2717 became law June 11, 2003 and made changes necessary to Division 306 Administrative Rules for semiconductor electrical industrial manufacturing equipment approvals. Product certification and laboratory approval requirements for electrical products have been repealed. However, to provide consistency and to remove conflicting language among all the rules in Division 306, additional changes are necessary. The scope for use of minor installation labels in Division 309 are being clarified. Other rules in Division 309 on limited energy permitting are being clarified to implement provisions in 2003 House Bill 3613 that allows telecommunications service providers the ability to purchase electrical permits. Exemptions are being granted in Division 261 for traffic management systems, transformers, manufactured construction services and products located on the load side of a listed Class 2 transformer.

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

Rules Coordinator: Richard J. Baumann

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97309-0404

Telephone: (503) 373-7559

Date: 3-18-04 **Time:** 10:30 a.m. **Location:** 1535 Edgewater NW
Salem, OR 97304

Hearing Officer: Richard J. Baumann

Stat. Auth.: ORS 455.030, 455.080, 455.148, 455.150, 455.156, 455.465, 455.467 & 455.469; Other Auth.: Ch. 675, 2003 OL

Stats. Implemented: ORS 455.808, 455.148, 455.150, 455.153, 455.156, 455.465, 455.467 & 455.469

Proposed Adoptions: 918-020-0091

Proposed Amendments: 918-020-0090

Last Date for Comment: 3-20-04, 5 p.m.

Summary: Section 24 of 2003 Senate Bill 906 created additional statutory requirements directing building inspection programs to contain uniform processes and procedures for issuing citations for violations of licensing requirements. This rule will require inspectors to perform license enforcement inspections as part of their routine installation inspections.

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

Rules Coordinator: Richard J. Baumann

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97309-0404

Telephone: (503) 373-7559

Department of Environmental Quality Chapter 340

Date: 3-23-04 **Time:** 2 p.m. **Location:** DEQ, Western Region
Salem Office
750 Front St. NE, Ste. 120
Salem, OR

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Raghu Namburi
Stat. Auth.: ORS 454.625, 454.745, 468, 468.020, 468.065, 468B & 468B.050
Stats. Implemented: ORS 454.745, 468.005, 468.065, 468B.005 & 468B.050

Proposed Amendments: 340-045-0010, 340-045-0015, 340-045-0070, 340-045-0075

Last Date for Comment: 3-26-04, 5 p.m.

Summary: The Oregon Department of Environmental Quality (DEQ) proposes to amend rules to implement National Pollutant Discharge Elimination System (NPDES) individual permits for small municipal separate storm sewer systems (MS4s). This new type of permit is issued to small municipalities to comply with recent federal NPDES Phase II Storm Water regulations. Proposed changes will establish a new category of permit fees for these permits, OAR 340-045-0075, and add definitions to distinguish sizes of MS4s and define "storm water" consistent with federal rules, OAR 340-045-0010.

DEQ also proposes to amend rules governing the existing general permits. The proposed changes will allow flexibility for local governments or other contracted DEQ agents implementing general permits to set and collect permit fees, OAR 340-045-0070.

Proposed changes will also clarify permit requirements for storm water discharges, OAR 340-045-0015; correct a typo in OAR 340-045-0075; and edit the rules being revised for clarity.

To submit comments or request additional information, please contact Jim Billings at the Department of Environmental Quality (DEQ), Water Quality Division, 811 S.W. 6th Avenue, Portland, Oregon, 97204-1390, toll free in Oregon at 800-452-4011 or phone: 503-229-5073, email: billings.jim@deq.state.or.us, fax 503-229-5408 503-229-5408, 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

.....

Department of Fish and Wildlife Chapter 635

Date:	Time:	Location:
4-16-04	8 a.m.	Best Western Greenwood Inn & Suites 10700 SW Allen Blvd. Beaverton, OR

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Proposed Adoptions: Rules in Ch. 635-004, 005, 011, 017, 041, 042, 044
Proposed Amendments: Rules in Ch. 635-004, 005, 011, 017, 041, 042, 044
Proposed Repeals: Rules in Ch. 635-004, 005, 011, 017, 041, 042, 044
Last Date for Comment: 4-16-04

Summary: Amend rules relating to Pacific lamprey use as bait and harvest at Willamette Falls for 2004. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Cristy Mosset
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6034

Date:	Time:	Location:
4-16-04	8 a.m.	Best Western Greenwood Inn and Suites 10700 Allen Blvd. Beaverton, OR 97005

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 183.335 & 496.138
Stats. Implemented: ORS 183.335 & 496.138
Proposed Amendments: Rules in Ch. 635-001, 003, 006, 007, 010, 043, 044, 046, 048, 050, 055, 056, 100, 200, 300, 425
Last Date for Comment: 4-16-04

Summary: Rules will open, within a limited scope, only to amend regulations to correct or eliminate outdated Agency references to Portland Headquarters, mail addresses, and references to contact individuals no longer employed. Housekeeping and technical corrections to the regulations occur to ensure rule consistency.
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Cristy Mosset
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6034

.....

Date:	Time:	Location:
4-16-04	8 a.m.	Best Western Greenwood Inn & Suites 10700 SW Allen Blvd. Beaverton, OR 97005

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Proposed Adoptions: Ch. 635-003, 013, 014, 016, 017, 018, 023
Proposed Amendments: Ch. 635-003, 013, 014, 016, 017, 018, 023
Proposed Repeals: Ch. 635-003, 013, 014, 016, 017, 018, 023
Last Date for Comment: 4-16-04

Summary: Amend rules relating to commercial and sport salmon fishing in the Pacific Ocean, sport salmon fishing in specific near-shore ocean waters, bays and coastal streams, and sport salmon fishing in the Columbia River and tributaries. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.
**Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Cristy Mosset
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6034

.....

Department of Forestry Chapter 629

Stat. Auth.: ORS 321 & 526
Stats. Implemented: ORS 321.705 - 321.795
Proposed Repeals: 629-023-0110, 629-023-0120, 629-023-0130, 629-023-0140, 629-023-0145, 629-023-0150, 629-023-0160, 629-023-0165, 629-023-0170, 629-023-0180
Last Date for Comment: 3-22-04, 5 p.m.

Summary: Rules related to the Western Oregon Small Tract Optional Tax (WOSTOT) Program are being proposed for repeal because the 2003 Legislative Assembly repealed the governing statutes for this program. Forestlands previously in the WOSTOT Program have been automatically transferred to the new FORESTLAND Program. Send Written comments to: Linda Price, 2600 State Street #D, Salem, OR 97310

For questions specific to the repeal, phone: (503) 945-7368
Rules Coordinator: Gayle Birch
Address: Department of Forestry, 2600 State St., Salem, OR 97310
Telephone: (503) 945-7210

NOTICES OF PROPOSED RULEMAKING

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

Date: 3-19-04 **Time:** 10:30 a.m.-12 p.m. **Location:** Rm. 137C
500 Summer St. NE
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065

Proposed Amendments: 410-122-0030, 410-122-0040, 410-122-0060, 410-122-0080, 410-122-0180, 410-122-0190, 410-122-0200, 410-122-0202, 410-122-0203, 410-122-0205, 410-122-0209, 410-122-0210, 410-122-0340, 410-122-0365, 410-122-0375, 410-122-0380, 410-122-0525, 410-122-0540, 410-122-0560, 410-122-0580, 410-122-0620, 410-122-0625, 410-122-0660, 410-122-0700

Proposed Repeals: 410-122-0105, 410-122-0120, 410-122-0140
Last Date for Comment: 3-19-04, 5 p.m.

Summary: The Durable Medical Equipment and Medical Supplies (DME) Services program Administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for services provided to clients. Rule 410-122-0200 will be amended to revise the pulse oximeter rule; rule 410-122-0105, 410-122-0120 and 410-122-0140 are being repealed to remove unnecessary billing instructions; and, the remainder of rules listed above will be amended to reflect technical changes, code updates and word clarification.

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

Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35 Salem, OR 97301-0177
Telephone: (503) 945-6927

Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: 414.065
Proposed Amendments: 410-121-0157
Last Date for Comment: 3-14-04

Summary: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for pharmaceutical products and services provided to clients. Rule 410-121-0157 will be permanently amended to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Updates include information from CMS Release #127, dated November 4, 2003 and #128, dated January 21, 2004. This rule was temporarily amended January 2004 and this is the Notice to permanently amend.

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: 3-26-04 **Time:** 10 a.m. **Location:** 800 NE Oregon St.
Rm. 120C
Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS040-0135; Other Auth.: OL 1999, Ch. 861
Stats. Implemented: ORS 453.855 - 453.912 & OL 1999, Ch. 861
Proposed Amendments: 333-040-0135
Last Date for Comment: 3-26-04, 5 p.m.

Summary: Amends the requirements for qualifications and training of personnel conducting sampling at illegal drug manufacturing sites. It allows those who have been collecting samples at drug lab sites consistently since prior to January 1, 2000, an exemption from the current rule requirements. Some minor housekeeping changes are also included.

**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) 731-4405

Date: 3-23-04 **Time:** 10 a.m. **Location:** 800 NE Oregon St.
Rm. 715
Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: HB 2151 (2003 OL, Ch. 608); Other Auth.: 8 U.S.C. Secs. 1182(e) & 1184(1)

Stats. Implemented: HB 2151 (2003 OL, Ch. 608)
Proposed Adoptions: 333-005-0000, 333-005-0010, 333-005-0020, 333-005-0030, 333-005-0040, 333-005-0050, 333-005-0060
Last Date for Comment: 3-26-04, 5 p.m.

Summary: HB 2151 implements the Physician Visa Waiver Program. The purpose of the program is to allow international medical graduates to remain in the United States after completion of their residencies, on the condition that they practice in federally designated shortage areas. Many Oregonians, especially those in rural areas, do not have access to a primary care doctor. The Physician Visa Waiver Program helps to address the physician shortage. In addition, HB 2151 authorizes the Department of Human Services to collect application fees from employers that utilize the program.

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

Rules Coordinator: Christina Hartman
Address: Department of Human Services, Public Health, 800 NE Oregon St., Portland, OR 97232
Telephone: (503) 731-4405

Date: 4-1-04 **Time:** 9 a.m. **Location:** 800 NE Oregon St.
Rm. 140
Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 624.570
Stats. Implemented: ORS 624.570
Proposed Adoptions: 333-175-0001, 333-175-0011, 333-175-0021, 333-175-0031, 333-175-0041, 333-175-0051, 333-175-0061, 333-175-0071, 333-175-0081, 333-175-0091, 333-175-0101, 333-175-0111
Proposed Repeals: 333-175-0000, 333-175-0010, 333-175-0020, 333-175-0030

Last Date for Comment: 4-1-04, 5 p.m.
Summary: These proposed amendments to the Food Handler Training Rules clarify the requirements relating to program delivery, program content, and minimum standards for program completion and issuance of the certificate. These rules also establish standards for providers of food handler training programs.

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

Rules Coordinator: Christina Hartman
Address: Department of Human Services, Public Health, 800 NE Oregon St., Portland, OR 97232
Telephone: (503) 731-4405

Stat. Auth.: ORS 446 & 624
Stats. Implemented: ORS 446.330, 624.100, 624.390 & 624.992

NOTICES OF PROPOSED RULEMAKING

Proposed Adoptions: 333-162-1005

Proposed Amendments: 333-029-0105, 333-029-0110, 333-030-0095, 333-150-0000, 333-157-0045, 333-162-0300, 333-162-0930, 333-170-0010, 333-170-0020, 333-170-0030, 333-170-0040, 333-170-0050, 333-170-0060, 333-170-0070, 333-170-0080, 333-170-0090, 333-170-0100, 333-170-0120, 333-170-0130

Proposed Repeals: 333-157-0050, 333-157-0060, 333-157-0090

Last Date for Comment: 3-22-04

Summary: Retroactively adopts previously submitted rules that are the result of legislation passed during the 2001 Legislative Session and the Food Protection Program's adoption of the 1999 FDA Food Code by Reference. The changes correct outdated rule references to the new Food Sanitation Rules in several programs and repeal rules that are not longer consistent with food service statutes. The changes require Organizational Camp food service operations to comply with the applicable provisions of the new Food Sanitation Rules. The use of latex gloves in food service establishments and mobile food units will be prohibited. These rules changes were previously submitted to the Secretary of State and became effective August 7, 2002. These rules are identical to the rules previously filed with the Secretary of State on August 7, 2002.

Retroactively adopts previously submitted rules that 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. These rules are the result of legislation passed during the 2001 Legislative Session. ORS 624.992 requires the Department of Human Services to establish protocols and limits for the assessment of civil penalties. These rule changes were previously submitted to the Secretary of State and became effective December 4, 2002. These rules are identical to the rules previously filed with the Secretary of State on December 4, 2002.

Rules Coordinator: Christina Hartman

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

Telephone: (503) 731-4405

.....

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

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.511 - 344.690

Proposed Amendments: 411-200-0010

Last Date for Comment: 3-22-04

Summary: The Department's Disability Determination Services section is amending 411-200-0010, General Policy rule under Rates of Payment — Medical rules to reflect the current fee schedules in the Federal Register.

Rules Coordinator: Lynda Dyer

Address: Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301

Telephone: (503) 945-6398

.....

Department of Human Services, Vocational Rehabilitation Services Chapter 582

Date:	Time:	Location:
3-16-04	1:30 p.m.	Human Resources Bldg. 500 Summer St. NE Rm. 352 Salem, OR

Hearing Officer: Robert Trachtenberg

Stat. Auth.: ORS 344.530; Other Auth.: 34 CFR 361.13(c), 34 CFR 361.37, 361.48, 361.49(a)(6), 5 CFR 213-3101-3102

Stats. Implemented: ORS 344.530

Proposed Amendments: 582-090-0010, 582-090-0020, 582-090-0030

Proposed Repeals: 582-090-0050

Last Date for Comment: 3-26-04

Summary: Amends rules on certification of disability for employment and other purposes, removing outdated statutory references, and clarifying services provided by DHS-OVRS staff under current federal regulations. Clients are not required to have open cases to receive certification services. Certification is provided on request for federal employment and other services such as Tri-Met Honored Citizen Cards and the Public Utility Commission Oregon Telecommunications Relay Service. Assistance with state employment is provided through the HIRE program.

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

Rules Coordinator: Robert Trachtenberg

Address: Department of Human Services, Vocational Rehabilitation Services, 500 Summer St. NE, E-87, Salem, OR 97301-1120

Telephone: (503) 945-6734

.....

Department of Justice Chapter 137

Date:	Time:	Location:
3-16-04	2 p.m.	OR Dept. of Justice 1162 Court St. NE Salem, OR

Hearing Officer: Peter Shepherd

Stat. Auth.: Ch. 801(2)(1), OL 2003

Stats. Implemented: Ch. 801, OL 2003

Proposed Adoptions: 137-105-0001 - 137-105-0040

Last Date for Comment: 3-16-04

Summary: The proposed rules facilitate the enforcement of the state's Non-participating Manufacturer statutes. The rule establishes the procedure, authorized by Chapter 801, Oregon Laws, 2003, by which the Department of Justice (DOJ) may establish and operate the Tobacco Products Manufacturers Directory. The rules further establish the protocols for quarterly escrow deposits as required by ORS 293.535 and Chapter 801, Oregon Laws 2003. Finally, the rules establish the reporting requirements for distributors of certain tobacco products and the method for calculating periods of time for the purpose of the rules.

**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 97301

Telephone: (503) 378-4400

.....

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

Date:	Time:	Location:
3-15-04	9:30 a.m.	4760 Portland Rd. NE Salem, OR 97305

Hearing Officer: Anita Phillips

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476, 479 & 480

Proposed Amendments: 837-040-0001, 837-040-0010, 837-040-0140

Last Date for Comment: 3-15-04

Summary: Adopt the 2003 International Fire Code, promulgated by the International Code Council, and recommended by the Joint Building/Fire Code Review Committee and the Oregon Fire Code Committee. This adoption will also include Oregon amendments recommended by the Oregon Fire Code Committee.

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

Rules Coordinator: Glen Andreassen

NOTICES OF PROPOSED RULEMAKING

Address: Oregon State Police, Office of State Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305
Telephone: (503) 373-1540, ext. 210

.....
Department of Transportation
Chapter 731

Date:	Time:	Location:
4-9-04	1:30 p.m.	ODOT Bldg. Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 184.616, 184.619 & Sec. 57, Ch. 618, OL 2003 (HB 2041)

Stats. Implemented: Sec. 57, Ch. 618, OL 2003 (HB 2041)

Proposed Adoptions: 731-050-0020

Last Date for Comment: 5-21-04

Summary: Section 57, Chapter 618, OL 2003 (HB 2041) requires adoption of rules defining the term "Ready for Construction" by the Oregon Transportation Commission by June, 30, 2004, for purposes of establishing funding priority for certain funding categories in Sections 10 and 39 of the Act. Proposed OAR 731-050-0020 defines "Ready for Construction."

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

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

Rules Coordinator: Brenda Trump

Address: Department of Transportation, 1905 Lana Ave. NE, Salem, OR 97314

Telephone: (503) 945-5278

Date:	Time:	Location:
3-25-04	2 p.m.	ODOT Bldg. Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 184.616, 184.619 & Ch. 790, OL 2003 (SB 772)

Stats. Implemented: Sec. 1 - 13, Ch. 790, OL 2003 (SB 772)

Proposed Adoptions: 731-070-0010 - 731-070-0330

Last Date for Comment: 4-9-04

Summary: Section 3, Chapter 790, Oregon Laws 2003 gives ODOT authority to establish the "Oregon Innovative Partnerships Program," the purpose of which is to develop partnerships with private entities or units of local government to develop an expedited project delivery process and maximize innovation for transportation projects. These rules establish a process for soliciting concepts or proposals or receive and evaluate concepts or proposals for transportation projects from private entities or units of government.

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

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

Rules Coordinator: Brenda Trump

Address: Department of Transportation, 1905 Lana Ave. NE, Salem, OR 97314

Telephone: (503) 945-5278

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

Date:	Time:	Location:
4-6-04	11 a.m.	ODOT Bldg. Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: David Eyerly

Stat. Auth.: ORS 184.616, 814.619, 803.570 & Section 48, Ch. 618, OL 2003 (HB 2041); Other Auth.: Section 48, Ch. 618, OL 2003 (HB 2041)

Stats. Implemented: ORS 803.570 & Section 48, Ch. 618, OL 2003 (HB 2041)

Proposed Amendments: 735-032-0010

Last Date for Comment: 4-9-04

Summary: The need to amend this rule is necessitated by legislation passed by the 2003 Legislative Assembly. Specifically, Section 48, Chapter 618, Oregon Laws 2003 (HB 2041) amended ORS 803.570. HB 2041 repealed the requirement formerly in ORS 803.570(3) that DMV establish plate fees based on plate manufacturing costs. As amended, ORS 803.570 requires DMV to determine by rule the fee amount charged for each registration plate or plates issued, but sets a limit on the amount DMV may charge at \$3 per single plate and \$5 per pair of plates. As amended, OAR 735-032-0010 establishes the registration plate fee at \$3 for a single plate and \$5 for a pair of plates. This changes the plate fee from \$2 for a single plate and \$3 for a pair of plates. Because the legislative change went into effect January 1, 2004, DMV temporarily amended OAR 735-032-0010 to coincide with the effective date of amended ORS 803.570. DMV now proposes to permanently amend this rule.

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

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Date:	Time:	Location:
4-6-04	9 a.m.	ODOT Bldg. Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: David Eyerly

Stat. Auth.: ORS 184.616, 184.619, 803.097, 822.035, 822.042 & Section 3, Ch. 459, OL 2003 (HB 2455); Other Auth.: Section 3, Ch. 459, OL 2003 (HB 2455)

Stats. Implemented: ORS 87.152, 87.162, 87.166, 87.172, 87.176 - 87.206, 90.425, 90.675, 98.805, 98.810, 98.812, 98.818, 98.830, 98.835, 803.097, 809.720, 811.555, 811.570, 819.110, 819.120, 819.160, 819.230, 822.035, 822.042, 822.045 & Section 3, Ch. 459, OL 2003

Proposed Adoptions: 735-150-0250, 735-150-0260

Last Date for Comment: 4-9-04

Summary: These rules are needed to implement Section 3, Chapter 459, Oregon Laws 2003 (HB 2455), which amended ORS 822.015 and added new provisions. The law change requires a lien claimant, who sells or offers for sale a vehicle being sold to foreclose a possessory lien, or sells or offers for sale a vehicle acquired through possessory liens, to keep records sufficient to establish that all vehicles being sold or offered for sale were acquired by the lien claimant as the result of a possessory lien. The new provision authorizes DMV to adopt rules to establish record keeping and notification requirements and impose civil penalties. OAR 735-150-0250 is proposed to specify the requirements, form and retention period of records required to be maintained by a lien claimant pursuant to HB 2455. The rule also specifies how a lien claimant will notify DMV of the sale of a vehicle subject to the new statutory requirements. OAR 735-150-0260 adds a civil penalty schedule DMV may use when determining appropriate civil penalty amounts for violations of OAR 735-150-0250. Because the legislative change went into effect June 24, 2003, DMV temporarily adopted OAR 735-150-0250 and 735-150-0260 to make rules effective as soon as possible after the date amended ORS 803.045 became effective. DMV now proposes to permanently adopt these rules.

NOTICES OF PROPOSED RULEMAKING

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

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

.....

Date:	Time:	Location:
4-6-04	11 a.m.	ODOT Bldg. Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: David Eyerly

Stat. Auth.: ORS 184.616, 184.619, 802.101, 803.015, 803.045, 819.016, 821.016 & Sec. 1, Ch. 24, OL 2003 (HB 2216); Other Auth.: Sec. 1, Ch. 24, 2003 OL 2003 (HB 2216)

Stats. Implemented: ORS 803.015, 803.045, 803.420 & Sec. 1, Ch. 24, OL 2003 (HB 2216)

Proposed Adoptions: 735-020-0070

Proposed Amendments: 735-024-0010

Last Date for Comment: 4-9-04

Summary: The adoption of OAR 735-020-0070 is necessitated by Section 1, Chapter 24, Oregon Laws 2003 (HB 2216), which amended ORS 803.045. The amendment prohibits DMV from issuing a vehicle title, if the current title, certificate or ownership document is a junk title, junk certificate or similar ownership document issued by another jurisdiction, or has a junk or similar brand or notation. The purpose of OAR 735-020-0070 is to specify what constitutes a "junk title," "junk certificate" or "similar ownership document" and "junk or similar brand or notation" for purposes of amended ORS 803.045. Amendments are made to OAR 735-024-0010 to remove terms used by other jurisdictions that, prior to the enactment of HB 2216, formed the basis for DMV to determine if an Oregon title would be issued with a title notation indicating the vehicle was previously damaged in another jurisdiction. Because the legislative change went into effect January 1, 2004, DMV adopted temporary rules to coincide with the effective date of amended ORS 803.045. DMV now proposes to permanently adopt these rules.

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

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

.....

Date:	Time:	Location:
4-6-04	9 a.m.	ODOT Bldg. Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: David Eyerly

Stat. Auth.: ORS 184.616, 184.619, 802.031, 803.530, 803.600 - 803.650, 806.680, 821.060, 821.080, 822.035, 822.205, 822.215 & Ch. 600, OL 2003 (HB 2388); Other Auth.: Ch. 600, OL 2003 (HB 2388)

Stats. Implemented: ORS 802.031, 803.600, 821.060, 821.080, 822.005, 822.080 & Ch. 600, OL 2003 (HB 2388)

Proposed Adoptions: 735-154-0005

Proposed Amendments: 735-034-0010, 735-150-0040, 735-150-0070

Last Date for Comment: 4-9-04

Summary: The need to amend these rules is necessitated by the passage of Chapter 600, Oregon Laws 2003 (HB 2388), which in part, amended ORS 803.600. The law change requires licensed vehicle dealers and towing companies to remove the registration stickers

from the registration plates of vehicles they sell that have Oregon registration plates. Exceptions from the requirement occur only if a dealer or tow company submits title and registration documents to DMV on behalf of the vehicle buyer, or if a dealer or tow company sells a vehicle to a licensed dealer. The law change authorizes dealers and towing companies to issue a new 10-day trip permit that allows vehicle buyers to operate their vehicles until DMV issues new registration stickers. DMV proposes to amend its trip permit rules to conform them to the new law. As amended, OAR 735-034-0010 adds language that specifies the procedures and requirements for issuance of the new 10-day trip permit. OAR 735-150-0040 is amended to add the 10-day trip permit to the list of trip permits that may be issued by vehicle dealers. OAR 735-150-0070 is amended to specify when a 10-day trip permit may be issued by a dealer. OAR 735-154-0005 is proposed for adoption to specify the authority of towing businesses to issue 10-day trip permits. Because the legislative change went into effect January 1, 2004, DMV temporarily amended these rules to coincide with the effective date of amended ORS 803.045. DMV now proposes to permanently adopt these rules.

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

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

.....

Stat. Auth.: ORS 184.616, 184.619, 802.600 & 803.097

Stats. Implemented: ORS 801.402, 801.465, 801.562, 802.600, 803.097 & 803.130 - 803.138

Proposed Amendments: 735-020-0000, 735-020-0020

Last Date for Comment: 4-9-04

Summary: ORS 802.097 requires DMV to determine by rule what constitutes receipt of an application for a security interest for purposes of perfection of security interest in a vehicle. To implement its electronic vehicle registration program (EVR), DMV recently entered into an agreement with an EVR integrator under the authority of ORS 802.600. The agreement authorizes the EVR integrator to process title and registration applications on behalf of DMV. The agreement also authorizes the EVR integrator to subcontract with qualified Oregon vehicle dealers who, with customer approval, file title and registration applications on behalf of their customers. The purpose and need for amendments to the above-referenced rules is to specify that for purposes of perfecting a security interest, an application for security interest may be received by DMV or the EVR integrator. OAR 735-020-0000, is amended to define the terms "agent," "EVR" and "EVR integrator." OAR 735-020-0020 is amended to specify that both DMV and the EVR integrator may accept an application for a security interest under ORS 803.097 and to clarify what constitutes receipt of an application as required by ORS 803.097(2).

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

.....

Department of Transportation, Highway Division Chapter 734

Date:	Time:	Location:
3-24-04	9:30 a.m.*	ODOT Bldg. Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: Stuart Foster

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 184.616, 184.619 & 810.180
Stats. Implemented: ORS 810.180
Proposed Amendments: 734-020-0010
Last Date for Comment: 3-24-04

Summary: Notice for this rulemaking was published February 1, 2004. A new notice is being filed to announce the public hearing. This rule currently establishes the specific locations of 65 MPH speed zones on interstate highways. House Bill 2661 amended ORS 810.180, setting the designated speed on interstate highways at 65 MPH. HB 2661 also gave ODOT authority to establish by rule designated speeds on any specified section of interstate highway if the department determines that speed limits established by law are greater or less than is reasonable or safe under the conditions that exist with respect to that section of the interstate highway. The rule is being rewritten in its entirety to establish a procedure for establishing speed zones by rule on interstate highways as directed by ORS 810.180(3) as revised by Chapter 819, Oregon Laws 2003. The rule will specify the procedure for ODOT to follow when establishing speeds other than the maximum speed set in Chapter 819, Oregon Laws 2003 (HB 2661) for interstate highways. The procedure for establishing speed zones on interstate highways must be in place before ODOT can begin the process of determining if speeds should be higher or lower than the speed designated by law on certain sections of the interstate highways. ***NOTE: The hearing is being held at the Oregon Transportation Commission meeting, which begins at 9:30 a.m. We anticipate the rule hearing will be an early item on the agenda.**

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.odot.state.or.us/rules/>.
**Auxiliary aids for persons with disabilities are available upon advance request.*

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

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060
Stats. Implemented: ORS 810.050, 810.060 & 818.100
Proposed Amendments: 734-071-0010, 734-071-0050
Last Date for Comment: 4-9-04

Summary: Cement Products Manufacturing Co., Inc. (Petitioner) requests an amendment to rules related to the definition of overall length in Division 71. Division 71 rules describe lengths of vehicles, loads and vehicle combinations that may operate without a special variance permit. Petitioner specifically requests that a small forklift attached to the rear of a motor truck be excluded from overall length, similar to the current exclusion for a small forklift attached to the rear of a semi-trailer. Petitioner owns a motor truck and attaches a small forklift to the rear of the motor truck to facilitate unloading. The overall length of the motor truck including the forklift is approximately 42 feet, which exceeds the current legal maximum length for a single vehicle. Petitioner has safely operated the over-length vehicle since March 2001 and, until recently advised otherwise, thought the operations were legal. An overdimensional variance permit for the operation is not authorized under current rules. The proposed amendment is needed to prevent economic hardship to Petitioner, and simply provides a similar exclusion to overall length determination of a motor truck as currently applies to a semi-trailer. Current exclusions to overall length determination are being moved from OAR 734-071-0010 to 734-071-0050. The proposed exclusion for a motor truck with attached forklift is added as subsection (3)(a).

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

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

Department of Transportation, Rail Division Chapter 741

Stat. Auth.: ORS 184.616, 184.619 & 823.011
Stats. Implemented: Sec. 10 and 11, Ch. 741, OL 2003
Proposed Adoptions: 741-020-0010 - 741-020-0080
Last Date for Comment: 4-9-04

Summary: These rules will establish the procedure for determining eligibility and the application procedure for grants and loans under the Industrial Spur program.

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

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

Stat. Auth.: ORS 184.616, 184.619, 367.066, 367.067 & 823.011
Stats. Implemented: ORS 367.066(2) & 367.067
Proposed Adoptions: 741-025-0010 - 741-025-0080
Last Date for Comment: 4-9-04

Summary: These rules will establish the procedure for determining eligibility and the application procedure for grants and loans under the Short Line Railroad Rail Infrastructure program.

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

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

Department of Veterans' Affairs Chapter 274

Stat. Auth.: ORS 406.030, 407.115, 407.325 & 407.327
Stats. Implemented: ORS 407.325 & 407.327
Proposed Amendments: 274-020-0341
Proposed Repeals: 274-020-0341(T)
Last Date for Comment: 3-23-04

Summary: This rule replaces and supersedes the Temporary Rule 274-020-0341(T) filed on January 21, 2004, and effective January 22, 2004 through April 5, 2004.

Applications on all ODVA's Veterans' Home Loan Program loans that have a maturity date of no more than 30 years and received on or after January 22, 2004, shall have the interest rate of 5.125 percent with an origination fee of 1.0 percent, or 5.0 percent with an origination fee of 1.5 percent.

PLEASE NOTE: The interest rate on the Certificate and Order for Filing of the Permanent Administrative Rule may change due to changes in the market rate.

Rules Coordinator: Herbert D. Riley
Address: Department of Veterans' Affairs, 700 Summer St. NE, Salem, OR 97301-1285
Telephone: (503) 373-2055

Employment Department, Child Care Division Chapter 414

Date:	Time:	Location:
3-17-04	1 p.m.	Employment Dept. Auditorium 875 Union NE Salem, OR 97311

Hearing Officer: Richard Luthé
Stat. Auth.: ORS Ch. 657.610; Other Auth.: Social Security Act, Sec. 466(a)(13)
Stats. Implemented: ORS Ch. 25.785
Proposed Amendments: 414-050-0010

NOTICES OF PROPOSED RULEMAKING

Proposed Repeals: 414-050-0010(T)

Last Date for Comment: 3-17-04, 5 p.m.

Summary: The Child Care Division is proposing to amend this rule to clarify that any written statement submitted to the CCD under section (2) of OAR 414-050-0010 will not be released by the CCD to any person or entity.

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

Rules Coordinator: Richard L. Luthé

Address: Employment Department, Child Care Division, 875 Union St. NE - Room 312, Salem, OR 97311

Telephone: (503) 947-1724

.....

Date:	Time:	Location:
3-17-04	2 p.m.	Employment Dept. Auditorium 875 Union NE Salem, OR 97311

Hearing Officer: Richard Luthé

Stat. Auth.: ORS Ch. 657.610; Other Auth.: Social Security Act, Sec. 466(a)(13)

Stats. Implemented: ORS Ch. 25.785

Proposed Repeals: 414-600-0000(T), 414-600-0010(T), 414-600-0020(T), 414-600-0030(T), 414-600-0040(T), 414-600-0050(T), 414-600-0060(T), 414-600-0070(T), 414-600-0080(T), 414-600-0090(T), 414-600-0100(T)

Last Date for Comment: 3-17-04, 5 p.m.

Summary: The Employment Department is proposing to repeal this rule as the Child Care Contribution Tax Credit Program was significantly changed by the passage of HB 3184 (Chapter 473, Oregon Laws 2003).

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

Rules Coordinator: Richard L. Luthé

Address: Employment Department, Child Care Division, 875 Union St. NE - Room 312, Salem, OR 97311

Telephone: (503) 947-1724

.....

Health Licensing Office Chapter 331

Date:	Time:	Location:
3-19-04	9 a.m.	Rhoades Conference Rm. Salem, OR

Hearing Officer: Bert Krages

Stat. Auth.: OL 2003 Ch. 547, OL 1999 Ch. 736 & OL 1999 Ch. 885; Other Auth.: ORS 183

Stats. Implemented: OL 2003 Ch. 547, OL 1999 Ch. 736 & OL 1999 Ch. 885

Proposed Amendments: 331-105-0020, 331-105-0030, 331-110-0005, 331-110-0010, 331-110-0055, 331-115-0020, 331-115-0030, 331-115-0060, 331-120-0000, 331-120-0020, 331-120-0030, 331-125-0000, 331-125-0010, 331-125-0020

Proposed Repeals: 331-100-0000, 331-100-0005, 331-100-0020, 331-100-0030, 331-105-0000, 331-105-0010, 331-115-0040, 331-115-0050, 331-115-0070, 331-130-0000, 331-130-0010, 331-130-0020, 331-135-0000, 331-135-0010, 331-135-0020, 331-135-0030

Last Date for Comment: 3-19-04

Summary: Passage of HB 2325 by the 2003 Legislature completed the process of reorganizing oversight and centralizing service for 15 health and related professions, including the practice of athletic training. Rules are being amended to eliminate duplicative provisions in each of the programs' rules — procedural rules, general administration, regulatory operations and licensing requirements. General amendments focus on adding provisions to link requirements between agency and program rules, improve readability of provisions, conform continuing education audit and sanction requirements with HLO business practices, and revises specific rule titles for uniformity with all programs under the agency's administration.

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

Rules Coordinator: Patricia C. Allbritton

Address: Department of Human Services, Health Division Licensing Programs, 700 Summer St. NE, Suite 320, Salem, OR 97302

Telephone: (503) 378-8667, ext. 4322

.....

Date:	Time:	Location:
3-19-04	9 a.m.	Rhoades Conference Rm. Salem, OR

Hearing Officer: Bert Krages

Stat. Auth.: OL 2003 Ch. 547, ORS 676.605, 676.615, 690.570; Other Auth.: ORS 183

Stats. Implemented: OL 2003 Ch. 547

Proposed Adoptions: 331-210-0021

Proposed Amendments: 331-205-0020, 331-205-0030, 331-210-0000, 331-210-0010, 331-210-0020, 331-215-0000, 331-215-0010, 331-215-0020, 331-215-0030, 331-215-0040, 331-220-0000, 331-220-0010, 331-220-0020, 331-220-0030, 331-220-0040, 331-220-0050, 331-220-0060, 331-220-0080, 331-225-0020, 331-225-0030, 331-225-0040, 331-225-0050, 331-225-0060, 331-225-0070, 331-225-0080, 331-225-0090, 331-225-0100, 331-225-0110, 331-225-0120, 331-225-0130, 331-225-0140, 331-225-0150, 331-225-0160

Proposed Repeals: 331-200-0000, 331-200-0010, 331-200-0020, 331-200-0030, 331-205-0000, 331-205-0010, 331-215-0050, 331-220-0070, 331-225-0000, 331-225-0010

Last Date for Comment: 3-19-04

Summary: Administrative rules are required to implement the provisions of HB 2325, passed by the Oregon Legislature in 2003, consolidating specific administrative, licensing and regulatory provisions currently contained within the programs' rules administered by the Health Licensing Office. The "agency rules" clarify appropriate jurisdiction and apply uniform standards and requirements for the body piercing licensing program administered by the agency. Amendments link provisions of the program rules with agency rules adopted in OAR 331, Divisions 001 through 030 — *Procedural Rules*; *General Administration Rules* (definitions, fees, refund of payments, charges for copies and documents, and notification requirements; *Regulatory Operations Rules* (contested case procedures, filing a complaint, complaint processing and investigation, civil penalty considerations and discipline); and *Registration Requirements* (application requirements, procedures for issuing and renewing registrations, duplicate registrations and sanctions).

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

Rules Coordinator: Patricia C. Allbritton

Address: Department of Human Services, Health Division Licensing Programs, 700 Summer St. NE, Suite 320, Salem, OR 97302

Telephone: (503) 378-8667, ext. 4322

.....

Date:	Time:	Location:
3-19-04	9 a.m.	Rhoades Conference Rm. Salem, OR

Hearing Officer: Bert Krages

Stat. Auth.: ORS 676.605, 676.615, 680.535, 680.566 & OL 2003 Ch. 547; Other Auth.: ORS 183

Stats. Implemented: OL 2003 Ch. 547

Proposed Amendments: 331-405-0020, 331-405-0030, 331-410-0000, 331-410-0010, 331-410-0020, 331-410-0030, 331-410-0040, 331-410-0050, 331-410-0060, 331-410-0065, 331-410-0080, 331-410-0090, 331-415-0000, 331-415-0010, 331-415-0020, 331-420-0000, 331-420-0020, 331-430-0030

Proposed Repeals: 331-400-0000, 331-400-0010, 331-400-0020, 331-400-0030, 331-400-0040, 331-405-0000, 331-405-0010, 331-405-0040, 331-405-0050, 331-410-0005, 331-410-0070, 331-410-0100, 331-425-0000, 331-425-0010, 331-425-0020, 331-430-0000, 331-430-0010, 331-430-0020

Last Date for Comment: 3-19-04

NOTICES OF PROPOSED RULEMAKING

Summary: Administrative rules are required to implement the provisions of HB 2325, passed by the Oregon Legislature in 2003, consolidating specific administrative, licensing and regulatory provisions currently contained within the programs' rules administered by the Health Licensing Office. The "agency rules" clarify appropriate jurisdiction and apply uniform standards and requirements for the denture technology program administered by the agency. Amendments link provisions of the program rules with agency rules adopted in OAR 331, Divisions 001 through 030 — *Procedural Rules; General Administration Rules* (definitions, fees, refund of payments, charges for copies and documents, and notification requirements); *Regulatory Operations Rules* (contested case procedures, filing a complaint, complaint processing and investigation, civil penalty considerations and discipline); and *Registration Requirements* (application requirements, procedures for issuing and renewing registrations, duplicate registrations and sanctions).

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

Rules Coordinator: Patricia C. Allbritton

Address: Department of Human Services, Health Division Licensing Programs, 700 Summer St. NE, Suite 320, Salem, OR 97302

Telephone: (503) 378-8667, ext. 4322

.....
**Health Licensing Office,
Board of Cosmetology
Chapter 817**

Date:	Time:	Location:
4-19-04	9 a.m.	700 Summer St. Suite 320 Salem, OR 97302

Hearing Officer: Bert Krages

Stat. Auth.: ORS 676.605, 676.615, 690.165, 690.205 & OL 2003, Ch. 547; Other Auth.: ORS 183

Stats. Implemented: OL 2003, Ch. 547

Proposed Amendments: 817-005-0005, 817-010-0007, 817-010-0014, 817-010-0055, 817-010-0060, 817-010-0065, 817-010-0068, 817-010-0069, 817-010-0075, 817-010-0101, 817-010-0300, 817-015-0010, 817-015-0030, 817-015-0065, 817-020-0005, 817-020-0011, 817-020-0012, 817-020-0015, 817-020-0305, 817-030-0005, 817-030-0015, 817-030-0018, 817-030-0020, 817-030-0030, 817-030-0040, 817-030-0045, 817-030-0055, 817-030-0065, 817-030-0080, 817-030-0100, 817-035-0010, 817-035-0020, 817-035-0030, 817-035-0050, 817-035-0070, 817-035-0090, 817-035-0110, 817-040-0003, 817-060-0020, 817-060-0030, 817-090-0025, 817-090-0035, 817-090-0045, 817-090-0050, 817-090-0055, 817-090-0065, 817-090-0070, 817-090-0075, 817-090-0080, 817-090-0085, 817-090-0095, 817-090-0100, 817-090-0105, 817-090-0110, 817-090-0115, 817-100-0005, 817-120-0005

Proposed Repeals: 817-001-0000, 817-001-0005, 817-001-0020, 817-001-0030, 817-055-0010, 817-070-0005, 817-080-0005, 817-090-0005, 817-090-0008, 817-090-0015, 817-110-0005

Last Date for Comment: 4-19-04

Summary: Administrative rules are required to implement the provisions of HB 2325, passed by the Oregon Legislature in 2003, consolidating specific administrative, licensing and regulatory provisions currently contained within the programs' rules administered by the Health Licensing Office. The "agency rules" clarify appropriate jurisdiction and apply uniform standards and requirements for the athletic training program administered by the agency. Amendments link provisions of the program rules with agency rules adopted in OAR 331, Divisions 001 through 030. Proposed amendments include terminology and citation corrections, clarification to materials in contact with clients and appropriate disposal or disinfecting of equipment, and requiring that mixing and using chemicals must take place away from an open flame or other potential ignition source.

Fee adjustments have been proposed to increase the required late fee from \$5 to \$25 per year in expired status and to adjust (some

increased/decreased) specific monetary fine amounts for approximately 34 civil penalties.

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

Rules Coordinator: Patricia C. Allbritton

Address: Health Licensing Office, Board of Cosmetology, 700 Summer St. NE, Suite 320, Salem, OR 97302

Telephone: (503) 378-8667, ext. 4322

.....
**Health Licensing Office,
Sanitarians Registration Board
Chapter 338**

Date:	Time:	Location:
5-20-04	9 a.m.	700 Summer St. Suite 320 Salem, OR 97302

Hearing Officer: Bert Krages

Stat. Auth.: ORS 676.605, 676.615 & OL 2003, Ch. 547; Other Auth.: ORS 183

Stats. Implemented: OL 2003, Ch. 547

Proposed Amendments: 338-005-0020, 338-005-0030, 338-010-0015, 338-010-0017, 338-010-0025, 338-010-0030, 338-010-0033, 338-010-0035, 338-010-0038, 338-010-0050, 338-020-0000, 338-020-0030, 338-020-0050

Proposed Repeals: 338-001-0000, 338-001-0005, 338-001-0008, 338-001-0010, 338-001-0015, 338-005-0000, 338-005-0010, 338-010-0060, 338-020-0060, 338-030-0000, 338-030-0010, 338-030-0020, 338-030-0030, 338-030-0040, 338-030-0050

Last Date for Comment: 3-19-04

Summary: Administrative rules are required to implement the provisions of HB 2325, passed by the Oregon Legislature in 2003, consolidating specific administrative, licensing and regulatory provisions currently contained within the programs' rules administered by the Health Licensing Office. The "agency rules" clarify appropriate jurisdiction and apply uniform standards and requirements for the environmental sanitation and wastewater sanitation program administered by the agency. Amendments link provisions of the program rules with agency rules adopted in OAR 331, Divisions 001 through 030 — *Procedural Rules; General Administration Rules* (definitions, fees, refund of payments, charges for copies and documents, and notification requirements); *Regulatory Operations Rules* (contested case procedures, filing a complaint, complaint processing and investigation, civil penalty considerations and discipline); and *Registration Requirements* (application requirements, procedures for issuing and renewing registrations, duplicate registrations and sanctions).

The proposed rules reflect the statutory name change from the regulatory board and fields of practice — *Environmental Health Registration Board, Environmental Health Specialist, and Waste Water Specialist*. Additional amendments are proposed to streamline the application and examination process, and clarify continuing education requirements.

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

Rules Coordinator: Patricia C. Allbritton

Address: Sanitarians Registration Board, 700 Summer St. NE, Suite 320, Salem, OR 97302

Telephone: (503) 378-8667, ext. 4322

.....
**Land Conservation and Development Department
Chapter 660**

Date:	Time:	Location:
3-11-04	9 a.m.	Hood River Co. Hearing Rm. 601 State St. Hood River, OR
4-22-04	9 a.m.	Basement Hearing Rm. Agriculture Bldg. 635 Capitol St. NE Salem, OR

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: LCDC

Stat. Auth.: ORS 197.040(1); Other Auth.: 215.213(2), 215.283(2), 215.296 - .298 & 517.750

Stats. Implemented: 197.040 & 215.298

Proposed Amendments: 660-023-0180, rules in 660-023

Last Date for Comment: 4-22-04, LCDC Hearing

Summary: The proposed amendments will broaden the definition of significant aggregate resources and make other related rule changes in order to allow local governments to authorize aggregate mining on sites that are smaller, or that have different qualities of materials, than the significant sites currently specified in this rule. For these and other significant aggregate sites, the proposed rule amendments will provide a different, more streamlined process for local consideration of mining proposals. The amended rule may include provisions to resolve conflicts with aggregate sites, including provisions that protect higher quality agricultural land from loss due to mining.

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

Rules Coordinator: Shelia Preston

Address: Land Conservation and Development Department, 635 Capitol St. NE - Suite 150, Salem, OR 97301-2540

Telephone: (503) 373-0050, ext. 222

Date:	Time:	Location:
3-11-04	9 a.m.	Hood River Co. Hearing Rm. 601 State St. Hood River, OR

Hearing Officer: LCDC

Stat. Auth.: ORS 197.040(1) & 197.175(1); Other Auth.: 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447, 724 P2d 268 (1986); 1000 Friends of Oregon v. Wasco County Court, 299 Or 344, 703 P2d 207 (1985).

Stats. Implemented: ORS 197.175 & 197.757

Proposed Amendments: Rules in 660-014

Proposed Renumberings: 660-001-0300 to 660-014-0045, 660-001-0310 to 660-014-0065, 660-001-0315 to 660-014-0075

Last Date for Comment: 3-11-04, LCDC Hearing

Summary: The proposed amendments will delete and amend rules in OAR 660, Division 014, in order to make this Division consistent with the Oregon Supreme Court decision in *1000 Friends of Oregon v. Wasco County Court*, 299 Or 344, 703 P2d 207 (1985). The proposed amendments will also modify the title of Division 014 to indicate that some of the rules in the division, as amended, also apply to planning and zoning of rural land with respect to urban uses regardless of whether the land is subject to a proposed incorporation, based on the Oregon Supreme Court decision in *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 724 P2d 268 (1986). Finally, OAR 660, Division 014, will be amended to add new rules regarding annexation of lands. The new rules to be added are currently under OAR 660, Division 001. Specifically, OAR 660-001-0030 thru 660-001-0315 will be renumbered as OAR 660-014-0045, 660-014-0065 and 660-014-0075.

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

Rules Coordinator: Shelia Preston

Address: Land Conservation and Development Department, 635 Capitol St. NE - Suite 150, Salem, OR 97301-2540

Telephone: (503) 373-0050, ext. 222

Oregon Department of Aviation Chapter 738

Date:	Time:	Location:
5-19-04	9 a.m.	Salishan Lodge The Pine Room 7760 North Highway 101 Glenden Beach, OR

Hearing Officer: Bill Wilkins, State Aviation Board

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 835.015, 835.025, 836.015 & 836.070

Proposed Adoptions: 738-125-0010, 738-125-0015, 738-125-0020, 738-125-0025, 738-125-0030, 738-125-0035, 738-125-0040, 738-125-0045, 738-125-0050, 738-125-0055

Last Date for Comment: 4-30-04

Summary: This rule establishes fair, reasonable and nondiscriminatory processes and criteria to govern the Department's Financial Aid to Municipalities (FAM) Grant Program. The FAM Grant Program fosters a statewide system of airports through discretionary award of financial assistance for airport planning, development and capital improvement projects. Businesses will experience a positive economic impact from the program because of the additional funding of projects on airports.

Note: Copy of proposed language for OAR 738-025 is available for review on the internet at www.aviation.state.or.us or at the Oregon Department of Aviation offices, 3040 25th Street SE, Salem, OR 97302-1125, telephone 503-378-4880.

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

Rules Coordinator: Carolyn R. Bolton

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

Telephone: (503) 378-4880, ext. 223

Oregon Economic and Community Development Department Chapter 123

Date:	Time:	Location:
3-16-04	9 a.m.-12 p.m.	Conf. Rm. 201 State Lands Bldg. Salem, OR

Hearing Officer: Lynn Beaton

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)

Stats. Implemented: ORS 777.262 - 777.267, 285A.666 - 285A.732 & 285A.654 - 285A.660

Proposed Adoptions: Rules in 123-035

Proposed Amendments: Rules in 123-020, 123-025, 123-027, 123-030

Proposed Ren. & Amends: Rules in 123-027

Last Date for Comment: 3-16-04

Summary: Amending all of the Port rules including: Port Planning and Marketing Fund, Marine Navigation Fund, Port Revolving Fund, Ports Representative Group, and Formation of Ports. The first three represent rules for programs that fund port projects and respond to 2003 legislative changes. The Ports Representative Group rules respond to 2003 legislative changes to statutes renaming the Ports Advisory Committee and establishing new criteria and responsibilities. The Formation of Ports rules updates the rules to better fit with the statute.

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

Rules Coordinator: Lynn Beaton

Address: Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

Telephone: (503) 986-0201

Date:	Time:	Location:
3-16-04	9 a.m.-12 p.m.	Conf. Rm. 201 State Lands Bldg. Salem, OR

Hearing Officer: Lynn Beaton

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.482

Proposed Amendments: Rules in 123-042

Proposed Repeals: 123-042-0050, 123-042-0060, 123-042-0075, 123-042-0140, 123-042-0160, 123-042-0170

Last Date for Comment: 3-16-04

NOTICES OF PROPOSED RULEMAKING

Summary: This Amendment affects the administration of the Special Public Works Fund. This division of administrative rules describes the process for administering and distribution of funds under Technical Assistance, Community Facilities/Essential Community Facilities Emergency, and Infrastructure. This division of rules reflects the separation of Community Facilities projects from Infrastructure projects. The temporary rule is necessary because the old rule is more restrictive and not in compliance with the statute as amended by House Bills 2300 and 2011.

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

Rules Coordinator: Lynn Beaton

Address: Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

Telephone: (503) 986-0102

Date:	Time:	Location:
3-16-04	9 a.m.-12 p.m.	Conf. Rm. 201 State Lands Bldg. Salem, OR

Hearing Officer: Lynn Beaton

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.269

Proposed Amendments: 123-055-0100, 123-055-0120, 123-055-0200, 123-055-0240, 123-055-0300, 123-055-0340, 123-055-0400, 123-055-0420, 123-055-0440, 123-055-0460, 123-055-0525, 123-055-0600, 123-055-0620, 123-055-0900, 123-057-0110, 123-057-0130, 123-057-0170, 123-057-0190, 123-057-0210, 123-057-0230, 123-057-0310, 123-057-0330, 123-057-0350, 123-057-0410, 123-057-0430, 123-057-0450, 123-057-0470, 123-057-0510, 123-057-0530, 123-057-0710

Last Date for Comment: 3-16-04

Summary: In accordance with HB 2300, modifies Regional Investment Plan to become Regional Investment Strategy with expanded purposes to leverage and attract capital investment. Directs Oregon Economic and Community Development Department Commission and Regional Investment Board to establish Regional Performance Measures. Establishes criteria for Regional Investment Boards to evaluate effectiveness of activities funded with Regional and Rural Investment funds. The rules govern the use of Regional and Rural Investment funds and outline the required planning and distribution, including specific performance criteria for the use of those funds as authorized by law.

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

Rules Coordinator: Lynn Beaton

Address: Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280

Telephone: (503) 986-0201

Oregon Housing and Community Services Chapter 813

Date:	Time:	Location:
3-22-04	10 a.m.	725 Summer St. NE Salem, OR 97301

Hearing Officer: Shelly Cullin

Stat. Auth.: ORS Ch. 183, 456.555(2) & 456.625(12)(16)

Stats. Implemented: ORS 456.515 - 456.725

Proposed Amendments: 813-350-0030

Proposed Repeals: 813-350-0030(T)

Last Date for Comment: 4-5-04

Summary: The rule establishes the eligibility for guarantees under the General Guarantee Program. Amendments to the rule adjusts the guarantee limits to meet immediate programmatic needs.

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

Rules Coordinator: Sandy McDonnell

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

Telephone: (503) 986-2012

Oregon Public Employees Retirement System Chapter 459

Date:	Time:	Location:
3-22-04	9:30 a.m.	Conference Rm. Archives Bldg. 800 Summer St. NE Salem, OR

Hearing Officer: Yvette Elledge

Stat. Auth.: ORS 238.650 & OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733 (Enrolled HB 2020)

Proposed Adoptions: 459-070-0900

Last Date for Comment: 4-19-04

Summary: A new administrative rule is needed to implement and clarify provisions of Enrolled HB 2020, which established the Oregon Public Service Retirement Plan (OPSRP). As staff has continued to identify transactions that may occur now that OPSRP is in operation, several issues have arisen that require immediate attention to administer the new plan. Temporary rules are needed to administer the OPSRP until permanent rules and associated application forms and information can be developed to administer the following areas of the OPSRP Pension Program and Individual Account Program (IAP): beneficiary designation under the IAP, withdrawals under both the Pension Program and the IAP, retirements under the IAP, and disabilities under the Pension Program.

A copy of the proposed rule is available to any person upon request. The rule is also available at <http://www.pers.state.or.us>. Public comment may be mailed to the above address or sent via email to yvette.s.elledge@state.or.us.

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

Rules Coordinator: Yvette S. Elledge

Address: Oregon Public Employees' Retirement System, PO Box 23700, Tigard, OR 97281-3700

Telephone: (503) 603-7713

Oregon Student Assistance Commission, Office of Degree Authorization Chapter 583

Date:	Time:	Location:
4-2-04	10:30 a.m.	State Capitol Bldg. 900 Court St. NE Hearing Rm. C Salem, OR

Hearing Officer: Brian Clem, Commission Chair

Stat. Auth.: ORS 183, 348, 348.594, 348.606

Stats. Implemented: ORS 348, 348.594, 348.603, 348.606, 348.612

Proposed Amendments: 583-030-0010, 583-030-0020, 583-030-0035, 583-030-0041, 583-030-0042, 583-030-0046

Last Date for Comment: 4-2-04

Summary: Re-filing to correct a technical error, retroactive to 11-1-2003 effective date of rule.

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

Rules Coordinator: Susan Taylor

Address: Student Assistance Commission, Office of Degree Authorization, 1500 Valley River Dr. #100, Eugene, OR 97401

Telephone: (541) 687-7443

NOTICES OF PROPOSED RULEMAKING

Oregon University System Chapter 580

Date: 3-15-04 **Time:** 12 p.m. **Location:** Walnut Rm.
Erb Mem. Union, UO
Eugene, OR 97403

Hearing Officer: Rebecca Bordreaux
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Adoptions: 580-020-0006
Last Date for Comment: 3-16-04

Summary: The proposed OAR distinguishes positions in unclassified service. These positions do not provide academic instruction nor do they fit within the Oregon University System's classification system for represented employees. The OUS Office of Human Resources worked with representatives throughout the OUS to determine a list of positions that meet this criteria.

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

Rules Coordinator: Marcia M. Stuart
Address: Department of Higher Education, PO Box 3175, Eugene, OR 97403-0175
Telephone: (541) 346-5795

Oregon University System, University of Oregon Chapter 571

Date: 4-7-04 **Time:** 4 p.m. **Location:** Owyhee & Metolius Rms.
ERB, UO
Eugene, OR

4-13-04 4 p.m. Owyhee & Metolius Rms.
ERB, UO
Eugene, OR

Hearing Officer: Deb Eldredge
Stat. Auth.: ORS 351.070 & 352
Stats. Implemented: 351.070
Proposed Adoptions: 571-060-0005
Last Date for Comment: 4-14-04, 12 p.m.
Summary: Increase in family housing rental rates to cover projected operating costs for 2004-2005.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Deb Eldredge
Address: Oregon State System of Higher Education, University of Oregon, 1226 President's Office, University of Oregon, Eugene, OR 97403-1226
Telephone: (541) 346-3082

Parks and Recreation Department Chapter 736

Date: 3-15-04 **Time:** 1:30 p.m. **Location:** OPRD
725 Summer St. NE
Suite C
Salem, OR 97301

Hearing Officer: Steve Brutscher
Stat. Auth.: ORS 390.180(1)(b) & 390.124; Other Auth.: Article XV, Sec. 4a(3) of the OR Constitution
Stats. Implemented: ORS 390.180(1)(b)
Proposed Amendments: 736-006-0100, 736-006-0105, 736-006-0110, 736-006-0115, 736-006-0120, 736-006-0125, 736-006-0130, 736-006-0135
Last Date for Comment: 4-13-04
Summary: Amend the procedures and requirements for the distribution of state funds to eligible local governments and the process for establishing the priority order in which projects will be funded for the development of public outdoor recreation areas and facilities.

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

Rules Coordinator: Angie Springer
Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301
Telephone: (503) 986-0719

Public Utility Commission Chapter 860

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040 & 756.500 - 756.575
Proposed Amendments: 860-011-0001
Last Date for Comment: 3-22-04

Summary: The amendment would add the word "permanent" to OAR 860-011-0001(1) to reflect the Commission's practice of providing written notification to interested persons regarding the adoption, amendment or repeal of any permanent rule.

Rules Coordinator: Lauri Salsbury
Address: Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551
Telephone: (503) 378-4372

Racing Commission Chapter 462

Date: 3-18-04 **Time:** 10 a.m. **Location:** Rm. 140
800 NE Oregon St.
Portland, OR

Hearing Officer: Stephen S. Walters, Commissioners
Stat. Auth.: ORS 462.270(3); Other Auth.: ORS 462.725
Stats. Implemented: ORS 462.725
Proposed Amendments: 462-110-0030, 462-120-0040, 462-140-0070, 462-140-0410, 462-140-0420, 462-140-0480, 462-170-0010, 462-170-0030, 462-170-0050, 462-180-0010, 462-180-0060
Last Date for Comment: 3-18-04
Summary: Amends the rules pertaining to definitions; types of licenses; duties of commission veterinarian, racing secretary, kennel owner, lead-out; official schooling requirements; grading system; withdrawals from races; purchase, sale and adoption; care in transit.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Carol N. Morgan
Address: Oregon Racing Commission, 800 NE Oregon St. #11, Suite 405, Portland, OR 97232
Telephone: (503) 731-4052

Secretary of State, Archives Division Chapter 166

Date: 3-29-04 **Time:** 9 a.m. **Location:** State Archives Bldg.
Salem, OR

Hearing Officer: Mary Beth Herkert
Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005-192.170 & 357.805-357.895
Proposed Amendments: 166-475-0060
Last Date for Comment: 3-29-04
Summary: Change is necessary to bring the retention requirements for animal research records into compliance with federal regulations found in 9 CFR 2.35(f).
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: Julie Yamaka
Address: Secretary of State, Archives Division, 800 Summer St. NE, Salem, OR 97310
Telephone: (503) 373-0701, ext. 240

NOTICES OF PROPOSED RULEMAKING

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

Date: 3-31-04 **Time:** 9-9:30 a.m. **Location:** 900 Court St.
Rm. 257
Salem, OR 97301

Hearing Officer: Brenda Bayes

Stat. Auth.: ORS 246.150, 250.105, 250.215, 250.315 & 255.175

Stats. Implemented: ORS 250.105, 250.215, 250.315 & 255.175

Proposed Amendments: 165-014-0030, 165-014-0110

Last Date for Comment: 3-31-04, 5 p.m.

Summary: These proposed rule amendments, of OAR 165-014-0030 and 165-014-0110, conform the statistical sampling rules to OAR 165-010-0005, 165-014-0005 and 165-020-0005, the 2004 manuals, which were previously adopted. Most changes are technical in nature, however language has been added to both rules, which clarifies that signature sheets that do not contain a dated circulators certification, shall be removed during the signature verification process. Additionally Appendix 1 of the sampling formula has incorporated an accounting for triplicate signatures.

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

Rules Coordinator: Brenda Bayes

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

Telephone: (503) 986-1518

Stat. Auth.: ORS 246.150, 255.305

Stats. Implemented: ORS 246.179, 246.250, 251.365, 254.046,
255.305

Proposed Amendments: 165-020-0050, 165-020-0060

Last Date for Comment: 3-31-04, 5 p.m.

Summary: OAR 165-020-0050 and 165-020-0060 designate the forms used by the counties for billing for a local election and the purpose of such billings. The amendment to these rules will adopt form SEL 951B, Election Equipment lease/Maintenance Worksheet Annual or Unit Cost Method, for the county clerks to use in the amortization of election equipment. Form SEL 950B is a one sheet summary which incorporates both the annual method and the unit cost method of calculating the amortization of election equipment. Forms SEL 950 and SEL950A provide a detailed accounting based on each of these methods.

Rules Coordinator: Brenda Bayes

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

Telephone: (503) 986-1518

ADMINISTRATIVE RULES

Appraiser Certification and Licensure Board Chapter 161

Adm. Order No.: ACLB 1-2004

Filed with Sec. of State: 2-3-2004

Certified to be Effective: 2-3-04

Notice Publication Date: 11-1-03

Rules Amended: 161-002-0000, 161-025-0060

Subject: Permanent changes to Oregon Administrative Rules 161, Division 2 regarding definitions; and Division 25 regarding appraisal standards and the USPAP.

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

161-002-0000

Definitions

As used in OAR 161-001-0005 to 161-050-0050, the following terms (whether capitalized or not) shall have the following meanings:

(1) "Administrator" means the administrator of the Board appointed by the Board.

(2) "Affiliate" means a business organization sharing with a financial institution or insurance company some aspect of common ownership and control.

(3) "Appraisal" or "Real Estate Appraisal" means "appraisal" as defined in USPAP.

(4) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(5) "Appraisal Report" means "report" as defined in USPAP.

(6) "Appraiser Assistant" means a person who is not licensed or certified as an appraiser, but is registered as an appraiser assistant under ORS 674.310, and who assists with real estate appraisal activity under the direct supervision of a certified or licensed appraiser.

(7) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) established pursuant to the Federal Act.

(8) "Board" or "ACLB" means the Appraiser Certification and Licensure Board established under ORS chapter 674.

(9) "Certificate" means the document issued by the Board indicating that the person named thereon has satisfied the requirements for certification as a state certified residential or state certified general appraiser.

(10) "Classroom hour" as used in reference to qualifying and continuing education means 50 minutes out of each 60 minute segment.

(11) "Completion" means interpreting, analyzing and reconciling data or compiled data, including reviewing and adopting another person's interpretations and reconciliations as one's own.

(12) "Complex one-to-four family residential property appraisal" means an appraisal in which the property to be appraised, market conditions, or form of ownership is atypical. For example, atypical factors may include, but are not limited to:

- (a) Architectural style;
- (b) Age of improvements;
- (c) Size of improvements;
- (d) Size of lot;
- (e) Neighborhood land use;
- (f) Potential environmental hazard liability;
- (g) Property interests;
- (h) Limited readily available comparable sales data; or
- (i) Other unusual factors.

(13) "Continuing Education" means education that is creditable toward the education requirements that must be satisfied to renew licensure as a state licensed appraiser or certification as a state certified residential or state certified general appraiser.

(14) "Direct Supervision" of an appraiser assistant means:

(a) Disclosing in the appraisal report that the supervising appraiser has inspected the subject property both inside and out, and has made an exterior inspection of all comparables relied upon in the appraisal or disclose that the supervising appraiser did not inspect the subject property both inside and out, and did not inspect the exterior of comparables relied upon in the appraisal; and

(b) Reviewing the appraiser assistant's appraisal report(s); and

(c) Accepting responsibility for the appraisal report by signing and certifying that the report has been prepared in compliance with the Uniform Standards of Professional Appraisal Practice.

(15) "Federal Act" means Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C 3310 et seq.).

(16) "Federal Financial Institution Regulatory Agency" means:

- (a) The Board of Governors of the Federal Reserve System;
- (b) The Federal Deposit Insurance Corporation;
- (c) The Office of the Comptroller of the Currency;
- (d) The Office of Thrift Supervision; or
- (e) The National Credit Union Administration.

(17) "Financial Institution" means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act.

(18) "Issuance" means the act of communicating the opinion of value either in writing or orally.

(19) "License" means the document issued by the Board indicating that the person named thereon has satisfied all requirements for licensure as a state licensed appraiser.

(20) "Mortgage banker" has the meaning defined in ORS 59.840.

(21) "Non-residential" appraising means to render a value on real property other than one-to-four family residential properties.

(22) "One-to-four family residential property" means a property that includes one to four residential units and is residential in character, i.e., zoning, land use.

(23) "Preparation" means compiling data, including reviewing and adopting such compiled data as one's own.

(24) "Prerequisite education" means the initial qualifying educational requirements to become licensed or certified with the Board.

(25) "Professional real estate activity" has the meaning defined in ORS 696.010.

(26) "Qualifying Education" means education that is creditable toward the education requirements for initial licensure or certification under one or more of the three real estate appraiser classifications.

(27) "Real estate appraisal activity" has the meaning defined in ORS 674.100.

(28) "Real Estate" or "Real Property" means an identified parcel or tract of land, together with any improvements, that includes easements, rights-of-way, undivided or future interests or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(29) "State Certified General Appraiser" means an individual who has been certified as a state certified general appraiser by the Board.

(30) "State Certified Residential Appraiser" means an individual who has been certified as a state certified residential appraiser by the Board.

(31) "State Licensed Appraiser" means an individual who has been licensed as a state licensed appraiser by the Board.

(32) "Transaction Value" means:

(a) For loans or other extensions of credit, the amount of the loan or extension of credit; and

(b) For sales, leases, purchases and investments in or exchange of real property, the market value of the real property interest involved; and

(c) For the pooling of loans or interest in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(d) For determinations of the transaction value of real property or interests in real property in circumstances other than described in the preceding (a) to (c) of this section (36), the market value of the real property interest involved.

(e) In condemnation or partial taking actions, the transaction value is deemed to be the value of the larger parcel before the taking.

(33) "Uniform Standards of Professional Appraisal Practice" or "USPAP" means the standards adopted and published by the Appraisal Standards Board of the Appraisal Foundation dated April 27, 1987, as amended January 1, 2004.

(34) "Workfile" means "workfile" as defined in USPAP.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94; Renumbered from 161-10-000; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04

ADMINISTRATIVE RULES

161-025-0060

Appraisal Standards and USPAP

(1) All appraisal reports shall be prepared in accordance with these administrative rules and USPAP.

(2) In addition to the Ethics Provision of the USPAP, it is unethical to knowingly violate USPAP.

(3) An individual appraiser employed by a group or organization which conducts itself in a manner that does not conform to these standards shall nonetheless comply with the standards.

(4) An appraiser who signs the appraisal report must inspect the subject property both inside and out, and must inspect the exterior of all comparables relied upon in the appraisal, or disclose that the appraiser did not inspect the subject property both inside and out, and did not inspect the exterior of comparables relied upon in the appraisal.

(5) All testimony before an administrative or judicial proceeding will be based upon written reports prepared in conformance with USPAP.

(6) The "Uniform Standards of Professional Appraisal Practice", 2004 Edition, approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, dated April 27, 1987, as amended on January 1, 2004, are incorporated into the Administrative Rules of the Appraiser Certification and Licensure Board as the standards of professional conduct which shall guide the behavior of licensed and certified appraisers in the State of Oregon. Copies of the Uniform Standards of Professional Appraisal Practice may be obtained from the Appraisal Foundation located at 1029 Vermont Avenue, N.W., Suite 900, Washington D.C. 20005-3517.

(7) The appraiser shall list his/her certificate or license number in the appraisal report.

(8) State licensed, State Certified Residential and State Certified General appraisers shall comply with USPAP in all valuation work as provided in ORS 674.100(2), (3).

(9) Notwithstanding any other provision of these rules, the following licensed or certified appraisers are not subject to the requirements of Standard 3 of USPAP when examining an appraisal as part of an official investigation conducted by the Appraiser Certification and Licensure Board:

(a) State Licensed, State Certified Residential or State Certified General Appraisers who are serving on the Board;

(b) State Licensed, State Certified Residential or State Certified General Appraisers who are employed by the Board;

(c) State Licensed, State Certified Residential or State Certified General Appraisers acting as volunteers at the request of the Board.

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

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

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 4-1994, f. & cert. ef. 7-27-1994; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-89; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 3-2000(Temp), f. 11-9-00, cert. ef. 11-9-00 thru 5-8-01; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04

Board of Architect Examiners Chapter 806

Adm. Order No.: BAE 1-2004

Filed with Sec. of State: 1-28-2004

Certified to be Effective: 1-28-04

Notice Publication Date: 12-1-03

Rules Amended: 806-020-0080

Subject: This rule change accommodates the changes from passage of Senate Bill 211 at the 2003 Legislative Assembly, and allows the Board to take disciplinary action against those who have been the subject of disciplinary action by another jurisdiction.

Rules Coordinator: Carol Halford—(503) 763-0662

806-020-0080

Misconduct

Under the provisions of ORS 671.090 and ORS 671.220, an architect may be disciplined for misconduct in the practice of architecture who has:

(1) Signed or stamped drawings, specifications, reports or other professional work which was not prepared under the architect's direct control and supervision.

(2) Offered or accepted gifts, other than gifts of nominal value (e.g. reasonable entertainment and hospitality), with the intent of influencing the judgment of an existing or prospective client or governmental official in connection with a project in which the architect is interested.

(3) Engaged in any conduct involving fraud or deceit which relates to the business or practice of architecture.

(4) Assisted the application for registration of a person by falsely verifying the individual's education, training or experience.

(5) Made any false statement or given any false information in connection with an application for registration or for renewal of registration.

(6) Been convicted of any crime under circumstances that relate to the practice of architecture.

(7) Violated any federal or state statute or rule that relates to the practice of architecture.

(8) Practiced architecture while the architect's ability to practice was impaired by alcohol or drugs.

(9) Engaged in false, misleading or deceptive advertising.

(10) Made a substantial misrepresentation in the course of practice.

(11) Obtained or attempted to obtain compensation by fraud or deceit.

(12) Engaged in any conduct that, through professional experience, is not an acceptable standard for architectural practice in Oregon.

(13) Practiced architecture in Oregon while not holding an active Oregon license to practice architecture.

(14) Been the subject of disciplinary action taken by another jurisdiction.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.090(4) & ORS 671.125

Hist.: AE 1-1983, f. & ef. 1-12-83; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2004, f. & cert. ef. 1-28-04

Board of Examiners for Engineering and Land Survey Chapter 820

Adm. Order No.: BEELS 1-2004

Filed with Sec. of State: 1-26-2004

Certified to be Effective: 1-26-04

Notice Publication Date: 12-1-03

Rules Adopted: 820-010-0623

Rules Amended: 820-010-0010, 820-010-0200, 820-010-0225, 820-010-0450, 820-010-0500, 820-015-0026

Subject: OAR 820-010-0010(17) - Clarifies the scope of practice of retired engineers.

OAR 820-010-0010(18) - Creates a definition of a nonresident engineer as referred in ORS 672.050.

OAR 820-010-0200 - Repeals language previously adopted to implement the grandfather provision under ORS 672.129(4), which ceased to apply on October 23, 2000.

OAR 820-010-0225(3)(c) (4)(b) - Clarifies and expands types of qualifying programs for licensing applicants.

OAR 820-010-0450 - Removes acoustical, manufacturing, and traffic engineering from the list of exams offered by the Board as provided in OAR 820-010-0450(3).

OAR 820-010-0500 - Repeals subsection (2) of the rule removing the requirement for licensure as a qualification for the position of Executive Secretary.

OAR 820-010-0623 - Adds requirements and restrictions for stamping documents prepared by more than one registrant. This allows multiple registrants to prepare and take responsibility for portions of a document as long as the portion prepared by each registrant is clearly denoted.

OAR 820-015-0026(2) (3) - Provides for placing license of registrant in inactive status for failing to comply with continuing professional development requirements and allows the Board to provide a one-year grace period for a registrant deficient in accumulating PDH requirements.

Rules Coordinator: Mari Lopez—(503) 362-2666

820-010-0010

Definitions

The following definitions and guides have been adopted by the Board to assist registrants and the general public in their interpretation of specific portions of ORS 672.002 to 672.325.

ADMINISTRATIVE RULES

(1) "Board" means the Oregon State Board of Examiners for Engineering and Land Surveying provided by ORS 672.240.

(2) "Practice of Engineering" refers to ORS 672.005 and 672.007.

(3) "Technician work" means the time spent on work where the personal responsibility and technical knowledge required are small; that is, where the individual performance of a task, set and supervised by others, is all that is required. It shall also include all time spent in work before applicant is 18 years old, excepting for engineering and land surveying education, see sections (5) and (9) of this rule. Engineering "technician work" will include, but not be limited to, work as: inspector, laboratory assistant, design assistant, survey technician, or draftsman. Land Surveying "technician work" will include, but not be limited to, survey technician, draftsman, instrument, plotter, or computation work under close supervision and not requiring the exercise of judgment in survey or map design, nor decisions on boundary location.

(4) "Engineering work," means time after an applicant is 18 years old spent in work of a higher grade and responsibility than that above defined as "technician work". Time spent in engineering teaching subsequent to graduation shall be listed as "engineering work". Time spent in training and performing engineering work to supplement engineering education for the purpose of qualifying for the FE examination shall be listed as "engineering work". Engineering work done during summer vacations will be considered as part of the year of "engineering education".

(5) "Responsible Charge of engineering work" means that:

(a) The applicant must have had direction of work, the successful accomplishment of which rested upon the individual, where the individual had to decide questions of methods of execution and suitability of materials, without relying upon instruction from their superior, and of supplying deficiencies in plans, or correcting errors in design without first referring them to higher authority for approval; or

(b) That the applicant must have undertaken investigations or carried out important assignments that demand resourcefulness and originality, or made plans, written specifications, and directed computations made in connection with engineering works when guided solely by rough sketches, general information, and field measurements;

(c) Experience as a full-time assistant professor or above, in a Board-approved engineering curriculum, may be considered at the discretion of the Board as "charge of engineering work of a character satisfactory to the Board".

(6) "Practice of land surveying" refers to ORS 672.005(3) and 672.007. It is interpreted by the Board as the application of all technologies for quantitative measurement of the earth surface, sub-surface, and sub-oceanic features for the purpose of, but not limited to, location and relocation of boundaries, construction of maps, and the determination of positions, elevations, areas, and volumes. The practice requires fundamental knowledge of mathematics and science as applied to instrumentation, observations, and measurements and the rigid adjustments of data to useful and practical mapping and survey systems. The practice also requires authoritative knowledge of common law in boundary locations particularly with regard to unwritten title transfer and admissible evidence, as well as the current statutory laws in the State of Oregon with respect to land subdivision and the legal responsibilities of a land surveyor.

(7) "Land surveying work" means time after the applicant is 18 years old spent in work of a higher grade and responsibility than that above defined as "technician work". Engineering work, not related to the practice of land surveying as defined under section (6) of this rule, is not land surveying work. Time spent in training and performing land surveying work to supplement surveying education, for the purpose of qualifying for the FLS examination shall be listed as "land surveying work". "Land surveying work" done during summer vacations shall be considered as part of the year of "land surveying education".

(8) "Responsible Charge of land surveying work" means that:

(a) The applicant must have had direction of work, the successful accomplishment of which rested upon the individual, where the individual had to decide questions of methods of execution, design of a survey system, the research and evaluation of evidence, the preparation of maps, or plats for record without relying upon advice or instruction from their superior, and the supplying of deficiencies or correcting errors in surveys or maps without first referring them to higher authority for approval; or

(b) That the applicant must have undertaken investigations or carried out important assignments that demand resourcefulness and originality, or made plans and directed computations in connection with land surveying work when guided solely by general guidelines and information;

(c) Experience as a full-time assistant professor or above, in a Board-approved land surveying curriculum may be considered at the discretion of the Board as "charge of land surveying work".

(9) "Under direct supervision and control" shall be construed to mean that the engineer or land surveyor providing such supervision shall have made the decisions on technical matters of policy and design and shall have exercised their own professional judgment in all engineering and land surveying matters that are embodied in the plans, design, specifications, or other documents involved in the work. By applying their seal to the final documents, they accept responsibility thereof.

(10) Professional Development Hour (PDH) — A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.

(11) Continuing Education Unit (CEU) — Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(12) College/Unit Semester/Quarter Hour — Credit for course work in an approved program or other related college course approved in accordance with article (e) of this section.

(13) Course/Activity — Any qualifying course or activity with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to the licensee's field of practice.

(14) Multiple Registrant — A person who is registered as both a land surveyor and an engineer or is registered as an engineer in two or more disciplines.

(15) Active Status — An engineer or land surveyor who is providing professional engineering or land surveying services to the public.

(16) Inactive Status — An engineer or land surveyor who has notified the Board that they are not providing professional engineering or land surveying services to the public of the State of Oregon and who requests exemption from Continuing Professional Development requirements from the Board.

(17) Retired status — An engineer or land surveyor meeting the requirements of ORS 672.180, who has notified the Board that they are not providing engineering or land surveying services to the public of the State of Oregon and who requests the retired status.

(18) Nonresident engineer — a nonresident engineer as used in ORS 672.050 shall mean an engineer who does not meet the residence requirements of OAR 820-010-0616(1).

(19) Acronyms:

(a) ACCE — American Council for Construction Education;

(b) ABET — Accreditation Board for Engineering and Technology, Inc.;

(c) EAC — Engineering Accreditation Commission of ABET;

(d) TAC — Technology Accreditation Commission of ABET;

(e) ASAC — Applied Science Accreditation Commission of ABET;

(f) EI — Engineering Intern;

(g) LSI — Land Surveying Intern.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 17, f. 4-22-74, ef. 5-11-74; EE 20, f. & ef. 12-15-77; EE 1-1987, f. & ef. 1-5-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 4-2000, f. & cert. ef. 8-4-00; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2002, f. & cert. ef. 3-13-02; BEELS 1-2004, f. & cert. ef. 1-26-04

820-010-0200

Application for Registration as Professional Engineers (PE)

(1) (References are to Engineers' and Land Surveyors' Registration Law, ORS Chapter 672, as amended.) Applications may be made for admission to examination for registration as provided in ORS 672.255. Professional engineers registered in other states may file applications for registration on the basis of comity with such other state as provided in ORS 672.125. The National Council of Examiners for Engineering and Surveying Certificate verified record may be accepted at full value. Experience records and references of the NCEES verified record are to be current within the last two years. If not, they must be verified by the Board.

(2) Applicants who are not registered in any state or jurisdiction but who meet all requirements for registration in Oregon may be considered for registration if the application is submitted within 2 years following completion of the practical examination. This section does not apply to applicants who are not currently registered due to expired, delinquent, or otherwise invalid certificates.

(3) Professional engineers currently registered in another jurisdiction that, at the time of that registration, did not require an examination equivalent to the Fundamentals of Engineering may be considered as having met

ADMINISTRATIVE RULES

substantially-equivalent requirements for registration in Oregon after providing evidence of each of the following:

- (a) Graduation in an engineering curriculum of four years or more;
- (b) Passage of a written examination devoted to practical engineering problems; and
- (c) No less than 12 years of qualifying engineering practice, approved by the Board, as a registered professional or a chartered engineer in a jurisdiction identified as approved by the Board through the agreement on education known as the "Washington Accord";
- (d) Successful passage of an oral exam if required by the Board;
- (e) Applicants are advised that registration under this equivalent provision may not satisfy requirements in other jurisdictions.

(4) Prior to issuing an initial certificate of registration to practice in Oregon, each applicant must pass a "take-home" examination on the laws and rules that regulate practice.

(5) The Board shall grant registration as a "Geotechnical Engineer" to a professional engineer especially qualified in civil engineering if the professional engineer:

- (a) Holds an unexpired, valid Oregon license as a professional engineer especially qualified in civil engineering;
- (b) Passes the geotechnical engineering examination offered by the Board; and
- (c) Submits evidence satisfactory to the Board demonstrating four (4) years of qualifying experience as required by ORS 672.255(1)(d) and as defined in Section 820-040-0040. In addition, up to one year credit for qualifying experience will be given for possession of post graduate degree(s) from a Board approved school of engineering with major studies in soil engineering. Credit for post graduate degree(s) will not be given if already applied to the experience requirement for professional engineering licensure.

(6) A professional engineer may qualify for registration as a professional geotechnical engineer without taking the geotechnical exam if the engineer, within one year after the date the board first gives an examination in the new branch, submits an application that demonstrates qualifying experience to the satisfaction of the Board.

(7) "Qualifying experience" as used in section (6) of this rule means:

(a) At least four (4) years of experience having responsible charge of soil engineering projects in geotechnical engineering as defined in 820-040-0040 and accumulated since licensure as a professional engineer. The application must contain a description of the pertinent geotechnical aspects of each project claimed as part of the minimum experience. Teaching soil engineering and related courses at a board approved school of engineering will be given credit as qualifying experience.

(b) Unless waived by the Board, an applicant must provide at least three (3) references acceptable to the Board from professional engineers substantiating the applicant's experience and that the application meets the requirements for geotechnical engineering as defined in 820-040-0040. Additional references may be required to substantiate all of the minimum experience.

(8) The titles "geotechnical engineer," "soils engineer," "foundation engineer," and "soil engineer" are identifications of competence and specialization in the geotechnical subspecialty of professional engineering and necessitates experience in addition to that required for registration as a professional engineer. Use of any of the above designations without licensure as a geotechnical engineer is misleading to the public and may subject the registrant to disciplinary action by the board.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1993, f. 1-28-93, cert. ef. 2-1-93; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 1-2003, f. & cert. ef. 1-28-03; BEELS 1-2004, f. & cert. ef. 1-26-04

820-010-0225

Information to Be Furnished by EI and LSI Applicants

Applicants for admission to examination for enrollment as an EI or LSI will be required to submit the following evidence to show eligibility to take the FE or FLS examination:

(1) Grade transcripts demonstrating completion of an engineering or land surveying curriculum satisfactory to the Board, as described in (3) through (7) hereinafter.

(2) If taking the examination in the applicant's senior year, a statement signed by an official from the school, university or college that all work necessary to complete a curriculum satisfactory to the Board has been or will be completed within four months following the examination as provided in ORS Chapter 670. A transcript verifying completion must be

received to allow enrollment. Scores will not be released until verification of completion is received.

(3) For entrance to the Fundamentals of Engineering Examination, a curriculum acceptable to the Board shall include, but not be limited to:

(a) Graduation from an EAC of ABET accredited engineering program.

(b) Graduation from a TAC of ABET baccalaureate engineering program or an ACCE accredited four year baccalaureate construction engineering management program.

(c) Graduation from a Graduate Degree Program in engineering at a college or university which has an EAC of ABET accredited undergraduate degree program in the same field as the Graduate degree program and completion of a specified curriculum. The specified curriculum shall include 21 semester/32 quarter hours of engineering related technical course work approved by the Board. The specified curriculum shall include courses in at least six of the following eight subjects: Differential Equations, Physics, Statistics, Statics, Dynamics, Thermodynamics, Fluid Mechanics, Electrical Fundamentals and Strength of Materials.

(d) Graduation from TAC of ABET accredited two-year Engineering Technology program or graduation from a two-year Associate of Applied Science program, which the Board finds, has adequately prepared the applicant for enrollment as an EI. A Board approved curriculum shall meet the following criteria:

(A) A total of at least 64 semester/96 quarter hours.

(B) At least 32 semester/48 quarter hours in technical courses. (Skills and knowledge of appropriate methods, procedures and techniques; experience in carrying out established engineering procedures).

(C) At least 16 semester/24 quarter hours in math and science:

(i) 4 semester/6 quarter basic science (physics, chemistry, earth and life sciences);

(ii) 8 semester/12 quarter mathematics (not counting courses below college algebra or courses in computer programming).

(D) At least 9 semester/13 quarter hours in social science, humanities and communications.

(E) However, prior to being admitted to the FE examination, graduates from the above described two-year programs shall complete two or more years of active practice in engineering work of a character satisfactory to the Board or complete additional course work set out in OAR 820-010-0230(1)(b). The additional course work shall be in addition to that required by the two-year degree.

(e) Completion of a curriculum that the Board finds has adequately prepared the applicant for enrollment as an EI.

(4) For entrance to the Fundamentals of Land Surveying Examination, a curriculum acceptable to the Board shall include, but not be limited to:

(a) Graduation from an EAC/ASAC/TAC of ABET accredited four year baccalaureate land surveying program.

(b) Graduation from a Graduate Degree Program in engineering or surveying with 11 semester/16 quarter-credits of surveying instruction as defined in ORS 672.005(2)(a) through (d), "Practice of Land Surveying".

(c) Graduation from a ASAC/TAC of ABET accredited two-year Surveying Technology program or graduation from a two-year Associate of Applied Science program in Surveying Technology or Engineering Technology, which the Board finds, has adequately prepared the applicant for enrollment as a LSI. A Board approved curriculum shall meet the following criteria:

(A) A total of at least 64 semester/96 quarter hours.

(B) At least 32 semester/48 quarter hours in technical courses, of which a minimum of 11 semester/16 quarter hours shall be in subjects defined in ORS 672.005(2)(a) through (d), "Practice of Land Surveying".

(C) At least 16 semester/24 quarter hours in subjects such as math, science, basic electricity, hydraulics, road design, construction management and estimating engineering economics with college level algebra, trigonometry and statistics.

(D) At least 9 semester/13 quarter hours in social science, humanities and communications.

(E) However, prior to being admitted to the FLS examination, graduates from the above described two-year programs shall complete two or more years of active practice in land surveying work of a character satisfactory to the Board.

(d) Graduation from either an EAC/TAC of ABET, an ACCE accredited four-year baccalaureate program or a Board approved engineering curriculum of four years or more with 11 semester/16 quarter hours of surveying instruction as defined in ORS 672.005(2)(a) through (d), "Practice of Land Surveying".

ADMINISTRATIVE RULES

(e) Completion of a curriculum that the Board finds as adequately prepared the applicant for enrollment as an LSI.

(5) Notwithstanding (3)(a), (b), (c), (d), and (e), and (4)(a), (b), (c), (d), and (e) above, an applicant may apply for admission to the examination based on a combination of education and experience in the practice of engineering for the FE examination or the practice of land surveying for the FLS examination if the applicant's experience and education meet the following criteria:

(a) The experience, defined as "engineering work" or "land surveying work", shall meet the definition of responsible charge and be performed under the direct supervision of a licensed professional PE or LS, and;

(b) The applicant has completed sufficient college course work in engineering ethics, fundamentals and design for the FE examination or land surveying ethics, fundamentals and practical application for the FLS examination to demonstrate to the Board that the applicant is competent to practice either engineering or land surveying under the supervision of a licensed professional engineer or land surveyor.

(c) Where "engineering work" or "land surveying work" is substituted for "engineering education" or "land surveying education" the applicant must submit a specific record of eight or more years active practice in engineering or land surveying work of a character satisfactory to the Board.

(6) Examination results will be distributed as soon as available to any interested parties that have submitted written requests for statistical information. Based upon data provided by the candidates, results shall identify the educational institution, and the title of the program from which the candidate graduated. The results shall be stated in terms of the number of successful candidates expressed as a percent of all candidates from the same institution and program.

Stat. Auth.: ORS 670.310, 672.097, 672.099, 672.255 & 672.155
Stats. Implemented: ORS 672.002 - 672.325
Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 1-1986, f. 2-4-86, ef. 2-15-86; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 2-1996, f. & cert. ef. 10-3-96; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2004, f. & cert. ef. 1-26-04

820-010-0450

Branches Examined by Board

The Board will conduct examinations and issue licenses in accordance with the following:

(1) Examinations will be offered annually and successful examinees will be licensed as professional engineers especially qualified in one of the branches listed below. The applicant will be limited to the selection of examination questions pertaining to that branch:

- (a) Acoustical;
- (b) Agricultural;
- (c) Chemical;
- (d) Civil;
- (e) Control Systems;
- (f) Electrical;
- (g) Environmental;
- (h) Fire Protection;
- (i) Industrial;
- (j) Forest;
- (k) Mechanical;
- (l) Metallurgical;
- (m) Nuclear;
- (n) Structural.

(2) Persons desiring to be licensed as a professional engineer naming a branch other than one listed under section (1) of this rule as one in which the individual is especially qualified may petition the Board to amend the list. Procedures are designated in the Model Rules of Procedure under the Administrative Procedure Act, OAR 137-001-0070. Information in the petition shall include:

- (a) The public need for recognition of the new discipline;
- (b) The number of potential licensees that would be affected;
- (c) Whether the new branch is a specialty under an already recognized discipline; and
- (d) Recommendations for examination sources in that discipline.

(3) The Board may, at its option, discontinue examining and licensing in any branch at any time that it receives fewer than six qualified applicants in that branch in a three-year period.

(4) For a license as a professional land surveyor the applicant will be examined in land surveying.

(5) For certification as a water right examiner, the applicant will be examined on water right applications and the preparation of claims of beneficial use.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 2-1978, f. 12-21-78, ef. 1-1-79; EE 1-1981, f. 5-19-81, ef. 6-1-81; EE 1-1984, f. & ef. 3-6-84; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 3-1992, f. 3-19-92, cert. ef. 4-1-92; EE 5-1993, f. 8-3-93, cert. ef. 8-13-93; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 1-2004, f. & cert. ef. 1-26-04

820-010-0500

Qualifications of Administrative Officer (Executive Secretary)

The administrative officer of the Oregon State Board of Examiners for Engineering and Land Surveying authorized by ORS 670.306 shall:

- (1) Not be a member of the Board.
- (2) Serve at the pleasure of the Board.
- (3) Receive such compensation as the Board may determine.
- (4) Perform such duties as assigned by the Board.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1983, f. 2-28-83, ef. 3-1-83; EE 1-1984, f. & ef. 3-6-84; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 3-2002, f. & cert. ef. 11-13-02; BEELS 3-2003(Temp), f. 5-14-03, cert. ef. 5-15-03 thru 11-11-03; BEELS 5-2003(Temp), f. 11-10-03, cert. ef. 11-12-03 thru 5-8-04; BEELS 1-2004, f. & cert. ef. 1-26-04

820-010-0623

Dual Stamping Documents

No more than one registrant will seal documents unless it is clearly explained and denoted on the document by all registrants which portion of the work each registrant prepared and for which each registrant is responsible.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 1-2004, f. & cert. ef. 1-26-04

820-015-0026

Failure to Comply with Continuing Professional Development Requirements

(1) Any registrant who fails to comply with Continuing Professional Development requirements as established in Sections 820-010-0635(1) through (8) shall not be subject to revocation of his/her license if the sole reason for revocation is noncompliance with said sections.

(2) Registrants not in compliance with the Continuing Professional Development requirements of OAR 820-010-0635 may be placed on inactive status by the Board and prohibited from practicing Engineering and/or Land Surveying until such time the Board determines they are in compliance.

(3) The Board may allow a grace period of up to one year for registrants that are found to be deficient in accumulating PDH credits satisfactory to the Board. When a grace period is granted, the registrant shall complete all deficient PDH requirements plus the additional PDH requirements within the grace period at the rate of 15 per year.

Stat. Auth.: ORS 670.310, 672.097, 672.099 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 2-2000, f. & cert. ef. 2-17-00; BEELS 1-2004, f. & cert. ef. 1-26-04

Board of Examiners for Speech Pathology and Audiology Chapter 335

Adm. Order No.: SPA 1-2004

Filed with Sec. of State: 2-6-2004

Certified to be Effective: 2-6-04

Notice Publication Date: 1-1-04

Rules Amended: 335-005-0025, 335-070-0030, 335-070-0060, 335-095-0020, 335-095-0030

Subject: Amended rule in Division 5 defines the rules for accurate representation of an audiologist who works for a business that dispenses hearing aids. 335-070-0025(12) (13) also clarifies documentation requirements for speech-language pathologists who supervise others.

Amended rules in Division 70 clarify that inservices are acceptable at public schools and clarify the professional development requirements for new licensees.

Amended rules in Division 95 delete a grandparenting qualification that no longer applies and clarifies how a person may qualify outside of grandparenting.

Rules Coordinator: Brenda Felber—(503) 731-4050

ADMINISTRATIVE RULES

335-005-0025

Accurate Representation

(1) Individuals shall not misrepresent their credentials, competence, education, training, or experience.

(2) Individuals shall not misrepresent the credentials of assistants and shall inform those they serve professionally of the name and professional credentials of persons providing services.

(3) Individuals shall not transfer to a noncertified individual any responsibility which requires the unique skills, knowledge, and judgement that is within the scope of practice of that professional.

(4) Individuals shall not misrepresent diagnostic information, services rendered, or products dispensed or engage in any scheme or artifice to defraud in connection with obtaining payment or reimbursement for such services or products.

(5) Individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, about the professions, and about professional services.

(6) Individuals' statements to the public — advertising, announcing, and marketing their professional services, reporting research results, and promoting products — shall adhere to prevailing professional standards and shall not contain misrepresentations.

(7) Individuals shall not engage in any scheme or enter into any arrangement whereby clients are referred to or from any person or business entity in return for any remuneration of any kind, including referrals back to the person or business entity.

(8) Individuals shall not engage in dishonesty, fraud, misrepresentation, or any form of conduct that adversely reflects on the individual's fitness to serve persons professionally.

(9) Individuals' statements to colleagues about professional services, research results, and products shall contain no misrepresentations.

(10) At any time the licensee is disciplined or convicted of a crime, the licensee shall immediately report the incident to the Board.

(11) Audiologist licensees may not consult with, contract with, or be employed by a business that dispenses hearing aids if the business holds itself out as having an audiologist on staff or providing audiology services unless audiology licensees provide audiological services as follows:

(a) The licensee, in combination with other audiology licensees or alone, performs audiology evaluations or hearing fitting services or both at each of the business locations that is advertised as having an audiologist on staff or providing audiology services;

(b) The licensee, or the licensee and other licensees, are physically present for at least 30 hours per month at each of the business locations that is advertised as having an audiologist on staff or providing audiology services; and

(c) The licensee keeps a record of the hours he or she spends at each of the business locations that is advertised as having an audiologist on staff or providing audiology services and submits a record of the hours spent at each of these business locations at the time of licensure renewal.

(12) Except as described in section 13 of this rule, a licensee shall not sign, or authorize anyone else to sign on the licensee's behalf, letters or reports purporting to describe the function or condition of any person unless the licensee has personally performed testing of the person.

(13) If support personnel or a student in supervised practicum provide services, the name and duties of the assistant or the student must be clearly referenced in any formal documents (e.g. treatment plans, reports) signed by the licensee.

Stat. Auth.: ORS 681

Stats. Implemented: ORS 681.330

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2004, f. & cert. ef. 2-6-04

335-070-0030

Activities Acceptable for Obtaining Professional Development Hours

Professional development hours may be accrued from, but are not limited to, the following sources:

(1) Attendance at educational programs where continuing education credit is given and approved by the Oregon Speech-Language and Hearing Association (OSHA) and other state chapters of the American Speech-Language Hearing Association (ASHA).

(2) Attendance at educational programs where continuing education credit is given and approved by the American Speech-Language Hearing Association (ASHA), including other state association educational programs.

(3) Attendance at educational programs where continuing education credit is given and approved by the American Academy of Audiology.

(4) Attendance at educational programs where continuing education credit is given and approved by the Oregon Academy of Audiology and other state chapters of the American Academy of Audiology.

(5) Attendance at educational programs where continuing education credit is given and approved by the Health Licensing Office Hearing Aid Dealers Program.

(6) Academic course work taken after successful completion of the master's degree licensure requirement and taken for credit from an educational institution accredited by an appropriate state or regional body or approved by the Board. The courses must relate to the clinical practice of speech-language pathology or audiology. One academic semester hour shall be equivalent to fifteen (15) clock hours for professional development credit. One academic quarter hour shall be equivalent to ten (10) clock hours for professional development credit. Courses must be on the graduate level, with a minimum grade of "C" required.

(7) Self-assessment home study courses accompanied by examination and sponsored by a nationally-recognized professional organization in audiology or speech-language pathology.

(8) In-service programs offered by public schools, hospitals and clinics. Programs must be related to speech-language pathology or audiology, and signed documentation must be provided for participants.

(9) CPR classes for a maximum of two (2) hours credit during the two-year licensing period.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2004, f. & cert. ef. 2-6-04

335-070-0060

New Licensees

Professional development for new licensees will be required on the following scale:

(1) Licensed zero through six months prior to renewal — zero hours.

(2) Licensed 7-18 months — 20 hours.

(3) Licensed over 18 months — 40 hours.

Stat. Auth.: ORS 681.420(5) & ORS 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2004, f. & cert. ef. 2-6-04

335-095-0020

Grandparenting

An applicant may meet the requirements for a certificate to practice as a speech-language pathology assistant if, prior to January 1, 2005, they submit proof of specific experience, or experience and preparation, as defined below.

(1) Applicants must meet either criterion (1)(a) or (1)(b) and (2) and (3).

(a) The equivalent of three school years of full-time experience (minimum thirty (30) hours per week, or more than 3,276 total hours) working with an Oregon licensed speech-language pathologist or a speech-language pathologist with a certificate of clinical competence (CCC's) from the American Speech and Hearing Association (ASHA); or

(b) The equivalent of two years of full time experience (minimum thirty (30) hours per week, or more than 2,184 total hours) working with an Oregon licensed speech-language pathologist or a speech-language pathologist with a certificate of clinical competence (CCC's) from the American Speech and Hearing Association (ASHA) and the completion of nine (9) hours of speech-language pathology technical coursework;

(2) Applicants must complete the Competency Checklist (**Form SLPA1, Revised 2/04**);

(3) Applicants must submit the completed application, all supporting documentation, and the required non-refundable certificate fee prior to January 1, 2005.

[ED. NOTE: Forms referenced are available from the agency.]

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

Stat. Implemented: ORS 681.360, 681.370 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-1-03; SPA 1-2004, f. & cert. ef. 2-6-04

335-095-0030

Certification of Speech-Language Pathology Assistants

Applicants not qualifying by grandparenting under rule 335-095-0020 must submit all of the following to be eligible for certification.

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

(2) Transcripts showing 45 quarter hours or 30 semester hours of general education credit; and

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

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

ADMINISTRATIVE RULES

Stat. Implemented: ORS 681.360 & 681.375
Hist.: SPA 1-2003, f. & cert. ef. 5-1-03; SPA 1-2004, f. & cert. ef. 2-6-04

Board of Examiners of Nursing Home Administrators Chapter 853

Adm. Order No.: BENHA 1-2004
Filed with Sec. of State: 1-30-2004
Certified to be Effective: 1-30-04
Notice Publication Date: 1-1-04
Rules Amended: 853-010-0060

Subject: The proposed rule incorporates a limited Certified Nursing Assistant (CNA) training requirement into the existing Administrator-In-Training (AIT) program. The CNA course would consist of one week (40 hours) of CNA training or a review of the CNA training manual coupled with a minimum of 40 hours spent shadowing a CNA. The CNA training requirement is an integral component to the AIT's training in that it provides the necessary knowledge, skills and understanding for an administrator to fully appreciate the importance of staffing and to adequately meet the needs of residents. In addition, it provides an awareness of the CNA's training and their ability to perform assigned tasks.

Rules Coordinator: Janet Bartel—(503) 731-4046

853-010-0060

Registration of Trainees and Supervising Administrators

(1) On or before January 1, 1983, any trainee who is accumulating experience in Oregon, as defined in OAR 853-010-0010(3), toward the experience requirements for licensure as specified in 853-010-0015, shall register with the Board, on forms provided by the Board.

(2) Any trainee who begins to accumulate experience following January 1, 1983, as defined in OAR 853-010-0010(3), shall register with the Board within 15 working days and submit a registration fee of \$100.

(3) Training and experience in a supervised internship shall be for a period of not less than 40 hours per week for six months. The total hours of training shall not be less than 960 hours. A hospital administrator who has less than one year experience in a hospital with a physically attached nursing home shall receive credit of 80 hours of AIT experience for every month of prior experience accumulated in the hospital/nursing home facility. Additional training required to meet the minimum of 960 hours AIT training shall be gained in an Administrator-in-Training program in a long-term care facility or under the supervision of a preceptor in the hospital/nursing home facility.

(4) Accredited university or college coursework in advanced degree programs specializing in long-term care may replace no more than 480 hours of the 960 hours of training. Such coursework must be pre-approved by the Board. The request for approval must be received from the college or university.

(5) Every trainee shall be supervised on a full-time basis or the equivalent thereof by a preceptor as defined in OAR 853-010-0010(9). The Board may grant exceptions to the supervision requirement for good reasons such as, but not limited to geographical location. Preceptor shall:

(a) Be the holder of a current Oregon Administrator's License issued by the Board of Examiners of Nursing Home Administrators;

(b) Train only one trainee at any one time unless the facility is licensed for a minimum of 100 beds in which case a preceptor may train two trainees.

(6) The preceptor shall make a pre-training assessment of the Administrator-In-Training applicant's background, including both education and experience. Based on the assessment, the preceptor shall prepare a detailed curriculum of the training program to be completed. The outline of the curriculum shall be submitted to the board for approval at the time the trainee registration form is submitted. This outline shall include 40 hours participation in a CNA training course for the AIT or a comparable review of the CNA training manual coupled with a minimum of 40 hours spent shadowing a CNA. If the CNA training or manual review is not completed prior to the end of the training period, proof of such completion must be submitted prior to taking the national examination. Exceptions to this training requirement would be:

(a) AIT is or has been an RN, LPN or CNA in a long-term care facility

(b) AIT is training in a facility which does not have a CNA class or is not located within 60 miles of a facility with a CNA class.

(7) Every trainee shall submit periodic reports on forms provided by the Board, outlining specifically all aspects of training. These reports shall be submitted bimonthly. The preceptor shall countersign each report. If the trainee does not submit the required reports, the Board may discontinue the training. The preceptor will notify the Board if training is discontinued at the long-term care facility.

(8) If the preceptor is unable for any reason to fulfill the approved program of a trainee, a new preceptor shall be obtained as soon as possible, but no more than 60 days from the date the trainee first obtained knowledge that the training under the previous preceptor would be discontinued. In special circumstances, the Board, upon written request, may authorize additional time in which a new preceptor may be secured.

(9) A traineeship which has been interrupted cannot be continued if the absence exceeds one year from the date of interruption.

(10) If a preceptor fails to provide the trainee with adequate training and supervision, the preceptor certification may be suspended or revoked after a hearing. This may be for such time as shall be prescribed by the Board.

(11) At the Board's discretion, the preceptor may be required to appear before the Board.

Stat. Auth.: ORS 678.740(1), 678.760(1), 678.760(2), 678.760(3), 678.770(2) & 678.775
Stats. Implemented: ORS 678.740(1), 678.760(1), 678.760(2), 678.760(3), 678.770(2) & 678.775

Hist.: NHA 1-1978, f. & ef. 1-31-78; NHA 4-1978, f. & ef. 8-29-78; NHA 1-1982, f. 12-15-82, ef. 1-1-83; NHA 1-1988, f. & cert. ef. 4-27-88; NHA 1-1989, f. & cert. ef. 2-15-89; NHA 1-1990(Temp), f. & cert. ef. 5-4-90; NHA 2-1990, f. & cert. ef. 10-26-90; NHA 1-1991, f. & cert. ef. 5-3-91; NHA 2-1996, f. & cert. ef. 7-31-96; BENHA 1-2002, f. 1-31-02, cert. ef. 2-1-02; BENHA 1-2004, f. & cert. ef. 1-30-04

Board of Medical Examiners Chapter 847

Adm. Order No.: BME 1-2004
Filed with Sec. of State: 1-27-2004
Certified to be Effective: 1-27-04
Notice Publication Date: 12-1-03
Rules Amended: 847-012-0000

Subject: The adopted language updates the administrative rules on a patient's access to physician medical records based on language in HB 2305 which was passed by the 2003 Legislature, and updates the rules per the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

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

847-012-0000

Patient's Access to Physician Medical Records

(1) Licensees of the Board of Medical Examiners shall make protected health information in the medical record available to the patient or his/her authorized representative upon their request, to inspect and obtain a copy of protected health information about the individual, except as provided by law and this rule. The patient may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution. Board licensees are encouraged to use the written authorization form provided by Oregon Laws 2003, chapter 86, section 5.

(2) For the purpose of this rule, "health information in the medical record" means any oral or written information in any form or medium that is created or received and relates to:

(a) The past, present, or future physical or mental health of the patient.

(b) The provision of health care to the patient.

(c) The past, present, or future payment for the provision of healthcare to the patient.

(3) Upon request, the entire health information record in the possession of the Board licensee will be provided to the patient. This includes records from other healthcare providers. Information which may be withheld includes:

(a) Information which was obtained from someone other than a healthcare provider under a promise of confidentiality and access to the information would likely reveal the source of the information.

(b) Psychotherapy notes.

(c) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and

(d) Other reasons specified by federal regulation.

(4) A reasonable cost may be imposed for the costs incurred in complying with the patient's request for health information. These costs may include:

ADMINISTRATIVE RULES

(a) No more than \$25 for copying 10 or fewer pages of written material and no more than 25 cents per page for each additional page.

(b) Postage costs to mail copies of the requested records.

(c) Actual costs of preparing an explanation or summary of the health information, if such information is requested by the patient

(d) Actual costs of reproducing films, x-rays, or other reports maintained in a non written form. However, a patient may not be denied summaries or copies of his/her medical records because of inability to pay.

(5) Violation of this rule may be cause for disciplinary action under ORS 677.190.

Stat. Auth.: ORS 677

Stats. Implemented: ORS 677.265

Hist.: ME 7-1988, f. & cert. ef. 4-20-88; BME 1-2004, f. & cert. ef. 1-27-04

Adm. Order No.: BME 2-2004

Filed with Sec. of State: 1-27-2004

Certified to be Effective: 1-27-04

Notice Publication Date: 12-1-04

Rules Amended: 847-008-0015, 847-008-0055

Subject: The adopted rules change in OAR 847-008-0015 provide alternative documentation of evidence of Oregon as state of residence for physicians who request Active Military status and who do not have an Oregon address to provide to the Board. The adopted rules change in OAR 847-008-0055 shortens the reactivation process and waives the reactivation fee for physicians with Active Military status returning to private practice after being called up to active duty in the armed forces.

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

847-008-0015

Active Registration

Each licensee of the Board who practices within the State of Oregon, shall register and pay a biennial active registration fee prior to the last day of the registration period, except where:

(1) The licensee is in a qualified training program and elects to register on an annual basis, or

(2) The licensee practices on an intermittent, locum-tenens basis, as defined in OAR 847-008-0020.

(3) The licensee is in the Military or Public Health Service where the licensee's official state of residence is Oregon as documented by a Defense Finance and Accounting Service Military Leave and Earnings Statement, an Oregon voters registration card, or an Oregon driver license, then licensee may maintain an active status by request and by paying the active fee. Practice must be limited to the military or public health service. Licensee must file an affidavit before beginning active practice in Oregon.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.228

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 5-1991, f. & cert. ef. 7-24-91; BME 2-2004, f. & cert. ef. 1-27-04

847-008-0055

Reactivation from Active/Military or Public Health/Locum Tenens/Inactive/ Emeritus to Active/Locum Tenens Status

(1) A licensee who wishes to reactivate from an active/military or public health, inactive or emeritus status to an active or locum tenens status, or from locum tenens status to active status must provide the Board with the following:

(a) Completed affidavit form provided by the Board, describing activities during the period of active/military or public health, locum tenens, inactive or emeritus registration:

(b) Completed application(s) for registration; and

(c) Appropriate fees for processing of affidavit and registration.

(d) A completed "Reports for Disciplinary Inquiries" (MD/DO/DPM) sent to the Board from the Federation of State Medical Boards or Federation of Podiatric Medical Boards, a physician profile sent to the Board from the American Medical Association Physician Profile System, or American Osteopathic Association, and the results of the Practitioner Request for Information Disclosure (Self-Query) from the National Practitioners Data Bank and the Healthcare Integrity and Protection Data Bank, sent to the Board by the applicant;

(e) Verification of current licensure sent directly from each of the State Boards in the United States or Canada where the licensee has been practicing during the past 5 years, or from the date the license to practice in Oregon changed to active/military or public health, inactive, locum tenens

or emeritus status whichever is the shorter period of time, showing license number, date issued, and status;

(f) An official letter sent directly to the Board from the director, administrator, dean, or other official of each hospital, clinic, office, or training institute where the licensee was employed, practiced, had hospital privileges (MD/DO/DPM), or trained in the United States or foreign countries during the past 5 years, or from the date the license to practice in Oregon changed to active/military or public health, locum tenens, inactive or emeritus status, whichever is the shorter period of time. The letter shall include an evaluation of overall performance, and specific beginning and ending dates of practice/employment/training.

(2) A personal appearance before the Board may be required.

(3) If, in the judgment of the Board, the conduct of the licensee has been such, during the period of active/military or public health, locum tenens, inactive or emeritus registration, that the licensee would have been denied a license if applying for an initial license to practice medicine, the Board may deny active registration.

(4) If a licensee has ceased the practice of medicine for 12 or more consecutive months, the licensee may be required to take an examination to demonstrate medical competency.

(5) The above reactivation process and fee for processing the Affidavit of Reactivation shall be waived for physicians practicing in Oregon whose status was changed to active/military because they were called up from the Reserves or National Guard to active duty to serve out-of-state or out-of-country in a branch of the armed forces. Upon discharge from active duty in the military, the physician returning to practice in Oregon shall provide the Board with the following:

(a) A completed Affidavit of Reactivation form;

(b) A copy of the Order to Active duty; and

(c) A copy of the Discharge from Active Duty.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.228

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 2-1997, f. & cert. ef. 7-28-97; BME 6-2000, f. & cert. ef. 7-27-00; BME 7-2002, f. & cert. ef. 7-17-02; BME 2-2004, f. & cert. ef. 1-27-04

Adm. Order No.: BME 3-2004

Filed with Sec. of State: 1-27-2004

Certified to be Effective: 1-27-04

Notice Publication Date: 12-1-03

Rules Amended: 847-020-0170, 847-020-0180

Subject: The adopted rules add the National Board of Osteopathic Medical Examiners (NBOME) examination to the section of the rules that cover the various medical licensing examinations that have been and are currently required for licensure. The adopted rules add language as to when an applicant may request a waiver of the seven year requirement for passing the United States Medical Licensing Examination (USMLE) or the NBOME examination, and adds January 16, 2003 as the effective date the Board adopted rules on the number of attempts allowed on each Step of USMLE in order to be eligible for licensure. The adopted rules create a waiver for applicants who have participated in a combined MD/DO/PhD program of the requirement that they must have passed the combined licensing examinations (National Board of Medical Examiners, FLEX and USMLE) by the year 2000.

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

847-020-0170

Written Examination, SPEX Examination and Personal Interview

(1) After complying with OAR 847-020-0110 through 847-020-0200 the applicant applying for licensure must have passed one of the following examinations or combinations of examinations:

(a) Part I of the National Board of Medical Examiners examination or Step 1 of the USMLE, Part II of the National Board of Medical Examiners examination or Step 2 of the USMLE, and Part III of the National Board of Medical Examiners examination or Step 3 of the USMLE or Component 2 of the FLEX examination. The score achieved on each Step, Part or Component must equal or exceed the figure established by the USMLE Program, the National Board of Medical Examiners or the Federation of State Medical Boards as a passing score. All Steps, Parts or Components must be administered prior to January 2000, except for applicants who participated in a combined MD/DO/PhD program; or

(b) Component 1 of the FLEX examination and Step 3 of the USMLE. A score of 75 or above must be achieved on Component 1 and the score achieved on Step 3 must be equal to or exceed the figure established

ADMINISTRATIVE RULES

by the Federation as a recommended passing score. The Component and Step must have been administered prior to January 2000, except for applicants who participated in a combined MD/DO/PhD program; or

(c) The National Board of Osteopathic Medical Examiners (NBOME) examination or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX) or any combination of their parts; or

(d) USMLE Steps 1, 2, and 3. All three Steps of USMLE, and all three Levels of the NBOME examination or COMLEX or any combination of the two, must be passed within a seven-year period which begins when the first Step or Level, either Step 1 or Step 2 or Level 1 or Level 2, is passed. The score achieved on each Step must equal or exceed the figure established by the Federation as a recommended passing score, and the score achieved on each Level must equal or exceed the figure established by the National Board of Osteopathic Medical Examiners.

(A) An applicant who has not passed all three Steps or Levels within the seven-year period may request an exception to the seven-year requirement if he/she suffered from a documented significant health condition which by its severity would necessarily cause a delay to the applicant's medical or osteopathic study, or he/she participated in a combined MD/DO/PhD program.

(B) Effective January 16, 2003, to be eligible for licensure, applicants must pass each Step or Level within three attempts within the seven-year period.

(2) Step 3 of the USMLE may be taken during the first year of postgraduate training, or after the first year of postgraduate training has been completed. A Limited License, Postgraduate will be required for training beyond the postgraduate 1 level if the USMLE is not yet passed.

(3) The applicant will not be allowed to take the USMLE for this state nor apply for licensure in this state if the FLEX has been previously failed four or more times.

(4) The applicant must have passed the written examination (FLEX) under the following conditions:

(a) The applicant who has taken the FLEX examination (Day I, II, and III) administered between June 1968 and December 1984 must have taken the entire examination at one sitting. The applicant who has taken the FLEX examination (Component 1 and Component 2), first administered in June 1985, was not required to take both Components 1 and 2 of the FLEX examination at one sitting. Both must have been passed within seven years of the first attempt.

(b) The applicant may not have taken the FLEX examination more than a total of four times, whether in Oregon or other states, whether the components were taken together or separately. After the third failed attempt, the applicant must have satisfactorily completed one year of approved training in the United States or Canada prior to having taken the entire FLEX examination at one sitting on the fourth and final attempt.

(c) Only the applicant's scores on the most recently taken FLEX examination will be considered to determine eligibility.

(5) The applicant may also be required to pass the Special Purpose Examination (SPEX). This requirement may be waived if:

(a) The applicant has within ten years of filing an application with the Board, completed an accredited one year residency, or an accredited or Board approved one year clinical fellowship;

(b) The applicant has within ten years of filing an application with the Board, been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(c) The applicant has received an appointment as Professor or Associate Professor at the Oregon Health Sciences University; and

(d) Has not ceased the practice of medicine for a period of 12 or more consecutive months. The SPEX examination may be waived if the applicant, after ceasing practice for a period of 12 or more consecutive months, has subsequently:

(A) Completed an accredited one year residency, or

(B) Completed an accredited or Board approved one year clinical fellowship, or

(C) Been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association, or

(D) Obtained continuing medical education to the Board's satisfaction.

(6) The applicant, who fails the SPEX examination three times, whether in Oregon or other states, shall successfully complete an accredited one year residency or an accredited or approved one-year clinical fellowship before retaking the SPEX.

(a) However, after the first or second failed attempt, the Board may allow the applicant to take an oral specialty examination, at the applicant's expense, to be given by a panel of physicians in such specialty. The applicant shall submit the cost of administering the oral examination prior to the examination being scheduled.

(b) If an oral specialty examination is requested by the applicant, an Examination Panel of at least three physicians shall be appointed.

(c) The examination shall include questions which test basic knowledge and also test for knowledge expected of a physician with a practice similar in nature to examinee's. The panel shall establish a system for weighing their score for each question in the examination. After it is prepared, the examination shall be submitted to the Board for review and approval.

(d) The Board shall require a passing grade of 75 on the oral specialty examination.

(e) If such oral examination is passed, the applicant would be granted a license limited to the applicant's specialty. If failed, the license would be denied and the applicant would not be eligible for licensure.

(7) The Limited License, SPEX may be granted for a period of 6 months and permits the licensee to practice medicine only until the grade results of the Special Purpose Examination are available and the applicant completes the initial registration process. The Limited License, SPEX would become invalid should the applicant fail the SPEX examination and the applicant, upon notification of failure of the examination, must cease practice in this state as expeditiously as possible, but not to exceed two weeks after the applicant receives notice of failure of the examination.

(8) After the applicant has met all requirements for licensure, the applicant may be required to appear before the Board for a personal interview regarding information received during the processing of the application. The interview shall be conducted during a regular meeting of the Board. An applicant who fails to cancel a scheduled interview at least one week prior to such interview, or who confirms and does not appear, shall be rescheduled only after paying a rescheduling fee prior to the filing deadline date.

(9) All of the rules, regulations and statutory requirements pertaining to the medical school graduate shall remain in full effect.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.110

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 5-2003, f. & cert. ef. 1-27-03; BME 10-2003, f. & cert. ef. 5-2-03; BME 14-2003(Temp), f. & cert. ef. 9-9-03 thru 3-1-04; BME 3-2004, f. & cert. ef. 1-27-04

847-020-0180

Endorsement or Reciprocity, SPEX Examination and Personal Interview

(1) After complying with OAR 847-020-0110 through 847-020-0200, the applicant may base an application upon certification by the National Board of Medical Examiners of the United States of America, the National Board of Osteopathic Medical Examiners, the Medical Council of Canada, or upon reciprocity with a license obtained by FLEX examination, USMLE examination, or written examination from a sister state. The FLEX and USMLE examination must have been taken in accordance with OAR 847-020-0170. The examination grades must meet Oregon standards pursuant to ORS 677.110(1). In order to reciprocate with a lapsed license, such license must have been in good standing while registered in that state and that board must furnish a current, original certification of grades to the Oregon Board.

(2) The applicant may also be required to pass the Special Purpose Examination (SPEX). This requirement may be waived if:

(a) The applicant has within ten years of filing an application with the Board, completed an accredited one year residency, or an accredited or Board approved clinical fellowship; or

(b) The applicant has within ten years of filing an application with the Board, been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(c) The applicant has received an appointment as Professor or Associate Professor at the Oregon Health Sciences University; and

(d) Has not ceased the practice of medicine for a period of 12 or more consecutive months. The SPEX examination may be waived if the applicant, after ceasing practice for a period of 12 or more consecutive months, has subsequently:

(A) Completed an accredited one year residency, or

(B) Completed an accredited or Board approved one year clinical fellowship, or

ADMINISTRATIVE RULES

(C) Been certified or recertified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association, or

(D) Obtained continuing medical education to the Board's satisfaction.

(3) The applicant who fails the SPEX examination three times, whether in Oregon or other states, shall successfully complete an accredited one year residency, or an accredited or approved one year clinical fellowship before retaking the SPEX.

(a) However, after the first or second failed attempt, the Board may allow the applicant to take an oral specialty examination, at the applicant's expense, to be given by a panel of physicians in such specialty. The applicant shall submit the cost of administering the oral examination prior to the examination being scheduled.

(b) If an oral specialty examination is requested by the applicant, an Examination Panel of at least three physicians shall be appointed.

(c) The examination shall include questions which test basic knowledge and also test for knowledge expected of a physician with a practice similar in nature to examinee's. The panel shall establish a system for weighing their score for each question in the examination. After it is prepared, the examination shall be submitted to the Board for review and approval.

(d) The Board shall require a passing grade of 75 on the oral specialty examination.

(e) If such oral examination is passed, the applicant would be granted a license limited to the applicant's specialty. If failed, the license would be denied and the applicant would not be eligible for licensure.

(4) The Limited License, SPEX may be granted for a period of 6 months and permits the licensee to practice medicine only until the grade results of the Special Purpose Examination are available, and the applicant completes the initial registration process. The Limited License, SPEX would become invalid should the applicant fail the SPEX examination and the applicant, upon notification of failure of the examination, must cease practice in this state as expeditiously as possible, but not to exceed two weeks after the applicant receives notice of failure of the examination.

(5) After the applicant has met all requirements for licensure, the applicant may be required to appear before the Board for a personal interview regarding information received during the processing of the application. The interview shall be conducted during a regular meeting of the Board. An applicant who fails to cancel a scheduled interview at least one week prior to such interview, or who confirms and does not appear, shall be rescheduled only after paying a rescheduling fee prior to the filing deadline date.

(6) All of the rules, regulations and statutory requirements pertaining to the medical school graduate shall remain in full effect.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.110

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 10-2003, f. & cert. ef. 5-2-03; BME 3-2004, f. & cert. ef. 1-27-04

.....

Adm. Order No.: BME 4-2004

Filed with Sec. of State: 1-27-2004

Certified to be Effective: 1-27-04

Notice Publication Date: 12-1-03

Rules Amended: 847-035-0030

Subject: The adopted amendment deletes the requirement that the EMT-Basic complete a course approved by the Emergency Medical Services and Trauma Section of the Office of Public Health systems of the Department of Human Resources prior to using a dual lumen airway device in the practice of airway maintenance. The EMT-Basic may obtain training through his/her ambulance service or fire department, and it will be added to the EMT-Basic curriculum. Section approved training in the administration of aspirin is also being deleted as current EMT-Basics have obtained training, and it has been added to the EMT-Basic curriculum.

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

847-035-0030

Scope of Practice

(1) The Board of Medical Examiners has established a scope of practice for emergency and nonemergency care for First Responders and EMTs. First Responders and EMTs may provide emergency and nonemergency care in the course of providing prehospital care as an incident of the oper-

ation of ambulance and as incidents of other public or private safety duties, but is not limited to "emergency care" as defined in OAR 847-035-0001(5).

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

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

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

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

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

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

(a) Conduct primary and secondary patient examinations;

(b) Take and record vital signs;

(c) Utilize noninvasive diagnostic devices in accordance with manufacturer's recommendation;

(d) Open and maintain an airway by positioning the patient's head;

(e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(f) Provide care for soft tissue injuries;

(g) Provide care for suspected fractures;

(h) Assist with prehospital childbirth; and

(i) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior EMT with the transporting ambulance.

(8) A First Responder may perform the following procedures only when the First Responder is providing emergency care as part of an agency which has a Board-approved supervising physician who has issued written standing orders to that First Responder authorizing the following:

(a) Administration of medical oxygen;

(b) Open and maintain an airway through the use of an oropharyngeal and nasopharyngeal airway and pharyngeal suctioning devices;

(c) Operate a bag mask ventilation device with reservoir;

(d) Provision of care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia; and

(e) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator, only when the First Responder:

(A) Has successfully completed a Section-approved course of instruction in the use of the automatic or semi-automatic defibrillator; and

(B) Complies with the periodic requalification requirements for automatic or semi-automatic defibrillator as established by the Section.

(9) An Oregon-certified EMT-Basic may perform emergency and nonemergency procedures. Emergency care procedures shall be limited to the following basic life support procedures:

(a) Perform all procedures that an Oregon-certified First Responder can perform;

(b) Ventilate with a non-invasive positive pressure delivery device;

(c) Insert a dual lumen airway device in the practice of airway maintenance ;

(d) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;

(e) Provide care for suspected shock, including the use of the pneumatic anti-shock garment;

(f) Provide care for suspected medical emergencies, including:

(A) Obtaining a peripheral blood specimen for blood glucose monitoring, obtained via fingerstick, heelstick, or earlobe puncture;

(B) Administer epinephrine by subcutaneous or automatic injection device for anaphylactic shock;

(C) Administer activated charcoal for poisonings, following local written standing orders; and

(D) Administer aspirin for suspected myocardial infarction.

ADMINISTRATIVE RULES

(g) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;

(h) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;

(i) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;

(j) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

(k) Assist a patient with administration of sublingual nitroglycerine tablets or spray and with metered dose inhalers that have been previously prescribed by that patient's personal physician and that are in the possession of the patient at the time the EMT-Basic is summoned to assist that patient; and

(l) In the event of a release of military chemical warfare agents from the Umatilla Army Depot, the EMT-Basic who is a member or employee of an EMS agency serving the DOD-designated Immediate Response Zone who has completed a Section-approved training program may administer atropine sulfate and pralidoxime chloride from a Section-approved pre-loaded auto-injector device, and perform endotracheal or pharyngo-esophageal intubation, using protocols promulgated by the Section and adopted by the supervising physician. 100% of EMT-Basic actions taken pursuant to this section shall be reported to the Section via a copy of the prehospital emergency care report and shall be reviewed for appropriateness by Section staff and the Subcommittee on EMT Certification, Education and Discipline.

(m) In the event of a release of chemical agents the EMT-Basic, who has completed Section-approved training, may administer atropine sulfate and pralidoxime chloride, using protocols approved by the Section and adopted by the supervising physician, if:

(A) The supervising physician provides the EMT-Basic with a direct, verbal order through radio or telephone contact, or

(B) The EMT-Basic is under the direction of an EMT-Paramedic who is on the scene.

(10) An Oregon-certified EMT-Intermediate may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to the following:

(a) Perform all procedures that an Oregon-certified EMT-Basic can perform;

(b) Initiate and maintain peripheral intravenous (I.V.) lines;

(c) Initiate and maintain an intraosseous infusion;

(d) Initiate saline or similar locks when specifically authorized by the physician;

(e) Infuse any physiologic isotonic crystalloid solution;

(f) Draw peripheral blood specimens;

(g) Initiate or administer the following medications:

(A) Epinephrine 1:10,000;

(B) Atropine sulfate;

(C) Lidocaine bolus for ventricular fibrillation, post ventricular fibrillation/ventricular tachycardia cardiac arrest, ventricular tachycardia, or wide complex tachycardia;

(D) Naloxone hydrochloride;

(E) Hypertonic glucose;

(F) Nitroglycerine for chest pain;

(G) Beta-2-specific nebulized bronchodilators;

(H) Morphine for pain management;

(h) Insert a dual lumen airway or laryngeal mask airway (LMA) device in the practice of airway maintenance;

(i) Insert an orogastric tube;

(j) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, and if clear and understandable written and verbal instructions for such maintenance have been provided by the personnel at the sending medical facility.

(k) Perform cardiac defibrillation with a manual defibrillator if the EMT-Intermediate has satisfactorily completed a Section-approved training course in manual defibrillation, including written and practical examinations and the EMT-Intermediate is, at the time of performing manual defibrillation, in the service of an agency which has been granted an "EMT-Intermediate Manual Defibrillation Waiver" by the Section.

(11) An Oregon-certified EMT-Paramedic may perform emergency and nonemergency care procedures. The emergency care procedures shall be limited to:

(a) Perform all procedures that an Oregon-certified EMT-Intermediate can perform;

(b) Initiate the following airway management techniques:

(A) Endotracheal intubation;

(B) Tracheal suctioning techniques;

(C) Needle cricothyrotomy; and

(D) Transtracheal jet insufflation which may be used when no other mechanism is available for establishing an airway.

(c) Initiate a nasogastric tube;

(d) Initiate electrocardiographic monitoring and interpret presenting rhythm;

(e) Provide advanced life support in the resuscitation of patients in cardiac arrest;

(f) Perform emergency cardioversion in the compromised patient;

(g) Attempt external transcutaneous pacing of bradycardia that is causing hemodynamic compromise;

(h) Initiate needle thoracostomy for tension pneumothorax in a pre-hospital setting;

(i) Initiate placement of a femoral intravenous line when a peripheral line cannot be placed;

(j) Initiate placement of a urinary catheter for trauma patients in a prehospital setting who have received diuretics and where the transport time is greater than thirty minutes; and

(k) Initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.

(12) The Board has delegated to the Section the following responsibilities for ensuring that these rules are adhered to:

(a) Designing the supervising physician and agent application;

(b) Approving a supervising physician or agent; and

(c) Investigating and disciplining any EMT or First Responder who violates their scope of practice.

(d) The Section shall provide copies of any supervising physician or agent applications and any EMT or First Responder disciplinary action reports to the Board upon their request.

(13) The Section shall immediately notify the Board when questions arise regarding the qualifications or responsibilities of the supervising physician or agent of the supervising physician.

Stat. Auth.: ORS 682.245

Stats. Implemented: ORS 677.245

Hist.: ME 2-1983, f. & ef. 7-21-83; ME 3-1984, f. & ef. 1-20-84; ME 12-1984, f. & ef. 8-2-84; ME 7-1985, f. & ef. 8-5-85; ME 12-1987, f. & ef. 4-28-87; ME 27-1987(Temp), f. & ef. 11-5-87; ME 5-1988, f. & cert. ef. 1-29-88; ME 12-1988, f. & cert. ef. 8-5-88; ME 15-1988, f. & cert. ef. 10-20-88; ME 2-1989, f. & cert. ef. 1-25-89; ME 15-1989, f. & cert. ef. 9-5-89, & corrected 9-22-89; ME 6-1991, f. & cert. ef. 7-24-91; ME 10-1993, f. & cert. ef. 7-27-93; ME 3-1995, f. & cert. ef. 2-1-95; ME 1-1996, f. & cert. ef. 2-15-96; ME 3-1996, f. & cert. ef. 7-25-96; BME 6-1998, f. & cert. ef. 4-27-98; BME 13-1998(Temp), f. & cert. ef. 8-6-98 thru 2-2-99; BME 14-1998, f. & cert. ef. 10-26-98; BME 16-1998, f. & cert. ef. 11-24-98; BME 13-1999, f. & cert. ef. 7-23-99; BME 14-2000, f. & cert. ef. 10-30-00; BME 11-2001, f. & cert. ef. 10-30-01; BME 9-2002, f. & cert. ef. 7-17-02; BME 10-2002, f. & cert. ef. 7-22-02; BME 1-2003, f. & cert. ef. 1-27-03; BME 12-2003, f. & cert. ef. 7-15-03; BME 4-2004, f. & cert. ef. 1-27-04

Board of Naturopathic Examiners Chapter 850

Adm. Order No.: BNE 1-2004

Filed with Sec. of State: 2-11-2004

Certified to be Effective: 2-11-04

Notice Publication Date: 1-1-04

Rules Amended: 850-010-0130

Subject: This amendment will clarify the licensee's responsibility to keep the board notified of any change in practice location, residence address or mailing address.

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

850-010-0130

Change of Address

Each licensee of the Board shall notify the Board in writing within 30 days of any change of residence address, practice location, or mailing address.

Stat. Auth.: ORS 685

Stats. Implemented: ORS 685.100, 685.110

Hist.: NE 2, f. 6-7-59; BNE 1-2004, f. & cert. ef. 2-11-04

Board of Nursing Chapter 851

Adm. Order No.: BN 1-2004

Filed with Sec. of State: 1-29-2004

Certified to be Effective: 2-12-04

ADMINISTRATIVE RULES

Notice Publication Date: 10-1-03

Rules Adopted: 851-061-0130

Rules Amended: 851-061-0010, 851-061-0020, 851-061-0030, 851-061-0040, 851-061-0050, 851-061-0070, 851-061-0080, 851-061-0090, 851-061-0100, 851-061-0110

Subject: These rules cover the standards for training programs for Nursing Assistants and Medication Aides.

Rules Coordinator: KC Cotton—(503) 731-4754

851-061-0010

Purpose of Standards

To foster the safe and effective performance of duties by graduates of nursing assistant and medication aide training programs by setting standards which promote adequate preparation of students. These standards will:

(1) Serve as a guide for the development and approval of new nursing assistant and medication aide training programs.

(2) Create minimum standards and provide general parameters for Board-approved curriculum of established nursing assistant and medication aide training programs.

(3) Allow flexibility in the manner of teaching the required curriculum when not in conflict with the parameters of Board-approved curriculum.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

851-061-0020

Definitions

As used in these rules:

(1) "Board-approved Curriculum" means content required in nursing assistant and medication aide training programs established by Board policy.

(2) "Certified Medication Aide (CMA)" means a Certified Nursing Assistant who has had additional training in administration of noninjectable medication and holds a current unencumbered Oregon CMA certificate.

(3) "Certified Nursing Assistant (CNA)" means a person who holds a current Oregon CNA certificate by meeting the requirements specified in these rules; whose name is listed on the CNA Registry; and who assists licensed nursing personnel in the provision of nursing care. The phrase Certified Nursing Assistant and the acronym CNA are generic and may refer to CNA 1, CNA 2 or all CNAs.

(4) "Certified Nursing Assistant 1 (CNA 1)" means a person who holds a current Oregon CNA certificate and who assists licensed nursing personnel in the provision of nursing care.

(5) "Certified Nursing Assistant 2 (CNA 2)" means a CNA 1 who has met requirements specified in these rules for one or more of the CNA 2 categories.

(6) "Client" means the individual who is provided care by the CNA or CMA including a person who may be referred to as "patient" or "resident" in some settings.

(7) "Clinical Instructor" means a registered nurse whose role is education of students in the skills laboratory or clinical site and who may participate in classroom teaching under the direction of the program director or primary instructor.

(8) "Clinical Preceptor" means a licensed nurse who provides direct clinical supervision of students during their clinical experience under the direction of the program director or a primary instructor.

(9) "Clinical Site" is a location or situation in which hands on experience with actual clients is obtained.

(10) "CNA Registry" means the listing of Oregon Certified Nursing Assistants maintained by the Board.

(11) "Competency evaluation" means the Board approved process for determining competency.

(12) "Direct supervision" means that the registered nurse, clinical nurse specialist, or nurse practitioner is physically present and accessible in the immediate client care area and is available to intervene if necessary.

(13) "Facility-Based Program" means an approved nursing assistant or medication aide training program in a licensed nursing facility.

(14) "Full-time" means at least 32 hours of regularly scheduled work each week.

(15) "Independent Training Program" means an approved nursing assistant or medication aide training program that is not a facility-based program.

(16) "Level 1 training" is the minimum training required to prepare a graduate to take the state certification examination for CNA 1.

(17) "Level 2 training" is training available to a CNA 1 to prepare them for a role in one or more of the Board approved category areas.

(18) "Licensed Nursing Facility" means a licensed nursing home or a Medicare or Medicaid certified long term care facility.

(19) "Medication Pass" means the time spent and the process of preparing and administering time scheduled medications to a group or groups of clients and documenting the medication administration.

(20) "Nursing Assistant" means a person who assists licensed nursing personnel in the provision of nursing care. ORS 678.440(4)

(21) "Program" means a training program that prepares graduates for certification as a nursing assistant level 1, level 2, or medication aide. The terms "nursing assistant program" or "medication aide program" as used in these rules, are synonymous with "Program."

(22) "Representative of the Board" means the Nursing Assistant Program Consultant or Board designee qualified to perform the necessary responsibilities.

(23) "Self-Evaluation" means a review of a basic nursing assistant or medication aide training program conducted by the program director using forms provided by the Board and submitted to the Board.

(24) "Site Visit" means that representative(s) of the Board go to the location of a program for specified purpose(s) which may include a survey for approval.

(25) "Standards for Approval" means authoritative statements which set expectations for a program to achieve and maintain approval status. (OAR 851-061-0080 through 0130).

(26) "Survey Visit" means that representative(s) of the Board go to the location of a program to review the program for compliance with Standards for Approval, and to prepare a report and recommendation regarding approval status.

(27) "Waiver of Prohibition" authorizes a program to be taught in but not by a facility that has had its approval denied or withdrawn pursuant to OAR 851-061-0050(2).

Stat. Auth.: ORS 678.440, 678.442 & 678.444

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

851-061-0030

Process for Program Approval

(1) Nursing assistant or medication aide training programs shall be Board-approved prior to being offered. Retroactive approval shall not be granted.

(2) Pilot level 1 training programs may be approved to test various settings for clinical experience.

(a) Such programs shall meet the same standards and requirements as current rules for program approval with the exception of Board-approved criteria for pilot status, and the variation in clinical setting(s) approved for the specific pilot program.

(b) Approval may be granted for a minimum of four cohort groups over a maximum of two years.

(c) The applicant must implement the program within six months from approval of the application for pilot status, and the two year maximum will start with the implementation date.

(d) Early withdrawal of approval may occur if the Board determines that public safety or student/graduate rights are affected. The program may withdraw from pilot status with written notice to the Board and evidence of meeting any relevant Board requirements for closure of a program.

(e) The provision for pilot testing clinical site variations will sunset three years from its effective date of March 1, 2002. Applications must be received for approval within a time frame that enables the program to complete its objectives, and to contribute to evaluation of effectiveness.

(3) Application for Initial Approval of level 1, level 2, and medication aide training programs. A facility, agency or individual wishing to establish a new nursing assistant program, a new pilot program, or medication aide training program shall make application to the Board at least 45 days in advance of expected start date. An established program in good standing, shall submit a proposal for pilot status at least 14 days in advance of the expected start date. The application for initial approval of a training program shall include:

(a) A completed form provided by the Board;

(b) Appropriate fees;

(c) Faculty names and qualifications;

(d) Names of classroom and clinical facilities;

(e) Name of person authorized to accept service of notices issued by the Board;

(f) Program rationale, philosophy and purpose;

(g) Program outline;

ADMINISTRATIVE RULES

- (A) Objectives;
- (B) Curriculum content divided into number and sequence of didactic and clinical hours; and
- (C) Teaching methodology.
- (h) Evaluation method:
 - (A) Laboratory and clinical skills checklist approved by the Board;
 - (B) Final exam; and
 - (C) In addition, for level 2 training programs, a Board approved competency evaluation.
 - (i) Certificate of completion; and
 - (j) Tentative time schedule for initiating the program.
 - (4) A site visit may be conducted by a representative(s) of the Board;
 - (5) The program director will be notified of approval or non-approval.

Following receipt of notification from the Board of approval or non-approval:

- (a) A program that is approved may begin classes according to the schedule submitted;
- (b) A program that is not approved will be notified of the deficiencies and will be re-evaluated after appropriate modifications are made;
- (c) A program denied approval may petition the Board for reconsideration.
- (6) An approved nursing assistant level 1 or medication aide training program:
 - (a) Shall be required to demonstrate ongoing compliance with the standards of approval at least every two years for continued approval.
 - (b) Shall be surveyed for consideration of continued approval and may have a survey visit or interim self-evaluation report required by the Board at any time.
 - (c) May be subject to scheduled or non-scheduled site visits for continued approval or any other purpose at any time.
 - (d) Shall submit an interim self evaluation during the intervening year or as requested by the Board on forms provided by the Board.
 - (e) Shall have records available for review.
- (7) Following initial approval, level 2 training programs remain approved unless specifically withdrawn by the Board.
- (8) Program changes requiring Board approval:
 - (a) Change of program ownership:
 - (A) If the change only causes minor changes, there is no need to seek new approval of the program.
 - (B) If the change causes a substantial difference as determined by the Board through the impact on the students, faculty, or program resources, an application and approval for the program shall be required.
 - (b) Changes in course content, lab/clinical skill checklist, final exam, certificate of completion, program director, primary instructor, clinical instructor, clinical preceptor, or classroom or clinical training sites shall be submitted to the Board for approval.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 5-2002, f. & cert. ef. 3-5-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

851-061-0040

Inactive Status or Closure of a Program

- (1) Voluntary Inactive Status. A training program may be granted temporary inactive status for up to two years:
 - (a) The program director shall notify the Board in writing of the intended inactive date and the plan for allowing the currently enrolled students to complete the program.
 - (b) The program shall be continued until the committed class schedule of currently enrolled students is completed.
- (2) Involuntary Inactive Status. A training program shall be placed on temporary inactive status for up to one year for the following reasons:
 - (a) To allow an opportunity for the program to take corrective action; or
 - (b) After a period of 12 months during which no classes were taught.
- (3) Process to reinstate active status:
 - (a) A training program may be reinstated during the year of voluntary or involuntary inactive status by submitting satisfactory evidence that the program meets Board standards.
 - (4) Voluntary Closing. When a facility, institution or individual considers closing a nursing assistant training program, the program director shall:
 - (a) Notify the Board in writing of the intended closing date and the plan for allowing the currently enrolled students to complete the program.
 - (b) Continue the program until the committed class schedule of currently enrolled students is completed.

- (c) Provide for the custody of the records:

- (A) If the nursing assistant or medication aide training program closes but the educational institution or licensed health care agency continues to function, the institution shall assume responsibility for the records of the students and the graduates. The Board of Nursing shall be advised of the arrangements made to safeguard the records.

- (B) If the facility-based or independent training program ceases to exist, the Board of Nursing shall be consulted about the maintenance of student records.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

851-061-0050

Denial or Withdrawal of Program Approval

- (1) The Board may deny or withdraw approval if standards for approval of new or existing nursing assistant level 1, level 2, or medication aide training programs are not being met:

- (a) Notice of the deficiency(ies) shall be given in writing to the program director;
 - (b) The program director may submit evidence of correction to the Board;
 - (c) The Board may withdraw program approval immediately or prescribe the time within which the deficiency(ies) shall be corrected;
 - (d) The approval may be withdrawn, if the program fails to correct the deficiency(ies) within the time specified;
 - (e) A program may request a hearing if the approval is withdrawn; and
 - (f) The withdrawal may be effective after the last currently enrolled student has completed the program.

- (2) Pursuant to Federal Regulations the Board shall deny approval to a nursing assistant training program and shall withdraw approval from a previously approved nursing assistant training program offered by or in a licensed nursing facility or a skilled nursing facility which, in the previous two years:

- (a) Has operated under a waiver of the federal requirement for nursing facilities and skilled nursing facilities to have 24 hour a day licensed nurse staffing with eight hour a day registered nurse staffing when such waiver is in excess of 48 hours per week; or
 - (b) Has been determined by surveyors from the state Seniors and People with Disabilities Division or federal Center for Medicare and Medicaid Services to have conditions which pose an immediate threat to resident health and safety; or
 - (c) Has been subject to an extended or partial extended survey, a restriction of admissions or an impending restriction of admissions for provision of substandard quality of care; or
 - (d) Was subject to a denial of payment under federal law; or
 - (e) Has had its Medicare participation terminated under federal or state law; or
 - (f) Was assessed a civil penalty of \$5,000 or more for deficiencies in nursing facility standards; or
 - (g) Has operated under trusteeship appointed to oversee the operation of the nursing facility and to ensure the health and safety of its residents; or
 - (h) As a result of state action terminated the operation of the facility or was closed or has had its residents transferred.

- (3) A program or facility that has had its approval denied or withdrawn pursuant to OAR 851-061-0050(2) may apply for waiver of prohibition if:

- (a) The facility has received written notice from Seniors and People with Disabilities Division's Client Care Monitoring Unit that it is in compliance with regulations governing licensure and/or certification; and
 - (b) There is not another program within ten road-miles from the facility submitting the request.
 - (4) The letter of request for waiver of prohibition shall:
 - (a) Address the distance in road-miles from the sanctioned facility to the closest program or facility that is willing and eligible for approval to serve as a clinical site for the training program; and
 - (b) Include a written statement of compliance with the standards for licensure and certification.

- (5) The Board shall grant or deny the waiver based upon information received from applicant and Seniors and People with Disabilities Division's Client Care Monitoring Unit.

- (6) The Board may withdraw program approval of a nursing assistant level 1 or medication aide training program if:

- (a) The program cannot provide satisfactory evidence that the standards for nursing assistant or medication aide training programs are consistently maintained; or

ADMINISTRATIVE RULES

- (b) No classes have been taught for 24 consecutive months; or
- (c) The average pass rate for graduates of the program falls below 85% over a two year period; or
- (d) The clinical facility fails to permit a site visit of the training program.

(7) The Board may withdraw program approval of a nursing assistant level 2 training program if:

- (a) Standards for program approval are not met as determined by a survey visit or interim self evaluation report which may be required by the Board at any time, for any purpose, and may be announced or unannounced; and

- (b) A site visit is not permitted or records are not available for review.
- (8) When program approval is withdrawn, the program shall:

- (a) Submit a plan to the Board within ten working days for completion of the currently enrolled students;
- (b) Allow students who have started a training program from which approval has been withdrawn to complete the course; and
- (c) Submit the course summary form when the students have completed the course.

(9) The Board may reinstate approval of the nursing assistant or medication aide training program upon submission of satisfactory evidence that the program meets the Board standards.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

851-061-0070

Reports

(1) When ownership of a nursing assistant or medication aide training program changes, a report must be submitted to the Board containing the following information:

- (a) Anticipated effects on students, faculty and resources; and
- (b) Plans for the orderly transition of the program.

(2) Program data to be sent to Board:

(a) Nursing assistant level 1 and medication aide training programs shall submit to the Board:

(A) By the end of the second class day, a course summary form that includes students':

- (i) Names;
- (ii) Dates of birth;
- (iii) Social security numbers if provided by the students; and
- (iv) Current addresses.

(B) Within two weeks of completion of a class, a course summary form that includes students':

- (i) Names;
- (ii) Dates of birth;
- (iii) Social security numbers if provided by the students;
- (iv) Current addresses; and
- (v) Dates of program completion.

(b) Nursing assistant level 2 training programs shall submit to the Board, within two weeks of completion of a class, verification of competency evaluation on the Board approved form.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

851-061-0080

Standards for Program Approval: Faculty Qualifications and Responsibilities

(1) The training of nursing assistants level 1 shall be by or under the supervision of a program director or primary instructor who has at least one year of nursing experience in a licensed nursing facility.

(2) The program director shall hold a current, unencumbered license to practice as a registered nurse in Oregon; and

(a) For a nursing assistant level 1 and level 2 training program, have at least three years of nursing experience, including at least one year of working in direct patient care; and one of the following:

- (A) One year of experience on a nursing faculty;
- (B) One year of experience in staff development;
- (C) Evidence of academic preparation for teaching adults; or
- (D) Evidence of equivalent experience.

(b) For a medication aide training program, have at least three years of experience as a Registered Nurse in the last five years, including at least one year as a nurse educator or nurse administrator.

(3) The program director shall:

(a) Act as liaison with the Board related to the program's continuing compliance with the required elements of these rules;

(b) Implement and maintain a program that complies with all Board standards;

(c) Assume the ultimate responsibility for the implementation of the Board-approved curriculum;

(d) Recruit, supervise, and evaluate qualified primary instructors and clinical instructors or preceptors;

(e) Develop and implement written policies necessary for the operation of the program;

(f) Coordinate classroom and clinical sites and activities;

(g) Coordinate with clinical sites to initiate criminal records check before clinical experience;

(h) Ensure that a Board-approved primary instructor, clinical instructor, or clinical preceptor is on the premises at all times during scheduled clinical hours;

(i) Supervise or coordinate supervision of students in the clinical setting or assign this responsibility to the primary instructor.

(j) Provide or arrange for the orientation of the clinical instructor or clinical preceptor to their role and responsibilities.

(k) Assess students' reactions to course content, instructional effectiveness, and other aspects of the learning experience;

(l) Submit program data upon request of the Board on forms provided by the Board;

(m) Submit required reports;

(n) Verify that the training facility in which the training program is offered or utilized for the clinical experience is licensed under the appropriate licensing agency and is in substantial compliance with all standards for licensure;

(o) Verify that a facility utilized for out-of-state clinical experience:

(A) Has not been found within the preceding two years, by the state survey and certification agency, using the currently applicable Center for Medicare and Medicaid Services regulations, to be categorized as providing substandard quality of care;

(B) Is no more than 50 miles from an Oregon border; and

(C) Has given permission for site visit(s) by Board staff.

(p) For medication aide training programs, determine student eligibility by verifying that the applicant:

(A) Holds a current certificate to practice as a CNA 1 on the CNA Registry;

(B) Has graduated from an approved basic nurse aide training program at least six months prior to enrollment in the medication aide training program; and

(C) Meets the employment requirement of at least six months of full time experience as a nursing assistant or the equivalent in part time experience since graduation from a basic nursing assistant training program unless the applicant is exempt under OAR 851-062-0090.

(4) The primary instructor shall hold a current, unencumbered license to practice as a registered nurse in Oregon; and

(a) For a nursing assistant level 1 and level 2 training program, have two years experience as a registered nurse and teaching experience or educational preparation for teaching adults.

(b) For a medication aide training program, have at least three years of nursing experience in the last five years, to include:

(A) One year as a nurse educator, a primary instructor in a nursing assistant training program or as a nurse administrator, and

(B) One year working with the particular type of clientele or providing clinical instruction in a setting with the particular type of clientele with whom students will have their clinical experience.

(c) May be the director of nursing service in a long term care facility only if there is evidence of formal arrangements for the director of nursing position to be filled by another qualified nurse during the period of instruction.

(5) The primary instructor shall:

(a) Implement the required Board-approved curriculum;

(b) Provide effective teaching strategies in an environment that encourages student and instructor interaction;

(c) Supervise and be present in the classroom at least 75% of the time that classes are being taught;

(d) Evaluate competency of students; and

(e) In addition, for medication aide training programs, the primary instructor shall:

(A) Obtain approval from a facility prior to using a facility employee as a clinical preceptor. The facility has the right to refuse such approval;

(B) Ensure that each student's clinical experience includes administration of medications by all approved routes of administration and includes administration of a variety of medications; and

ADMINISTRATIVE RULES

(C) Supervise the clinical experience for all medication aide students. Clinical preceptors may be used as appropriate.

(6) Other personnel from the healthcare professions may supplement the instructor in their area of expertise:

(a) For a nursing assistant level 1 and level 2 training program, the program director or primary instructor may:

(A) Involve as trainers for a specific portion of the nursing assistant training, other licensed nursing personnel or other licensed healthcare professionals who have at least one year of experience in their field.

(B) Use an approved clinical instructor who shall:

(i) Hold a current, unencumbered license to practice as a licensed nurse in Oregon; and

(ii) Have the equivalent of one year full time experience as a licensed nurse.

(C) Use an approved clinical preceptor who shall:

(i) Hold a current, unencumbered license to practice nursing in Oregon; and

(ii) Have the equivalent of at least one year of experience as a licensed nurse.

(b) For a medication aide training program, the clinical preceptor shall:

(A) Hold a current, unencumbered license to practice nursing in Oregon;

(B) Have the equivalent of one year full time experience as a licensed nurse and shall have three months' nursing experience in the setting in which the medication aide student will be passing medications;

(C) Provide direct supervision; and

(D) Have only the responsibility for clinical precepting during the scheduled clinical experience.

(c) Certified medication aides, resident care managers, and directors of nursing are prohibited from acting as clinical preceptors for medication aide students.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 18-2002, f. & cert. ef. 10-18-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

851-061-0090

Standards for Program Approval: Curriculum

(1) Board-approved curriculum shall be used in approved nursing assistant level 1 and medication aide training programs.

(2) A nursing assistant level 1 training program shall consist of:

(a) At least 150 hours of instruction divided into 75 hours of classroom instruction and 75 hours of supervised clinical experience;

(b) At least 24 hours of classroom/laboratory instruction with return student demonstrations of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients; and

(c) At least 40 hours of clinical experience in a licensed nursing facility, except that pilot programs (OAR 851-061-0030) shall provide clinical experience as approved for pilot status.

(3) A nursing assistant level 2 training program will have Board approved:

(a) Standardized category curriculum that may vary in training hours from other Board approved standardized category curricula; and

(b) Competency evaluation.

(4) Medication aide training program classroom and clinical instruction hours.

(a) A medication aide training program shall consist of at least 80 hours of instruction divided into at least 24 hours of classroom instruction and at least 24 hours of 1:1 supervised clinical experience.

(b) All clinical hours shall be completed at one site (licensed nursing facility, hospital, or assisted living facility).

(c) All required clinical hours shall be in medication administration related activities.

(5) Admission requirements for medication aide training programs shall be:

(a) Current, unencumbered CNA 1 status on the Oregon CNA Registry maintained by the Board;

(b) Documentation of graduation from an approved basic nursing assistant level 1 training program at least six months prior to enrollment in the medication aide training program; and

(c) Documentation of at least six months full time experience as a nursing assistant level 1 or the equivalent in part time experience since graduation from a basic nursing assistant training program.

(6) Prior to the clinical experience component, the nursing assistant or medication aide training program director shall ensure that students have a criminal history clearance initiated in accordance with OAR 411-009-0000 to 411-009-0110.

(7) Classroom and clinical faculty/student ratios for nursing assistant level 1 and medication aide training programs:

(a) Classroom: The ratio of students per instructor shall be such that each trainee is provided with registered nurse assistance and supervision and be no more than 20 students per instructor for classroom.

(b) Clinical:

(A) The ratio of students per instructor in a nursing assistant level 1 training program shall be no more than 10 students per instructor at all times during the clinical experience.

(B) The ratio of students per instructor in a medication aide training program shall begin with a ratio of one clinical preceptor to one medication aide student during the first 24 hours of the clinical experience. Less intensive supervision (either more students per preceptor or less direct supervision by preceptor) may occur with satisfactory evaluation and approval of the clinical preceptor and primary instructor.

(8) Clinical experience and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(a) A clinical schedule shall be prepared for all students prior to the beginning of the clinical experience, and provided to the clinical facility director of nursing, the clinical instructor/preceptor, and the student.

(b) Student practice and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(A) Students may provide direct client care within their authorized duties under the supervision of an approved instructor.

(B) Students shall be identified as students at all times while in the clinical area.

(C) Students must not be counted as staff or utilized as staff during the hours that are scheduled for clinical experience.

(D) Students may be on a unit, floor or wing of a facility only under direct supervision of a qualified instructor.

(E) Students shall not be on a unit, floor, or wing without a CNA or licensed nurse.

(F) Students shall provide care only to the level they have been taught and determined competent by the approved clinical instructor.

(c) In addition, for medication aide training programs, the clinical experience shall consist of a minimum of 10 medication passes to a minimum of five residents/patients during the first 20 hours of supervised clinical experience;

(9) Program completion:

(a) Completion of a nursing assistant level 1 or medication aide training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum;

(B) The student has successfully demonstrated the required skills on the laboratory and clinical skills checklist;

(C) The student has achieved a score of 75% or higher on the program's final examination;

(D) The student has successfully completed the clinical portion of the program no later than four months following the last date of classroom instruction; and

(E) In addition, for nursing assistant level 1 training programs, the student has successfully completed current, adult CPR certification in accordance with Board-approved curriculum.

(b) Completion of a nursing assistant level 2 training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum; and

(B) The student has successfully completed the competency evaluation.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 15-2002, f. & cert. ef. 7-17-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

851-061-0100

Standards for Program Approval: Responsibility to Students

The nursing assistant level 1 and medication aide training programs will be accountable to students by:

(1) Providing reasonable assurance that expectations of becoming a certified nursing assistant or medication aide will be met, as evidenced by an 85% pass rate for first-time candidates taking the Board-approved competency examination.

(2) Informing students of the following information:

ADMINISTRATIVE RULES

(a) That for facility-based nursing assistant level 1 programs, no student who is employed by, or who has received an offer of employment from a facility on the date on which the student begins training will be charged for any portion of the program, including any fees for textbooks or other required course materials in accordance with 42 CFR § 483.152(c)(1).

(b) The Department of Human Resources and Board of Nursing's criminal history requirements and policies. This information shall be provided to students prior to admission to the program.

(3) Issuing a certificate of completion or making an appropriate notation on a transcript for a graduate who has successfully completed the training. The certificate is to be printed on one side of a standard letter-sized piece of paper and is to include:

- (a) Name of individual;
- (b) Social Security number if provided by the student;
- (c) Date of birth;
- (d) Name of training program;
- (e) Number of classroom hours;
- (f) Number of clinical hours;
- (g) Date the training program was most recently approved by the

Board;

- (h) Signature of the program director or primary instructor; and
- (i) Date of completion.

Stat. Auth.: ORS 678.440 & ORS 678.444

Stats. Implemented: 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

851-061-0110

Standards for Program Approval: Records

Nursing assistant level 1, level 2, and medication aide training program records shall:

- (1) Be maintained for a period of seven years;
- (2) Be maintained in a secure and dry manner;
- (3) Include the following program files that are dated and contain:
 - (a) Faculty name and qualifications;
 - (b) Curricula, including the teaching methodology;
 - (c) Course schedules, including classroom and supervised clinical

hours;

- (d) Laboratory and clinical skill checklists;
- (e) Final exams; and
- (f) Documentation of Board approvals and re-approvals.
- (4) Include student records that contain:
 - (a) Course start date;
 - (b) Student progress record;
 - (c) Laboratory and clinical skills checklist;
 - (d) Attendance record;
 - (e) Examination scores;
 - (f) Proof of CPR certification (nursing assistant level 1 training program);

(g) Proof of the criminal history release authorization form (SDS 303) submitted to Seniors and People with Disabilities Division of the Oregon Department of Human Resources or an Area Agency on Aging;

- (h) Date of completion; and

- (i) Record of student completion:

(A) Facility-based and independent programs shall maintain a copy of the student certificate of completion;

(B) Community College and High School programs may meet this standard by appropriate notation on student transcript.

- (j) Date the student was employed (if applicable).

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

851-061-0130

Interstate Programs

(1) Out-of-State Programs who seek to send student(s) for clinical experience in Oregon shall meet the requirements established in OAR 851-061-0090(7)(b) and 851-061-0090(8)(b).

(2) Programs with faculty and facilities located in Oregon and approved by another state shall be required to obtain approval as a program in Oregon.

Stat. Auth.: ORS 678.440 & ORS 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 1-2004, f. 1-29-04, cert. ef. 2-12-04

.....

Adm. Order No.: BN 2-2004

Filed with Sec. of State: 1-29-2004

Certified to be Effective: 2-12-04

Notice Publication Date: 10-1-03

Rules Adopted: 851-062-0005, 851-062-0015, 851-062-0016, 851-062-0055, 851-062-0075

Rules Amended: 851-062-0010, 851-062-0020, 851-062-0050, 851-062-0070, 851-062-0080, 851-062-0090, 851-062-0100, 851-062-0110, 851-062-0120, 851-062-0130

Rules Repealed: 851-062-0040, 851-062-0060

Subject: These rules cover the standards for certification of Nursing Assistants and Medication Aides.

Rules Coordinator: KC Cotton—(503) 731-4754

851-062-0005

Effective Dates for References to CNA 1 and CNA 2 in these Rules

References to CNA 1 and CNA 2 in Division 62, including but not limited to OAR 851-062-0015 and 851-062-0016, are not effective until the Board adopts the curriculum and competency evaluation for the first level 2 category. Until the Board adopts the curriculum and competency evaluation for the first level 2 category, references to CNA 1 in OAR 851-062-0010 through 851-062-0130 mean current CNA certification.

Stat. Auth.: ORS 678.150, 678.440

Stats. Implemented: ORS 678.440

Hist.: BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0010

Definitions

(1) "Application" means a request for certification including all information identified on a form supplied by the Board and payment of required fee.

(2) "Approved Nursing Program" means a pre-licensure educational program approved by the Board for registered or practical nurse scope of practice, or an educational program in another state or jurisdiction approved by the licensing board for nurses or other appropriate accrediting agency for that state.

(3) "Certificate of Completion" means a document meeting the standards set in OAR 851-061-0100(3)(a-i) and awarded upon successfully meeting all requirements of a nursing assistant or medication aide training program.

(4) "Certified Medication Aide (CMA)" means a Certified Nursing Assistant who has had additional training in administration of noninjectable medication and holds a current unencumbered Oregon CMA Certificate.

(5) "Certified Nursing Assistant (CNA)" means a person who holds a current Oregon CNA certificate by meeting the requirements specified in these rules; whose name is listed on the CNA Registry; and who assists licensed nursing personnel in the provision of nursing care. The phrase Certified Nursing Assistant and the acronym CNA are generic and may refer to CNA 1, CNA 2 or all CNAs.

(6) "Certified Nursing Assistant 1 (CNA 1)" means a person who holds a current Oregon CNA 1 certificate and who assists licensed nursing personnel in the provision of nursing care.

(7) "Certified Nursing Assistant 2 (CNA 2)" means a CNA 1 who has met requirements specified in these rules for one or more of the CNA 2 categories.

(8) "Client" means the individual who is provided care by the CNA or CMA including a person who may be referred to as "patient" or "resident" in some settings.

(9) "CNA Registry" means the listing of Oregon Certified Nursing Assistants maintained by the Board.

(10) "Competency evaluation" means the Board-approved process for determining competency.

(11) "Completed Application" means a signed application, paid application fee and submission of all supporting documents related to certification requirements.

(12) "Completed Application Process" means a completed application, a Law Enforcement Data System (LEDS) check including any subsequent investigation; successful competency examination, if required; and final review for issue or denial.

(13) "Endorsement" means the process of certification for an applicant who is trained and certified as a CNA in another state or jurisdiction.

(14) "Enrolled" means making progress toward completion of an RN or LPN nursing program, whether or not registered in the current quarter or semester, as verified by the director or dean of the program.

- (15) Examinations:

(a) "Competency Examination" means the Board-approved examination administered to determine minimum competency for CNA 1 authorized duties. The competency examination consists of a written examination

ADMINISTRATIVE RULES

and a manual skills examination. The examination is administered in English.

(b) "Medication Aide Examination" means the Board-approved examination administered to determine minimum competency for CMA authorized duties. The examination is administered in English.

(16) "Full-time" means at least 32 hours of regularly scheduled work each week.

(17) "Licensed Nursing Facility" means a licensed nursing home or a Medicare or Medicaid certified long term care facility.

(18) "Monitoring" means that a Registered Nurse assesses and plans for care of the client, delegates duties to the nursing assistant according to OAR 851-047-0000 through 851-047-0040 and monitors client outcomes as an indicator of CNA/CMA competency.

(19) "Nurse Aide Registry" means the listing of Certified Nursing Assistants maintained by the appropriate state agency in another state or jurisdiction of the United States.

(20) "OBRA" means the Omnibus Budget Reconciliation Act of 1987, successor legislation and written directives from the Center for Medicare and Medicaid Services (CMS).

(21) "Qualifying Disability" means a diagnosed physical or mental impairment which substantially limits one or more major life activities, and is subject to the protection of the Americans with Disabilities Act (ADA).

(22) "Reinstatement" is the process of reactivation when the certificate has been subject to disciplinary sanction by the Board.

(23) "Supervision" means that the licensed nurse periodically observes and evaluates the skills and abilities of the CNA/CMA to perform authorized duties.

(24) "Unlicensed Persons" means individuals who are not necessarily licensed or certified by this Board or another Oregon health regulatory agency but who are engaged in the care of clients.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0015

Transition to CNA 1 and CNA 2

The Board hereby establishes two levels of CNA, each with its own distinct curriculum requirements, evaluation method and authorized duties, effective when the first level 2 category curriculum and competency evaluation are adopted.

(1) Any person certified as a CNA on the effective date established by OAR 851-062-0005 shall become a CNA 1.

(2) Requirements for recognition as a CNA 2:

(a) Hold a current, unencumbered CNA 1 certificate; and

(b) Complete the nursing assistant level 2 training program specified in Division 61 of these rules; and

(c) Pass the corresponding competency evaluation.

Stat. Auth.: ORS 678.150, 678.440

Stats. Implemented: ORS 678.440

Hist.: BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0016

CNA 2 Categories

(1) Acute Care Category. The acute care category becomes available after the Board adopts the curriculum and competency evaluation for this category.

(2) Dementia Care Category. The dementia care category becomes available after the Board adopts the curriculum and competency evaluation for this category.

(3) Restorative Care Category. The restorative care category becomes available after the Board adopts the curriculum and competency evaluation for this category.

(4) Other categories as subsequently established by the Board.

(5) For two years following the implementation date of each CNA 2 category, a person with a current unencumbered CNA 1 may become a CNA 2 in that category by successfully completing the competency evaluation and such additional training as may be deemed necessary by the nursing assistant level 2 training program director. After that date, a CNA 1 may become a CNA 2 only by successfully completing the entire level 2 training program and competency evaluation.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0020

Certification of Nursing Assistants Required

(1) A CNA must have a current Oregon CNA 1 certificate and be listed on the Oregon CNA Registry prior to performing CNA 1 authorized duties.

(2) A nursing assistant, never certified in any jurisdiction, who performs CNA 1 authorized duties as an employee of a licensed nursing facility in the State of Oregon must obtain initial Oregon CNA 1 certification according to these rules no later than four months after the date of hire.

(3) A nursing assistant who is enrolled in an approved nursing assistant level 1 training program that meets the standards set forth in OAR 851-061-0010 - 851-061-0130 may perform nursing assistant duties with appropriate supervision.

(4) Unlicensed persons who are performing tasks that have been delegated to them by a Registered Nurse according to OAR 851-047-0000 through 851-047-0040 may be certified or may be exempted from the requirement for certification.

(5) Successful completion of a Board-approved training program, alone, does not result in the granting of a CNA certificate. The training program is one element of certification requirements. All requirements must be met before the Board grants certification.

(6) An RN, LPN, student nurse or unlicensed graduate of a school of nursing is required to have current CNA 1 certification before assuming a CNA position and identifying himself or herself as a CNA.

Stat. Auth.: ORS 678.440 & ORS 678.442

Stats. Implemented: ORS 678.440 & ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0050

CNA Certification

An applicant for certification must submit a completed application using forms and instructions provided by the Board and pay fees established by the Board. Certification may be obtained in one of the following ways:

(1) Training and Competency Examination.

(a) Complete an approved nursing assistant level 1 training program.

(b) Pass the competency examination within two years of the date of completion of the training program and within three attempts.

(2) Military corpsman or medic training and experience and competency examination.

(a) Complete a training course equal in content to OBRA curriculum for nursing assistants; and

(b) Document evidence of at least 400 hours of paid employment in a nursing related capacity within the last two years; and

(c) Pass the competency examination within two years of application and within three attempts.

(3) RN or LPN licensure.

(a) Hold a current unencumbered license in any U.S. state or jurisdiction.

(b) Provide verification of current unencumbered licensure.

(c) A nurse in any U.S. state or jurisdiction who has had disciplinary action taken against the license will be considered on an individual basis to determine whether the individual is able to safely perform CNA 1 authorized duties.

(4) Enrollment in an approved nursing education program in the United States.

(a) Provide verification of enrollment in an approved nursing program; and

(b) Complete required course work equivalent to a Board-approved nursing assistant level 1 training program documented by:

(A) An official transcript from the nursing program; or

(B) Written verification of completion of equivalent coursework from the nursing program director or dean.

(5) Graduation from an approved nursing program in the United States.

(a) Within one year after graduation, submit an official transcript documenting graduation from an approved nursing program.

(b) Between one and three years after graduation:

(A) Submit an official transcript documenting graduation from an approved nursing program; and

(B) Pass the competency examination within two years and three attempts.

(c) Three or more years after graduation. The individual shall meet requirements for initial CNA 1 certification by training and competency examination.

ADMINISTRATIVE RULES

(6) Graduation from a nursing program outside of the United States and competency examination.

(a) Submit a transcript or other documentation, in English, of nursing education which includes nursing knowledge and skills necessary to perform the CNA 1 authorized duties; and

(b) Pass the competency examination; or

(c) Complete the training and competency examination as provided in OAR 851-062-0050(1).

(7) Nursing assistant training outside of the United States. Complete training and competency examination as provided in OAR 851-062-0050(1).

(8) Endorsement.

(a) Provide the following:

(A) Documentation of successful completion of a nursing assistant training program that met OBRA standards.

(i) Certificate of completion meeting the standards set in OAR 851-061-0100(3)(a-i); or

(ii) Letter from facility where training was completed, on letterhead, indicating the date that program was completed and the number of classroom and clinical hours; or

(iii) Information from the appropriate state agency attesting to program completion.

(B) Evidence of at least 400 hours of paid employment within CNA 1 authorized duties under the supervision of a nurse in another state where the individual held current certification in the two years immediately preceding application for endorsement. A CNA who has graduated from a nursing assistant training program within the previous two years has satisfied this requirement.

(C) Verification of current certification by the state agency in which CNA certification is held.

(b) An individual who cannot satisfy these requirements may be eligible for CNA 1 certification by training and competency examination as provided in OAR 851-062-0050(1).

(9) CNA Testing Eligibility

(a) An applicant who has completed a nursing assistant training program in Oregon or another of the United States, that met OBRA standards, shall be eligible for examination for two years from the date of completion of the nursing assistant training program.

(b) An applicant who is eligible for the competency examination as provided in OAR 851-062-0050(2)(5)(6) shall be eligible for examination for two years from the date of application.

(c) A completed application shall be valid for the period of eligibility to test.

(d) An incomplete application becomes void in one year.

(e) An applicant who fails to pass the competency examination within two years of eligibility and within three attempts shall not be eligible to re-apply for the examination except that the applicant may regain eligibility enrolling in and successfully completing a Board-approved nursing assistant training program.

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0055

Competency Examination Accommodations, Controls, Results, Reexamination

(1) An applicant for the competency examination must be able to perform nursing assistant duties safely, without risk to his/her own health and safety or to the health and safety of others.

(a) An applicant with a qualifying disability, who requires accommodation at the test site, shall:

(A) Submit a Request for Accommodation; and

(B) Submit documentation from the provider who rendered the diagnosis including:

(i) Specific diagnosis and testing limitations; and

(ii) Specific recommendation for accommodations;

(iii) Printed name, signature and business telephone number of the health care provider or professional; and

(iv) Signed release necessary to speak to provider about the condition as it relates to test taking.

(b) An applicant who has been ill or had a prescription from a health-care provider or professional for temporary restriction of activities must present a medical release for full return to normal activity prior to taking the manual skills portion of the exam.

(c) English as a second language does not qualify for special testing accommodation.

(2) Controls

(a) Reference materials, including dictionaries, are prohibited at the test site.

(b) Translators, unless as an approved accommodation for a qualifying disability, are prohibited at the test site. This includes written materials or documents used for translating one language to another and electronic devices used for translation purposes.

(3) Examination results shall be mailed to the applicant at the applicant's address of record and shall not be released by telephone.

(4) Re-examination:

(a) An applicant who fails and is eligible to retake the competency examination shall submit the appropriate application and examination fee.

(b) An applicant who fails the competency examination three times must complete another Board-approved nursing assistant level 1 training program prior to reexamination.

(5) Failure to take the examination or to reschedule the examination at least 24-hours in advance will result in re-examination fees.

(6) Current certification may be verified using the Board's automated verification line or internet verification system.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0070

Renewal of Certification

(1) The expiration date of a CNA certificate occurs biennially the midnight before the individual's birthdate:

(a) For individuals born in odd numbered years the certificate expires in odd numbered years.

(b) For individuals born in even numbered years the certificate expires in even numbered years.

(c) Persons whose birthdate falls on February 29 shall be treated as if the birthdate were March 1 for purpose of establishing the expiration date.

(2) The certificate shall automatically expire if the CNA fails to renew by the expiration date.

(a) A CNA may not work as a CNA with an expired certificate.

(b) Failure to receive the application for renewal shall not relieve the CNA of the responsibility of renewing the certificate by the expiration date.

(3) To renew certification a CNA shall, prior to the certificate expiration date:

(a) Submit a completed application using forms and instructions provided by the Board;

(b) Pay renewal fees established by the Board;

(c) Document paid employment;

(A) Document at least 400 hours of paid employment as a CNA within the CNA or CMA authorized duties, under supervision or monitoring by a nurse, in the two years immediately preceding the certificate expiration date.

(B) A CNA who has been certified for less than two years is exempt from the requirement in OAR 851-062-0070(3)(c)(A).

(d) A nursing assistant who cannot meet all the practice requirements for renewal in OAR 851-062-0070(3)(c)(A) may renew certification upon passing the competency examination.

(A) A nursing assistant has three attempts within two years of the expiration date on the certificate to pass the competency examination.

(B) A nursing assistant who fails to pass the competency examination in three attempts or within two years of the expiration date on the certificate may become certified by completing a Board-approved nursing assistant training program and then passing the competency examination.

(4) To renew certification, within two years after the certificate expiration date:

(a) Submit a completed application using forms and instructions provided by the Board;

(b) Pay the fees established by the Board; and

(c) Document at least 400 hours of paid employment as a CNA under supervision or monitoring by a nurse within two years immediately preceding expiration of certificate.

(d) A nursing assistant who cannot meet all the practice requirements for renewal in OAR 851-062-0070(4)(c) must apply for and pass the competency examination within three attempts and within two years of the expiration date on the certificate.

(e) A nursing assistant who fails to pass the competency examination in three attempts or within two years of the expiration date on the certificate may become certified by completing a Board-approved training program and then passing the competency examination.

ADMINISTRATIVE RULES

(5) To renew certification more than two years after the certificate expiration date. Individuals whose CNA certificate has been expired for more than two years are required to take a Board-approved nursing assistant training program and pass the competency examination according to OAR 851-062-0050(1) to become certified.

(6) An enrolled nursing student may renew without documentation of paid employment.

(7) A former nursing student may use clinical practice hours in the nursing program within the last two years as part or all of the required 400 hours in lieu of paid employment.

(8) Information provided to the Board to establish eligibility for renewal is subject to audit. Falsification of an application is grounds for disciplinary action.

(9) An applicant for renewal must answer all mandatory questions on the application form, including those about employment and education.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0075

Reinstatement

An applicant for reinstatement of a CNA certification shall:

- (1) Meet all terms and conditions of reinstatement;
- (2) Submit a completed application and fee; and
- (3) Meet the requirements of OAR 851-062-0070.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0080

Certification of Medication Aides Required

A CMA must have a current unencumbered Oregon CMA certificate and be listed on the Oregon CNA Registry prior to performing medication aide duties.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0090

CMA Certification

An applicant for CMA certification must submit a completed application using forms and instructions provided by the Board and pay the examination fee established by the Board. CMA certification may be obtained in one of the following ways:

(1) Training and competency examination.

(a) Hold a current unencumbered Oregon CNA certificate. An applicant with an encumbered CNA certificate may be considered on an individual basis.

(b) Submit evidence of completion of an 80-hour Board-approved medication aide training program.

(c) Document within the two years preceding application for medication aide examination:

(A) Six months full-time experience as a nursing assistant; or

(B) Equivalent experience in part-time employment as a nursing assistant.

(d) Pass the Board-administered medication aide examination.

(2) Enrollment in an approved nursing program in any U.S. state or jurisdiction.

(a) Obtain CNA 1 certification according to these rules;

(b) Show evidence of satisfactory completion of three terms of nursing school, each of which must have included a clinical nursing component.

(A) The three terms combined must have included:

(i) Basic clinical skills;

(ii) Basic pharmacology;

(iii) Principles of medication administration; and

(iv) Math competency.

(B) The following will be considered satisfactory evidence of meeting the requirements for satisfactory completion of three terms:

(i) Official transcript of the nursing program verifying successful completion of three terms; or

(ii) A letter from the Dean or Director of the school of nursing verifying the completion of the required course content.

(c) Submit application and fee for CMA certification;

(d) Pass the medication aide examination.

(e) Nursing students are exempt from the requirement to:

(A) Complete a medication aide training program;

(B) Have six months experience as a nursing assistant.

(3) Graduation from an approved nursing education program in the U.S.

(a) Obtain CNA 1 certification according to these rules; and

(b) Pass the medication aide examination.

(c) A graduate nurse is exempt from the requirements to:

(A) Complete a medication aide training program;

(B) Have six months experience as a nursing assistant.

(4) Medication aide training in another state.

(a) Obtain Oregon CNA 1 certification according to these rules; and

(b) Submit evidence of successful completion of a medication aide training program equal in content to the Board-approved medication aide curriculum; and

(c) Document at least six months full time experience performing CNA 1 authorized duties, or the equivalent in part time experience, since completion of nursing assistant training and within the last two years preceding application; and

(d) Pass the medication aide examination.

(5) Military corpsman or medic training and experience and competency examination. Obtain Oregon CNA 1 certification according to these rules;

(b) Submit evidence of training that is equal in content to the Board-approved medication aide curriculum;

(c) Verify at least six months full-time experience performing CNA 1 authorized duties or the equivalent in part-time experience in the two years prior to application.

(d) Pass the medication aide examination.

(6) RN or LPN Licensure in Oregon.

(a) Obtain CNA 1 certification according to OAR 851-062-0050(3); and

(b) Submit application and fee for CMA certification.

(c) A RN or LPN is exempt from the requirements to:

(A) Complete a medication aide training program;

(B) Have six months experience as a nursing assistant; and

(C) Pass the medication aide examination.

(7) CMA Testing Eligibility

(a) An applicant shall be eligible for examination for one year from the date of completion of the medication aide training program.

(b) A completed application shall be valid for the period of eligibility to test.

(c) An application process not completed within one year becomes void.

(d) An applicant who fails to pass the Board-administered medication aide examination within one year of completion of the training program and within three attempts shall not be eligible to reapply for the examination except that the applicant may re-enroll and successfully complete a Board-approved medication aide training program.

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0100

Medication Aide Examination

(1) The medication aide examination shall be administered and evaluated only by the Board or by a Board-approved entity.

(2) Examination sites and dates shall be determined by the Board or a Board-approved entity.

(3) An applicant shall be eligible for examination for one year from the date of completion of the medication aide training program.

(4) An application shall be valid for the period of eligibility to test.

(5) An applicant who fails to pass the Board-administered medication aide examination within one year of completion of the training program and within three attempts shall not be eligible to re-apply for the examination except that the applicant may re-enroll and successfully complete a Board-approved medication aide training program.

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0110

CMA Renewal and Continuing Education

Renewal of the CMA certificate is concurrent with the renewal of CNA 1 as described in these rules.

(1) The CMA is required to:

(a) Participate in at least eight hours of medication related continuing education in the 24 months immediately prior to expiration of certificate and to submit documentation of attendance with the application for Renewal of CMA Certification.

ADMINISTRATIVE RULES

(A) The following are acceptable methods of meeting the medication aide continuing education requirement:

- (i) Facility based classes dealing with the medications used at that facility;
- (ii) Medication classes taught by a licensed nurse, pharmacist or representative of a pharmaceutical company;
- (iii) Repeating classes offered for medication aide students;
- (iv) Video material when used as part of a presentation by an instructor;
- (v) Infection control classes when the content is medication related;
- (vi) Noninjectable medication related continuing education in recognized nursing journals; or
- (vii) Individual tutoring sessions by a nurse or pharmacist.

(B) The following are not acceptable toward meeting the medication aide continuing education requirement:

- (i) TV programs;
- (ii) Reading articles in non-nursing magazines;
- (iii) CPR classes;
- (iv) Classes dealing with injectable medications or IV medications; or
- (v) Job orientation.

(C) A CMA who is enrolled in a basic nursing education program has satisfied the requirement for medication related continuing education.

(b) Perform at least 400 hours of authorized medication aide duties under supervision or monitoring by a nurse in the 24 months immediately prior to expiration of certification.

(c) Affirm and document paid employment as a CMA under supervision or monitoring by a nurse and completion of continuing education.

(d) For a CMA who has been certified less than two years:

- (A) The continuing education requirement will be prorated; and
- (B) The paid employment requirement is waived.

(2) A CMA who has not performed at least 400 hours of authorized medication aide duties under supervision or monitoring by a nurse or has not completed the eight hours of medication related continuing education in the 24 months immediately prior to expiration of certification must successfully complete the medication aide examination as a condition of renewing CMA certification. A CMA is eligible to renew by examination only if the individual has completed a CMA training program that was at least 80 hours in length.

(3) Employment and continuing education are subject to audit by the Board. Falsification of employment or continuing education is grounds for disciplinary action.

Stat. Auth.: ORS 678.440 & 678.442
Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0120

Change of Name and Address of Record

(1) Change of name:

(a) A certificate holder shall keep his/her current legal name on file with the Board at all times.

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

(c) At the time of a legal name change the CNA/CMA shall send a signed, written notification of change of name to the Board, accompanied by legal proof of that name change. Legal proof shall be in the form of a copy of a birth certificate, marriage certificate or a court order/deed.

(d) Upon receipt of written notification and legal proof of change of name the Board will change its records to reflect the CNA/CMA's name change.

(e) To obtain a duplicate certificate reflecting the name change the CNA/CMA shall submit an application and fee for a duplicate certificate.

(2) Change of address:

(a) A certificate holder shall keep his/her current home address on file with the Board at all times.

(b) The home address currently on file with the Board shall be considered the address of record.

(c) Upon receipt of notification from the CNA/CMA of a change of home address, the Board will change its records to reflect the CNA/CMA's current address.

(d) The Board will send all correspondence and all official documents, including certificate renewal notices and Notices of Proposed Disciplinary Action to the CNA/CMA's address of record.

(e) A Notice of Proposed Disciplinary Action sent to the CNA/CMA at the person's address of record by certified mail or registered mail is sufficient notice even if the person fails to or refuses to respond to the postal service "return receipt" and never receives the Notice. Such mailing per-

mits the Board to proceed with disciplinary action in the absence of a request for hearing.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

851-062-0130

CNA Registry

In accordance with 42 CFR § 483.156 the Board maintains a CNA Registry. The Registry contains:

- (1) Identifying demographic information on each CNA;
- (2) Date of initial and most recent certification;
- (3) Board sanctions against a CNA certificate; and
- (4) Findings of resident abuse, neglect or misappropriation of resident property, made by Seniors and People with Disabilities (SPD) against a CNA.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04

Adm. Order No.: BN 3-2004

Filed with Sec. of State: 1-29-2004

Certified to be Effective: 2-12-04

Notice Publication Date: 10-1-03

Rules Amended: 851-063-0010, 851-063-0020, 851-063-0030, 851-063-0040, 851-063-0050, 851-063-0060, 851-063-0070, 851-063-0080, 851-063-0100

Subject: These rules cover standards and authorized duties for Certified Nursing Assistants and Certified Medication Aides.

Rules Coordinator: KC Cotton—(503) 731-4754

851-063-0010

Purpose of Authorized Duties and Standards

(1) To identify the range of tasks which may be performed by the nursing assistant/medication aide in the process of assisting a licensed nurse;

(2) To serve as a guide to the Board to evaluate safe and effective assistance in nursing care; and

(3) To establish standards and authorized duties for Certified Nursing Assistants (CNAs) and Certified Medication Aides (CMAs).

Stat. Auth.: ORS 678.440, 678.442 & 678.444

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04

851-063-0020

Definitions

(1) "Activities of Daily Living" means self-care activities which a person performs independently, when able, to sustain personal needs and/or to participate in society.

(2) "Additional Task(s) of Nursing Care" means task(s) of nursing care which exceed the authorized duties for CNAs as defined in OAR 851-063-0030 but may be performed by CNAs when taught and assigned according to these rules.

(3) "Assessment" means the systematic collection of data about an individual client for the purpose of judging that person's health/illness status and actual or potential health care needs.

(4) "Certified Medication Aide (CMA)" means a Certified Nursing Assistant who has had additional training in administration of noninjectable medication and holds a current Oregon CMA Certificate.

(5) "Certified Nursing Assistant (CNA)" means a person who holds a current Oregon CNA certificate by meeting the requirements specified in these rules; whose name is listed on the CNA Registry; and who assists licensed nursing personnel in the provision of nursing care. The phrase Certified Nursing Assistant and the acronym CNA are generic and may refer to CNA 1, CNA 2 or all CNAs.

(6) "Certified Nursing Assistant 1 (CNA 1)" means a person who holds a current, Oregon CNA certificate and who assists licensed nursing personnel in the provision of nursing care.

(7) "Certified Nursing Assistant 2 (CNA 2)" means a CNA 1 who has met requirements specified in these rules for one or more of the CNA 2 categories.

(8) "Client" means the individual who is provided care by the CNA or CMA including a person who may be referred to as "patient" or "resident" in some settings.

(9) "CNA Registry" means the listing of Oregon Certified Nursing Assistants maintained by the Board.

ADMINISTRATIVE RULES

(10) "Hand Hygiene" means those measures recommended by the Centers for Disease Control (CDC) and used by the CNA or CMA to protect themselves and others from infection. Hand hygiene includes hand-washing with soap and water, use of alcohol-based hand rubs and proper use of disposable gloves.

(11) "Monitoring" means that a Registered Nurse assesses and plans for the care of the client, delegates duties to the nursing assistant according to OAR 851-047-0000 through 851-047-0040 and monitors client outcomes as an indicator of CNA/CMA competency.

(12) "Nursing Assistant" means a person who assists licensed nursing personnel in the provision of nursing care. ORS 678.440(4)

(13) "Periodic Assessment and Evaluation" means that the RN, at regular intervals, assesses and evaluates the condition of the client and reviews, and modifies if necessary, the procedures and directions established for the provision of care. The interval shall be determined by the RN based on the condition of the client and the nature of the nursing care task(s) being performed.

(14) "PRN" means as necessary.

(15) "Site" means the specific geographic location of the facility or institution.

(16) "Site specific" means that the CNA may perform the additional task(s) of nursing care only at the site at which the task was learned or validated.

(17) "Stable/Predictable Condition" means a situation where the client's clinical and behavioral state is known, not characterized by rapid changes, and does not require frequent reassessment and evaluation. This includes clients whose deteriorating condition is predictable.

(18) "Supervision" means that the licensed nurse periodically observes and evaluates the skills and abilities of the CNA/CMA to perform authorized duties.

Stat. Auth.: ORS 678.440, 678.442 & 678.444

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04

851-063-0030

Authorized Duties and Standards for Certified Nursing Assistants

(1) Under the supervision of a licensed nurse, the CNA may provide care and assist clients with the following tasks related to the activities of daily living:

(a) Tasks associated with personal care:

- (A) Bathing;
- (B) Dressing;
- (C) Grooming;
- (D) Shaving;
- (E) Shampooing and caring for hair;
- (F) Providing and assisting with oral hygiene and denture care;
- (G) Caring for the skin;
- (H) Caring for the nails;
- (I) Providing peri care;
- (J) Bedmaking and handling linen; and
- (K) Maintaining environmental cleanliness.

(b) Tasks associated with maintaining mobility:

- (A) Ambulating;
- (B) Transferring;
- (C) Transporting;
- (D) Positioning;
- (E) Turning;
- (F) Lifting;
- (G) Elevating extremities;
- (H) Performing range of motion exercises; and
- (I) Maintaining alignment.

(c) Tasks associated with nutrition and hydration:

- (A) Feeding and assisting client with eating; and
- (B) Assisting client with drinking.

(d) Tasks associated with elimination:

- (A) Toileting;
- (B) Assisting with use of bed pan and urinal;

(C) Providing catheter care, including the application of and removal of external urinary catheters;

- (D) Administering enemas;
- (E) Collecting specimens;
- (F) Emptying ostomy bags or changing ostomy bags which do not adhere to the skin; and
- (G) Inserting bowel evacuation suppositories available without a prescription.

(e) Tasks associated with use of assistive devices:

- (A) Caring for, assisting with and removing:

(i) Dentures;

(ii) Eyeglasses; and

(iii) Hearing aids.

(B) Caring for, applying and removing:

(i) Antiembolus stockings;

(ii) Prosthetic devices;

(iii) Orthotic devices; and

(iv) Braces.

(C) Assisting with wheelchairs, walkers, or crutches;

(D) Using footboards;

(E) Assisting with and encouraging the use of self-help devices for eating, grooming and other personal care tasks; and

(F) Utilizing and assisting clients with devices for transferring, ambulation, and alignment.

(f) Tasks associated with maintaining environment and client safety.

(g) Tasks associated with data gathering, recording and reporting:

(A) Measuring temperature, pulse, respiration and blood pressure;

(B) Measuring height and weight;

(C) Measuring and recording oral intake;

(D) Measuring and recording urinary output, both voided and from urinary drainage systems;

(E) Measuring and recording emesis;

(F) Measuring and recording liquid stool;

(G) Measuring and recording pulse oximetry; and

(H) Collect responses to pain using a facility approved pain scale.

(2) The CNA may, as an unlicensed person, provide care as delegated or assigned by a nurse pursuant to the terms and conditions in OAR 851-047-0000 through 857-047-0040.

(3) ORS 678.440(4) defines the term "nursing assistant" as a person who assists licensed nursing personnel in the provision of nursing care. Consistent with that definition, a CNA must either:

(a) Be regularly supervised by a licensed nurse; or

(b) Work in a community-based care setting or other setting where there is no regularly scheduled presence of a licensed nurse provided there is periodic supervision and evaluation of clients under the provisions of OAR 851-047-0000 through 851-047-0040.

(4) Under no circumstance shall a CNA work independently without supervision or monitoring by a licensed nurse who provides assessment of clients as described in OAR 851-063-0030(3)(a)(b).

(5) A CNA may accept verbal or telephone orders for medication from a licensed health care professional who is authorized to independently diagnose and treat only when working in the following settings under the specified administrative rule:

(a) When working in Adult Foster Homes, as permitted under OAR 411-050-0447(4)(b);

(b) When working in Residential Care Facilities, as permitted under OAR 411-055-0210(f)(D); and

(c) When working in Assisted Living Facilities, as permitted under OAR 411-056-0015(4).

(6) Standards of Care for Certified Nursing Assistants. In the process of client care the CNA shall consistently:

(a) Apply standard precautions according to the Centers for Disease Control and Prevention guidelines;

(b) Use hand hygiene between episodes of care;

(c) Use appropriate body mechanics to prevent injury to self and client;

(d) Follow the care plan as directed by the licensed nurse;

(e) Use appropriate communication with client, client's family and friends, and coworkers;

(f) Use alternatives to physical restraints, or apply physical restraints as directed by the licensed nurse;

(g) Determine absence of pulse and/or respiration, and initiate an emergency response;

(h) Report to the licensed nurse any recognized abnormality in client's signs and symptoms;

(i) Record observations and measurements, tasks completed, and client statements about condition or care;

(j) Apply safety concepts in the workplace;

(k) Report signs of abuse, neglect, mistreatment, misappropriation or exploitation;

(l) Demonstrate respect for rights and property of clients and coworkers; and

(m) Maintain client confidentiality.

Stat. Auth.: ORS 678.440, 678.442 & 678.444

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04

ADMINISTRATIVE RULES

851-063-0040

Teaching and Assignment of Additional Task(s) of Nursing Care to CNAs in Settings Where an RN is Always Available for Client Assessment and Supervision of CNA(s)

Notwithstanding OAR 851-063-0030, a CNA may be taught and perform those additional tasks as authorized by the Board and listed in OAR 851-063-0060 in accordance with these rules. Such additional tasks may be taught and performed only in settings where there is continuous on-site RN or LPN supervision of CNAs, including an RN who is always available for the purpose of client assessment. Additional task(s) of nursing care are site specific. A CNA who is trained to perform additional task(s) of nursing care in one facility is not authorized to perform those task(s) in another facility without validation of skills for that facility.

(1) A CNA may perform additional tasks of nursing care when:

(a) The CNA has been taught to do those additional tasks according to these rules;

(b) The CNA has demonstrated initial competency to perform additional tasks as they were taught;

(c) The CNA performs the additional task(s) of nursing care under the assignment and supervision of an RN or LPN; and

(d) The CNA has maintained competency to perform additional tasks.

(2) Role of RN and LPN at a site that allows a CNA to perform additional tasks of nursing care:

(a) A RN at the site must document competency of the CNA to perform additional task(s) of nursing care;

(b) A RN at the site must assess the client and determines that assignment of the additional task(s) of nursing care to the CNA by an RN or LPN is appropriate for the client care situation and for the CNA;

(c) The RN or LPN who makes the specific assignment must periodically assess and evaluate the client care situation and the abilities of the CNA;

(d) The RN at the site must determine the interval for periodic assessment and evaluation based on the condition of the client and the nature of the nursing care task(s) being performed; and

(e) A RN at the site must ensure that there is RN or LPN supervision of CNAs performing additional task(s) of nursing care according to these rules.

(3) Program of Training for additional tasks:

(a) A RN who has the knowledge and skills necessary to teach additional task(s) is responsible to:

(A) Develop the training curriculum according to these rules;

(B) Teach the curriculum to CNAs employed at that site; and

(C) Develop the mechanisms for validating that a CNA has initial and ongoing competency to perform additional task(s) of nursing care.

(b) Additional tasks of nursing care may be taught at the site where additional tasks are to be performed or at a community college under terms and conditions specified in these rules.

(A) Each site specific training program for additional tasks shall:

(i) Be specific to that site;

(ii) Be specific to the needs of its specific client population(s); and

(iii) Specify those tasks which may be performed at the specific site.

(B) A community college may enter into a written agreement to teach additional tasks under the following conditions:

(i) There is a written agreement between the site and the community college for a RN to teach additional tasks;

(ii) Tasks taught are specific to the site that has the written agreement with the college for the teaching; and

(iii) A mechanism exists that is satisfactory to both the college and the site which documents that the CNA has demonstrated competency in the additional tasks of nursing care.

(4) Additional Tasks sunset December 30, 2008.

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.440 & 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04

851-063-0050

Criteria for Selection, Teaching, Assigning Additional Task(s) of Nursing Care for a CNA

(1) Criteria to be utilized by employers, facilities, institutions in selecting, teaching and assigning an additional task of nursing care from the Board-approved list:

(a) The task is considered safe and routine for the specific client population(s);

(b) The task poses little potential hazard for the client;

(c) The task can be performed with a predictable outcome;

(d) The task does not require assessment, interpretation or decision-making while being performed;

(e) The task involves limited degree of potential client discomfort; and

(f) The task does not require a substantial amount of scientific knowledge and technical skill.

(2) Site specific policy may limit the number and types of task(s) from the Board-approved list that CNAs can perform in the specific facility.

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.440 & 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04

851-063-0060

List of the Additional Task(s) of Nursing Care Which May Be Assigned to CNAs

If the additional task(s) of nursing care have been taught and assigned according to these rules, CNAs may perform the following tasks:

(1) Tasks associated with skin care:

(a) Change simple, nonsterile dressings using aseptic technique when no wound debridement or packing is involved;

(b) Clean ostomy sites and change dressings or appliances for established, non-acute ostomies; and

(c) Apply topical over-the-counter creams and ointments for prophylactic treatment of skin conditions.

(2) Tasks associated with monitoring intake and output:

(a) Discontinue Foley catheters;

(b) Perform clean intermittent straight urinary catheterization for chronic conditions;

(c) Collect clean-catch urine specimen; and

(d) Empty, measure and record output from other drainage devices.

(3) Tasks associated with vaginal care:

(a) Administer douches; and

(b) Insert over-the-counter vaginal suppositories and vaginal creams.

(4) Tasks associated with testing and monitoring:

(a) Perform tests on urine specimens;

(b) Perform hemocult test for occult blood;

(c) Perform capillary blood glucose (CBGs);

(d) Perform phlebotomy;

(e) Place electrodes and leads for electrocardiogram, cardiac monitoring and telemetry;

(f) Run 12-lead EKGs or rhythm strips;

(g) Assist with incentive spirometer; and

(h) Perform newborn hearing screening.

(5) In addition, if the additional task(s) of nursing care have been taught and assigned according to these rules, CNAs may:

(a) Suction oral pharynx;

(b) Set up traction equipment;

(c) Add fluid to established jejunostomy and gastrostomy tube feedings and change established tube feeding bags;

(d) Assist clients in and out of Continuous Passive Motion machines

if previously applied and regulated by a qualified health care professional;

(e) Apply pediculicides;

(f) Remove casts; and

(g) Turn oxygen on and off at predetermined, established flow rate.

Stat. Auth.: ORS 678.440, 678.442

Stats. Implemented: ORS 678.440, 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99, BN 12-1999, f. & cert. ef. 12-1-99; BN 6-2002, f. & cert. ef. 3-5-02; BN 5-2003, f. & cert. ef. 4-23-03; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04

851-063-0070

Authorized Duties and Standards for Certified Medication Aides

(1) Under supervision by a licensed nurse, CMAs may administer:

(a) Oral, sublingual and buccal medications;

(b) Eye medications with the exception of eye medications to new post-operative eye clients;

(c) Ear medications;

(d) Nasal medications;

(e) Rectal medications;

(f) Vaginal medications;

(g) Skin ointments, topical medications including patches and transdermal medications;

(h) Medications by gastrostomy and jejunostomy tubes;

(i) Premeasured medication delivered by Aerosol/Neubulizer; and

(j) Medications delivered by metered hand-held inhalers.

(2) Administration of PRN Medications. CMAs may administer PRN medications (including controlled substances) to stable clients according to physician's or nurse practitioner's orders in the following circumstances:

ADMINISTRATIVE RULES

- (a) In response to specific client requests:
- (A) Client request must be reported to licensed nurse; and
- (B) Client response must be reported to licensed nurse.
- (b) At the direction of the licensed nurse, when:
- (A) A licensed nurse assesses the patient prior to administration of the PRN medications; and
- (B) A licensed nurse assesses the patient following the administration of the PRN medication.
- (3) CMAs may:
- (a) Administer regularly scheduled controlled substances;
- (b) Jointly witness wasted controlled substances with a licensed nurse;
- (c) Count controlled substances with a licensed nurse or another CMA;
- (d) Perform capillary blood glucose (CBG);
- (e) Turn oxygen on and off at predetermined, established flow rate;
- (f) Add fluid to established jejunostomy or gastrostomy tube feedings and change established tube feeding bags; and
- (g) Accept verbal or telephone orders for medication from a licensed health care professional who is authorized to independently diagnose and treat. Such acceptance can occur only when the CMA is working in the following settings under the specified administrative rule(s):
- (A) Adult Foster Homes, as permitted under OAR 411-050-0447(4)(b);
- (B) Residential Care Facilities, as permitted under OAR 411-055-0210(f)(D); and
- (C) Assisted Living Facilities, as permitted under OAR 411-056-0015(4).
- (4) CMAs may not administer medications by the following routes:
- (a) Central lines;
- (b) Colostomy;
- (c) Intramuscular;
- (d) Intrathecal;
- (e) Intravenous;
- (f) Nasogastric;
- (g) Nonmetered inhaler;
- (h) Subcutaneous;
- (i) Intradermal;
- (j) Urethral;
- (k) Epidural; or
- (l) Endotracheal.
- (5) CMAs may not administer the following kinds of medications:
- (a) Barium and other diagnostic contrast media; or
- (b) Chemotherapeutic agents except oral maintenance chemotherapy.
- (6) Certified Medication Aides may not administer medication by, nor assume responsibility for, medication pumps, including client controlled analgesia.
- (7) A CMA may not act as a preceptor to a student in a medication aide training program.
- (8) The CMA may, as an unlicensed person, provide care as delegated or assigned by a licensed nurse pursuant to the terms and conditions in OAR 851-047-0000 through 851-047-0040.
- (9) Standards of Care for Certified Medication Assistants. In the process of client care the CMA shall consistently apply standards set for CNAs and:
- (a) Establish competency as a CMA;
- (b) Maintain competency as a CMA;
- (c) Perform within Authorized Duties;
- (d) Follow written instructions of a licensed health care professional authorized to independently diagnose and treat as transcribed in the Medication Administration Record (MAR); and
- (e) Accurately record on the Medication Administration Record (MAR) medications administered, medications withheld or refused and the reason why a medication was withheld or refused.

Stat. Auth.: ORS 678.440, 678.442, 678.444 & 678.445
Stats. Implemented: ORS 678.440, 678.442 & 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04

851-063-0080

Causes for Denial, Reprimand, Suspension, Probation or Revocation of CNA Certificate

Under the contested case procedure in ORS 183.310 to 183.550 the Board may deny, reprimand, suspend, place on probation or revoke the certificate to perform duties as a CNA for the following causes:

(1) Conviction of the nursing assistant of a crime where such crime bears demonstrable relationship to the duties of a nursing assistant; ORS 678.442(2)(a).

(2) Any willful fraud or misrepresentation in applying for or procuring a certificate or renewal thereof; ORS 678.442(2)(b).

(3) Use of any controlled substance or intoxicating liquor to an extent or in a manner injurious to the certificate holder or others or to an extent that such use impairs the ability to conduct safely the duties of a nursing assistant; ORS 678.442(2)(c).

(4) Violation of any provision of ORS 678.010 to 678.445 or rules adopted thereunder; ORS 678.442(2)(d).

(5) Physical or mental condition that makes the certificate holder unable to perform the duties of a nursing assistant; or ORS 678.442(2)(e).

(6) Conduct unbecoming a nursing assistant in the performance of duties. ORS 678.442(2)(f).

Stat. Auth.: ORS 678.442
Stats. Implemented: ORS 678.442
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04

851-063-0100

Conduct Unbecoming a Certified Medication Aide

Certified Medication Aides are subject to discipline as CNAs as described in these rules. In addition, CMAs are subject to discipline for conduct unbecoming a medication aide. Conduct unbecoming a medication aide includes but is not limited to:

(1) Failing to administer medications as ordered by a health care professional authorized to independently diagnose and treat;

(2) Failing to document medications as administered, medications withheld or refused and the reason a medication was withheld or refused.

(3) Altering/falsifying medication administration record;

(4) Altering/falsifying CNA or CMA certificate;

(5) Diverting drugs for use by self or others;

(6) Accepting a verbal order or telephone order for medication from a licensed health care professional who is authorized to independently diagnose and treat, except as allowed in authorized duties;

(7) Performing acts beyond the authorized duties for which the individual is certified;

(8) Working as a CMA without CMA Certification;

(9) Performing client care tasks other than authorized in these rules;

(10) Representing oneself as a CMA without current CMA certification; or

(11) Failing to conform to the standards and authorized duties in these rules.

Stat. Auth.: ORS 678.442
Stats. Implemented: ORS 678.442
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04

Board of Tax Practitioners Chapter 800

Adm. Order No.: BTP 1-2004

Filed with Sec. of State: 1-28-2004

Certified to be Effective: 2-1-04

Notice Publication Date: 12-1-03

Rules Amended: 800-025-0025, 800-030-0025

Subject: The Oregon Administrative Rule revisions the Board of Tax Practitioners is proposing are to change the language to better reflect ORS 673.605 - 673.740 & 673.990 as well as conform to the current standards the Board is operating under per ORS.

The amendment to OAR 800-025-0025 extends the date(s) in which business registrations expire to match the date(s) in which tax consultant/preparer licenses expire.

The amendments to OAR 800-030-0025 provide the Board guidance when assessing civil penalties. These amendments help to clarify to the public as well as the hearings officer panel the Board's intentions and practice in assessing civil penalties. This includes providing a penalty matrix clarifying the Board's intent on assessing civil penalties.

Rules Coordinator: Monica J. Leisten—(503) 378-4034

800-025-0025

Renewal of Tax Preparation Business Registration

(1) Tax preparation business registrations shall expire annually on June 15, except that combination business registration/tax preparer licenses shall expire annually on October 15.

ADMINISTRATIVE RULES

(2) At least 30 days before the registration expiration date each year, the Board shall mail a renewal notice to each registered tax preparation business.

(3) Renewal registrations shall be issued to qualifying businesses upon receipt of a completed registration renewal application and the fee for registering a tax preparation business specified in OAR 800-020-0025(13) or the fee for a combined tax consultant's or preparer's license and business registration specified in 800-020-0025(14).

(4) A business whose registration has expired shall not perform tax preparation services for the public, for a fee, or offer such services, until the re-application process has been completed.

Stat. Auth.:
Stats. Implemented:
Hist.: TSE 8-1991, f. & cert. ef. 10-28-91; BTP 1-2004, f. 1-28-04, cert. ef. 2-1-04

800-030-0025

Daily Civil Penalty

(1) Civil Penalty Ranges. Pursuant to ORS 673.735, a civil penalty in the following range shall be assessed for each violation of the following statutes and rules: [Table not included. See ED. NOTE.]

(2) Civil Penalty Factors. Pursuant to ORS 673.735, the following factors shall be considered in determining the amount of civil penalty to assess for each violation above the minimum established under paragraph (1) of this rule or for violations not specified in paragraph (1):

(a) The previous record of the person in complying, or failing to comply, with ORS 673.605 to 673.740, or any rule or order adopted there under.

(b) The harm to the consumer as a result of the violation.

(c) The person's knowledge of the statute, rule, or order violated. An intentional, reckless, or willful violation warrants a high civil penalty per violation.

(d) The person's lack of cooperation with the Board.

(e) The seriousness of the violations committed.

(3) Daily Civil Penalty. Pursuant to ORS 673.735, the Board may impose civil penalties of not more than \$5,000 for each violation of ORS 673.605 to 673.740, or any rule adopted there under. In the case of violations of ORS 673.615, 673.643, or 673.705(5), or OAR 800-010-0025(7) or 800-010-0042, the Board may consider each business day a person continues in violation following Board notification to be a separate violation.

(4) Civil Penalty Adjustment. The civil penalty amount to be imposed under this rule shall be lowered to an appropriate amount when the Board determines that the total civil penalties to be assessed against a person are grossly disproportionate to the seriousness of the violations committed.

(5) Payment of Civil Penalties. Unless otherwise ordered by the Board, payment of any civil penalty imposed by the Board must be made within 60 days of the date a final order assessing the penalty is issued. If the civil penalty is not paid within that time, in addition to any other action allowed by law or Board rules, proceedings may be instituted to suspend, revoke or refuse to renew the tax consultant's or tax preparer's license of the person against whom the penalty is assessed.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 673.730
Stats. Implemented: ORS 673.735
Hist.: TSE 1-1985, f. & ef. 1-15-85; BTSE 1-1998, f. & cert ef 9-3-98; BTSE 1-2002(Temp), f. & cert. ef. 8-6-02 thru 1-1-03; Administrative correction 4-16-03; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2004, f. 1-28-04, cert. ef. 2-1-04

Construction Contractors Board Chapter 812

Adm. Order No.: CCB 1-2004

Filed with Sec. of State: 2-2-2004

Certified to be Effective: 2-2-04

Notice Publication Date: 1-1-04

Rules Amended: 812-002-0380, 812-003-0015

Subject: OAR 812-002-0380 is amended to more accurately define the type of liability insurance required by ORS 701.105.

OAR 812-003-0015 is amended to define the type of insurance providers authorized by the agency to provide liability insurance to contractors to meet the requirements of ORS 701.105 and to clarify the type of insurance coverage.

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

812-002-0380

Insurance

"Insurance" required under ORS 701.105 means public liability, personal injury and property damage insurance.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 670.600, 701.055, 701.105 & 701.135
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 1-2004, f. & cert. ef. 2-2-04

812-003-0015

Applications for License

(1)(a) The application required under subsection (3)(a) of this rule together with the fee required and the original, fully-executed surety bond shall be on file with the agency before a license may be issued, except as provided in section (b) of this rule.

(b) The effective date of a license or renewal may be prior to the date of receipt of all documents and/or fees required by law and by these rules if the agency determines that delays in receipt of required documents and/or fees were caused by agency error. Additionally, if the agency determines that delays in receipt of a surety bond were caused by the surety through an error in executing the bond or through another error, the agency may issue a license prior to receipt of all documents and/or fees if the surety concurs with the agency's decision to pre-date the bond.

(2)(a) An applicant for a license or renewal shall certify that the applicant has procured insurance, from an insurer transacting insurance in Oregon, as required by ORS 701.105 and will continue to meet those insurance requirements for as long as the applicant is licensed. New licensees shall provide a certificate of insurance issued by an insurer as provided in OAR 812-002-0380(3). The agency may also require such certification from renewing licensees. As a minimum, for all licensees, certification shall include the name of the insurer, policy or binder number, effective dates of coverage, and coverage amount, and may also include the agent's name, and agent's telephone number. The CCB must be listed as the certificate holder.

(b) This certification constitutes satisfactory evidence of insurance and is in lieu of any other evidence of insurance.

(c) If the requirements of subsection (2)(a) of this rule have been met, and the agency receives a notice of cancellation, the agency may send a notice to the licensee, by regular mail, reminding the licensee of the obligation imposed by the licensee's insurance certification.

(d) The licensee shall maintain and provide evidence to the agency of the insurance required by ORS 701.105. The insurance shall remain in effect continuously until the license is terminated, revoked, or expired. If the licensee, in performance of work subject to ORS Chapter 701, through failure to comply with this subsection, causes damage to another entity or to the property of another person for which that entity could have been compensated by an insurer had the required insurance been in effect, the agency may assess a civil penalty against the licensee in an amount up to \$1,000 in addition to such other action as may be taken under ORS 701.135.

(3)(a) A complete license application includes:

(A) A completed application form;

(B) A completed "Independent Contractor Certification Statement";

(C) A signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee;

(D) The certification of insurance coverage showing not less than the minimum amount required per occurrence for public liability, personal injury and property damage under ORS 701.105;

(E) A properly executed bond; and

(F) The application fee.

(b) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

(4) A license card shall be issued by the agency effective the date on which all fees required by law have been paid and all documents required by law and by those rules are on file with the agency.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 670.310, 701.235, 701.280, 701.992 & 183.310 - 183.500
Stats. Implemented: ORS 701.075
Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 2-1979, f. & ef. 12-29-79; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0025; 1BB 3-1984, f. & ef. 5-11-84; 1BB 4-1984, f. & ef. 8-16-84; 1BB 3-1985, f. & ef. 4-25-85; 1BB 2-1987, f. & ef. 7-2-87; 1BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90, CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1999, f. 9-10-99, cert. ef. 11-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 1-2004, f. & cert. ef. 2-2-04

ADMINISTRATIVE RULES

Department of Agriculture Chapter 603

Adm. Order No.: DOA 2-2004
Filed with Sec. of State: 1-23-2004
Certified to be Effective: 1-23-04
Notice Publication Date: 11-1-03
Rules Amended: 603-014-0016
Subject: This addition to the rule will allow brands to be recorded for use on the jaw of cattle.
Rules Coordinator: Sherry Kudna—(503) 986-4619

603-014-0016

Location of Brands on Certain Animals

(1) Cattle: Brands can only be used or placed on cattle and can only be recorded with the Department under the provisions of ORS chapter 604, in the following locations:

- (a) Right hip, right ribs, right shoulder, right neck, and right jaw;
- (b) Left hip, left ribs, left shoulder, left neck, and left jaw.

(2) Horses, mules or asses: Brands can only be used or placed on horses, mules or asses and can only be recorded with the Department under the provisions of ORS chapter 604, in the following locations:

- (a) Right hip, right stifle, right shoulder, and right jaw;
- (b) Left hip, left stifle, left shoulder, and left jaw.

(3) Sheep: Brands can only be used or placed on sheep and can only be recorded with the Department under the provisions of ORS Chapter 604, in the following locations for the branding method identified:

(a) Paint brands shall be located on either of two locations on the back of the animal such locations being defined as:

(A) Withers area: From the spinous process of the first thoracic vertebrae posteriorly to the posterior border of the eighth rib, extending on each side to lines parallel to the back line from one-half the distance from the spinous process to the shoulder joint; and

(B) Mid-back area: From the posterior border of the above described withers area posteriorly along the spinous process to the fourth lumbar vertebrae, extending on each side to lines parallel to those side lines described in the withers area.

(b) Such brands shall be situated so that the top of the brand faces toward the head of the animal:

(A) Tattoo brands shall be located on the inside of either of the front legs on the wool-free area above the knee;

(B) Firebrands, freeze brands, or caustic chemical brands shall be located on either nose, left jaw, or right jaw.

Stat. Auth.: ORS 561 & 604

Stats. Implemented: ORS 604.021

Hist.: AD 647, f. & ef. 11-18-60; AD 849(21-67), f. 9-5-67, ef. 9-13-67; AD 1003(17-73), f. 12-5-73, ef. 12-25-73; AD 1092(15-76), f. & ef. 4-16-76; AD 22-1981, f. & ef. 10-7-81; DOA 2-2004, f. & cert. ef. 1-23-04

Adm. Order No.: DOA 3-2004
Filed with Sec. of State: 1-23-2004
Certified to be Effective: 1-23-03
Notice Publication Date: 6-1-03
Rules Amended: 603-095-0140

Subject: These rule amendments are a result of a biennial review and have been developed to update and clarify existing rules for the Tualatin Water Quality Management Area.

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

603-095-0140

Prohibited Conditions

All landowners or operators conducting activities on lands in agricultural use shall be in compliance with the following criteria. A land occupier shall be responsible for only those prohibited conditions caused by activities conducted on land managed by the landowner or occupier. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated. These rules are effective upon adoption unless otherwise indicated.

(1) Sheet and rill erosion:

(a) No agricultural land management or soil disturbing activities shall be conducted in such a way that the estimated sheet and rill erosion rate exceeds the soil loss tolerance factor.

(2) Active channel erosion: no agricultural land management or soil disturbing activity shall cause active channel erosion. A land occupier shall be responsible for only that portion of the active channel erosion that is

caused by agricultural land management or soil disturbing activities conducted on land managed by the landowner or occupier.

(3) Near-Stream management area:

(a) No agricultural land management or soil disturbing activities within near-stream management areas in agricultural use shall be conducted in a manner that results in the placement or delivery of suspended solids (i.e., nutrients, soil, sediment, manure) into waters of the state. The technical standards to be used to determine compliance with OAR 603-095-0140(3)(a) are

(A) The affected landowner shall establish and maintain an adequate vegetative buffer, or an equally effective pollution control practice, in the near-stream management area. When a vegetative buffer is established, the plant variety or seed mixture shall be one of those listed in field office technical guide standard 342 (Critical area planting). If any activity disturbs a vegetative buffer in the stream management area, the landowner shall replant or restore the disturbed area to an adequate vegetative buffer as soon as practicable.

(B) Pastures shall comply with field office technical guide standard 528A Prescribed grazing.

(C) Livestock barnyards, feedlots, drylots and other non-pasture areas cannot be located within the near-stream management area unless a barnyard runoff control system meeting field office technical guide standard 312 (Waste management system) is installed and maintained.

(D) Agricultural lands within the near-stream management area that receive manure and other nutrients through application of sludge, commercial fertilizer and other added nutrient inputs shall meet field office technical guide standard 590 (Nutrient management).

(b) Field office technical guide standards referred to in OAR 603-095-0140(3)(a) are those standards that are current as of the date of the adoption of these rules. Copies shall be made available to the public upon request to the department through its central office location.

(c) A landowner shall not be considered out of compliance with OAR 603-095-0140(3)(a) and 603-095-0140(4) if the department determines that a failure to meet the standards is a result of land use or actions by another landowner.

(d) Except for operations governed by the Forest Practices Act, no activities related to the conversion of woodland to non-woodland agricultural uses that require removal of the majority of woody material from a parcel of land such that the land no longer meets the definition of woodland, shall be conducted in a manner which results in the placement of soil, the delivery of sediment, the initiation or aggravation of streambank erosion, or compromises the conditions described in 603-095-0140(3)(a) and 603-095-0140(4).

(e) Limited duration activities related to construction, restoration, or maintenance may be exempted from OAR 603-095-0140(3) subject to prior written approval by the department.

(4) Stream Temperature: By January 1, 2005 agricultural activities along a perennial stream must allow for the natural or managed regeneration and growth of vegetation, consistent with the site capability, that is adequate after sufficient growth, to provide erosion control, streambank stability, and minimization of direct solar heating.

(a) Minimal breaks in shade vegetation for essential management activities are allowed.

(b) Management within the vegetated area is allowed provided it does not compromise achieving the conditions described in 603-095-0140(3)(a) and 603-095-0140(4).

(c) Drainage and irrigation ditches subject to ORS 196.600 to 196.905 (Removal Fill laws) are exempt from 603-095-0140(4).

(5) Irrigation water discharges: no activities shall result in irrigation water discharges to waters of the state during the period May 1 through October 31 annually, except as provided in OAR 603-095-0140(5)(a).

(a) Irrigation water discharges may be allowed upon submittal and written approval by the department of a monitoring program to be conducted by the landowner or operator. Such monitoring program shall provide reasonable assurance that the quality of the irrigation water discharge meets all applicable water quality standards.

(6) Waste discharges:

(a) No person conducting agricultural land management or earth disturbing practices shall cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) No person conducting agricultural land management or earth disturbing practices shall discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality

ADMINISTRATIVE RULES

standards established by rule for such waters by the Environmental Quality Commission.

(c) No person conducting agricultural land management or earth disturbing practices shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

Stat. Auth.: ORS 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: AD 3-1996, f. & cert. ef. 4-9-96; DOA 3-2004, f. & cert. ef. 1-23-04

Adm. Order No.: DOA 4-2004

Filed with Sec. of State: 1-23-2004

Certified to be Effective: 1-23-04

Notice Publication Date: 9-1-03

Rules Adopted: 603-095-3700, 603-095-3720, 603-095-3740, 603-095-3760

Subject: The rules effectuate the implementation of the Lower Willamette Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 seq.

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

603-095-3700

Purpose

(1) These rules have been developed to implement a water quality management area plan for the subbasin pursuant to authorities vested in the department through ORS 568.900 - 568.933. The area plan is known as the Lower Willamette Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Lower Willamette Agricultural Water Quality Management Area for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 4-2004, f. & cert. ef. 1-23-04

603-095-3720

Geographic and Programmatic Scope

(1) The Lower Willamette Agricultural Water Quality Management Area includes the area that drains into the Willamette River between a point due east of Bolton and the confluence with the Columbia River. Also included are areas that drain into the Columbia Slough between a point straight north of Troutdale and the confluence with the Willamette River and the area that drains into Multnomah Slough from the south between the Columbia/Multnomah County line and the confluence with the Willamette River. The physical boundaries of the Lower Willamette Agricultural Water Quality Management Area are indicated on the map included as an attachment to these rules.

(2) Operational boundaries for the land base under the purview of these rules include all agricultural and rural lands within the Lower Willamette Agricultural Water Quality Management Area with the exception of public lands managed by federal agencies and activities that are subject to the Oregon Forest Practices Act.

(3) The provisions of these rules apply to all agricultural land whether or not in current productive agricultural use.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the Department and the appropriate Local Management Agency shall work with these Designated Management Agencies to assure that provisions of these rules apply, and to assure that duplication of any services provided or fees assessed does not occur.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 4-2004, f. & cert. ef. 1-23-04

603-095-3740

Prevention and Control Measures

(1) All landowners or operators conducting activities on agricultural and rural lands are provided the following exemptions from the requirements of OAR 603-095-3740 (Prevention and Control Measures).

(a) A landowner or operator shall be responsible for only those conditions caused by activities conducted on land managed by the landowner or operator.

(b) Rules do not apply to conditions resulting from unusual weather events or other circumstances not within the reasonable control of the landowner or operator. Within the reasonable control of the landowner means that technically sound and economically feasible measures must be

available to address conditions described in Prevention and Control Measures.

(c) The Department may allow temporary exceptions when a specific integrated pest management plan is in place to deal with certain weed or pest problems.

(2) Waste Management: Effective upon rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Nutrient Management: Effective upon adoption.

(a) Landowners and operators shall prevent the runoff or leaching of contaminated water from feed and manure storage piles into waters of the state, including but not limited to groundwater.

(b) Landowners or operators shall store, use, and apply crop nutrients in a manner that prevents transport into the waters of the state.

(4) Erosion Management: Effective upon rule adoption, there shall be no visible evidence of erosion resulting from agricultural activities in a location where erosion contributes, or may contribute, sediment to waters of the state.

(a) Visible evidence of erosion consists of one or more of the following features:

(A) Sheet wash, noted by visible pedastalling, surface undulations, and/or flute marks on bare or sparsely-vegetated ground; or

(B) Visibly active gullies, as defined by OAR 603-095-0010(1); or

(C) Multiple rills, which have the form of gullies, but are smaller in cross sectional area than one square foot; or

(D) Visible soil deposition that could enter natural stream areas; or

(E) Streambanks breaking down, eroding, tension-cracking, shearing or slumping beyond the level that would be anticipated from natural disturbances given natural hydrologic characteristics; or

(F) Underground drainage tile outlets either improperly installed or maintained allowing soil or bank erosion to actively occur.

(b) Private roads used for agricultural activities shall be constructed and maintained such that road surfaces, fill, ditch lines, and associated structures are designed and maintained to prevent and control contributing sediment to waters of the state. All private roads not subject to the Oregon Forest Practices Act are subject to this regulation.

(c) Drainage and irrigation ditch construction and maintenance must be done such that:

(A) Ditch slope and ditch cross section are designed for the local soils and minimize erosion;

(B) Placement of disposed soils is done in a manner that prevents reintroduction to waters of the state; and

(C) Other appropriate best management practices are employed when necessary so that sediment delivery is consistent with water quality standards.

(5) Riparian Management: Effective upon rule adoption.

(a) Agricultural activities in Riparian Management Areas will allow for the development of riparian vegetation along streams to provide:

(A) Shade for minimizing solar heating of the stream;

(B) Streambank stability from flows at or below those expected to occur during or following a 25-year, 24-hour storm event;

(C) Filtration, settlement, and biological uptake of sediment, organic material, nutrients, and pesticides in surface runoff by intercepting or slowing overland flow;

(D) Improvement to water storage capacity of the riparian zone; and

(E) Protection of streams from flashy flows by infiltrating runoff and overland flow.

(b) The Riparian Management Area is defined by that area needed to achieve OAR 603-095-3740(5)(a)(A to E).

(c) Streams as used in OAR 603-095-3740(5)(a) are those that are identified in the 2001 Metro stream map Regional Land Information System (RLIS) lite stm_line.shp and stm_fill.shp.

(d) Riparian vegetation in OAR 603-095-3740(5) includes grasses, sedges, shrubs and trees that are consistent with site capability.

(e) Riparian area development can be through allowing natural processes to occur or through active management to accelerate achieving OAR 603-095-3740(5)(a)(A to E).

(f) Sufficient Riparian Management Area width will be site specific, and may vary by soil type, hydrology, climate, geology, and man-made limitations, and other factors.

(g) Within the entire Riparian Management Area the technical criteria to determine compliance with OAR 603-095-3740(5)(a) are:

(A) Ongoing renewal or establishment of riparian vegetation, especially native.

ADMINISTRATIVE RULES

(B) Where sufficient functions required in OAR 603-095-3740(5)(a) have not been met, at least 50% of each year's new growth of woody vegetation, both trees and shrubs, is maintained.

(h) Management activities within the Riparian Management Area are allowed provided they do not compromise achieving the conditions described in 603-095-3740(4) and 603-095-3740(5)(a)

(i) Drainage and irrigation ditches are not subject to the riparian management provisions cited above but are subject to OAR 603-095-3740(4).

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 4-2004, f. & cert. ef. 1-23-04

603-095-3760

Complaints and Investigations

(1) When the Department receives notice of an alleged occurrence of agricultural pollution it may conduct an investigation. The department will coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-3760(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-3760(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3760(4), the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191, ORS 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 4-2004, f. & cert. ef. 1-23-04

Adm. Order No.: DOA 5-2004

Filed with Sec. of State: 2-10-2004

Certified to be Effective: 2-10-04

Notice Publication Date: 12-1-03

Rules Amended: 603-001-0001

Subject: This amendment clarifies the procedures of the department when filing a temporary rule.

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

603-001-0001

Procedure for Notice of Intended Rulemaking

In order to provide a reasonable opportunity for interested persons to be notified of the Department's proposed administrative rulemaking actions, the Department shall give notice of its proposed adoption, amendment, or repeal of any administrative rule prior to such adoption, amendment, or repeal of any administrative rule in the following manner:

(1) By causing the Notice to be published in the Secretary of State's Bulletin, referred to in ORS 183.360, at least 21 days prior to the effective date of the proposed action with the exception of temporary rules which may become effective upon filing with the Secretary of State pursuant to ORS 183.355(2)(b);

(2) By mailing a copy of the Notice to persons on each of the appropriate departmental lists established pursuant to ORS 183.335(8);

(3) By mailing a copy of the Notice to known interested persons, or in lieu thereof, organizations or associations known to represent such interested persons; and

(4) By causing the Notice to be published in the Oregonian as a legal notice.

Stat. Auth.: ORS 183
Stats. Implemented: ORS 561.190
Hist.: AD 1078(2-76), f. & ef. 1-16-76; DOA 9-2001, f. & cert. ef. 5-4-01; DOA 21-2002, f. & cert. ef. 9-3-02; DOA 5-2004, f. & cert. ef. 2-10-04

Adm. Order No.: DOA 6-2004

Filed with Sec. of State: 2-13-2004

Certified to be Effective: 2-13-04

Notice Publication Date: 1-1-04

Rules Amended: 603-013-0600, 603-013-0602, 603-013-0604, 603-013-0616

Subject: OAR Chapter 603, Division 13, applies to pet or animal food slaughtering or processing establishments, the labeling of pet or animal food, animal disposal businesses, and the transportation of dead animals. The amendments proposed for OAR 603-013-0600, 603-013-0602, and 603-013-0616, would correct a typographical error and update the statutory references in three rules within the division that apply to pet or animal food slaughtering or processing establishments. The amendments proposed for OAR 603-013-0604 would require pet or animal food slaughtering or processing establishments to meet the same construction and maintenance standards that are applied to food establishments.

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

603-013-0600

Definitions

As used in OAR 603-013-0600 through 603-013-0616:

(1) "Department" means the State Department of Agriculture.

(2) "Establishment" means any building, plant, establishment, vehicle, or structure movable or stationary wherein animals or poultry are slaughtered, prepared, processed, or offered for sale or sold in any manner intended for or to be used as animal food. Establishment also includes the ground adjacent thereto.

(3) "Licensee" means any person licensed to operate a pet or animal food slaughtering establishment as authorized by ORS 619.031 or regulations promulgated thereunder.

(4) "Pet or Animal Food" means any meat, meat food product, carcass, or any part thereof including viscera of a slaughtered animal or poultry that is intended to be used, sold, or offered for sale as pet or animal food as authorized by ORS 619.031.

Stat. Auth.: ORS 603
Stats. Implemented: ORS 603
Hist.: AD 636, f. 3-15-60; DOA 6-2004, f. & cert. ef. 2-13-04

603-013-0602

Licenses

(1) No person shall operate a pet or animal food slaughtering or processing establishment without first obtaining a license therefor from the Department as required by ORS 619.031.

(2) Notwithstanding the provisions of section (1) of this rule, a person holding a meat food animal slaughterhouse license, or a person licensed to slaughter poultry and rabbits, or a person holding a non-slaughtering processing license may, without being required to obtain additional license, also sell or dispose of meat or meat products as pet or animal food providing that such licensees also comply with the special provisions of law or regulations thereunder which apply to the operation of an animal food and slaughtering establishment as required by ORS 619.031 and the provisions of OAR 603-013-0600 to 603-013-0616.

(3) No person shall operate an establishment or slaughter or process any animal for animal food except as authorized and provided by ORS 619.031 and the provisions of OAR 603-013-0600 to 603-013-0616.

(4) No person shall slaughter or process an animal which is intended for or offered for sale or sold for human consumption, in a pet and animal food slaughtering establishment. No person shall keep or maintain an animal carcass or any part thereof in an animal food slaughtering establishment except such carcasses or parts thereof which are intended for use or sale as pet or animal food.

Stat. Auth.: ORS 603
Stats. Implemented: ORS 603
Hist.: AD 636, f. 3-15-60; DOA 6-2004, f. & cert. ef. 2-13-04

603-013-0604

Construction

Pet food or animal food slaughtering establishments are subject to the provisions specified in OAR 603-025-0020.

Stat. Auth.: ORS 603

ADMINISTRATIVE RULES

Stats. Implemented: ORS 603
Hist.: AD 636, f. 3-15-60; DOA 6-2004, f. & cert. ef. 2-13-04

603-013-0616

Records

The licensee shall keep daily records as required by ORS 619.031.

Stat. Auth.: ORS 603

Stats. Implemented: ORS 603

Hist.: AD 636, f. 3-15-60; DOA 6-2004, f. & cert. ef. 2-13-04

Adm. Order No.: DOA 7-2004

Filed with Sec. of State: 2-13-2004

Certified to be Effective: 2-13-04

Notice Publication Date: 1-1-04

Rules Repealed: 603-016-0471, 603-016-0476, 603-016-0481, 603-016-0486, 603-016-0491, 603-016-0496, 603-016-0500, 603-016-0505, 603-016-0510

Subject: OAR Chapter 603, Division 16, applies to disease control in turkeys, to the inspection, grading and labeling of turkeys, and to the grading of turkey slaughtering establishments. OAR 603-016-0471 through OAR 603-016-0510 apply only to the inspection, grading, and labeling of turkeys, and to the grading of turkey slaughtering establishments. The proposed rulemaking action would repeal OAR 603-016-0471 through 603-016-0510.

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

Adm. Order No.: DOA 8-2004

Filed with Sec. of State: 2-13-2004

Certified to be Effective: 2-13-04

Notice Publication Date: 12-1-03

Rules Repealed: 603-051-0801, 603-051-0802, 603-051-0810, 603-051-0812, 603-051-0814, 603-051-0816, 603-051-0818, 603-051-0819, 603-051-0821, 603-051-0823, 603-051-0825, 603-051-0827, 603-051-0829, 603-051-0950, 603-052-0325, 603-052-0326, 603-052-0327, 603-052-0331, 603-052-0332, 603-052-0333, 603-052-0335, 603-052-0340, 603-052-0345, 603-052-0400, 603-052-0425, 603-052-0810, 603-052-1000, 603-052-1010, 603-054-0010

Subject: The action is to repeal all the rules listed which are believed to be obsolete.

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

Department of Agriculture, Oregon Grains Commission Chapter 679

Adm. Order No.: GRAIN 1-2004

Filed with Sec. of State: 1-20-2004

Certified to be Effective: 1-20-04

Notice Publication Date: 12-1-03

Rules Adopted: 679-010-0050, 679-010-0060, 679-030-0010, 679-030-0020, 679-030-0030, 679-030-0040

Rules Amended: 679-010-0000, 679-010-0010, 679-010-0030

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and, where necessary may address the commissions assessment rate if necessary to meet the limits in 2003 Oregon laws, Chapter 604 (section 39) or penalties for non-payment of assessment as stated in 2003 Oregon Laws, Chapter 604 (section 42). In addition, these rules may include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 Or. Laws Chapter 604 (section 9).

Rules Coordinator: Tammy Dennee—(541) 276-4609

679-010-0000

Definitions

(1) "Person" means any individual, corporation, association, partnership or joint stock company.

(2) "Commission" means the Oregon Grains Commission.

(3) "First Purchaser" means any person who buys these grains and/or oilseeds from the producer in the first instance, or handler who receives these grains and/or oilseeds in the first instance from the producer for resale or processing.

(4) "Producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, share-cropper, boat skipper or otherwise.

(5) "Handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(6) These grains and oilseeds consist of barley (*Hordeum vulgare*), rye (*Secale cereale*), triticale (*X Triticosecale*), canola (*Brassica napus*, *Brassica rapa*, *Brassica campestris*), yellow mustard (*Brassica hirta*), brown and oriental mustards (*Brassica juncea*). All of these grains and oilseeds grown in Oregon and sold commercially for whatever purpose are to be included.

(7) "Net Paid for Weight" means all sales or bartered tons and or hundredweight paid for.

Stat. Auth.: ORS 576.044 - 576.595

Stats. Implemented: ORS 576

Hist.: GC 1-1989, f. & cert. ef. 9-25-89; GRAIN 1-2000, f. & cert. ef. 8-4-00; GRAIN 1-2004, f. & cert. ef. 1-20-04

679-010-0010

Assessments

Any first purchaser shall deduct and withhold an assessment of the following amounts for all of the named grains and oilseeds grown in Oregon:

(1) Barley — \$1 per ton.

(2) Rye — \$1 per ton.

(3) Triticale — \$1 per ton.

(4) Canola — \$.00.

(5) Mustard — \$.00.

Stat. Auth.: ORS 576.044 - 576.595

Stats. Implemented: ORS 576

Hist.: GC 1-1989, f. & cert. ef. 9-25-89; GRAIN 1-2000, f. & cert. ef. 8-4-00; GRAIN 1-2004, f. & cert. ef. 1-20-04

679-010-0030

Penalties

In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by the Commission will pay a penalty of ten percent (10%) of the amount due and will also pay one and one-half percent (1 1/2%) interest per month on the unpaid balance of the assessment. By majority vote, the Commission may waive penalties for good cause.

Stat. Auth.: ORS 576, 2003 OL Ch. 604

Stats. Implemented: ORS 576, OL Ch. 604

Hist.: GC 1-1989, f. & cert. ef. 9-25-89; GRAIN 1-2000, f. & cert. ef. 8-4-00; GRAIN 1-2004, f. & cert. ef. 1-20-04

679-010-0050

Partial Refund of Assessment

The Oregon Grains Commission will provide for a percentage of an assessment budgeted and allocated on advertising and product promotion. Applications will only be accepted for refunds for assessments paid after January 20, 2004, the effective date of the administrative rule on refunds.

(1) The commission will pay refunds within 60 days of the end of the fiscal year:

(a) The commission will verify that:

(A) The assessment was collected from the producer seeking a refund of that part of the assessment allocated to advertising product promotion had the assessment been collected; and that

(B) Said assessment was remitted by the handler.

(b) When the commission gives notice of its annual budget hearing, it will include a specific statement of the amount proposed to be budgeted for advertising and product promotion, if any.

(c) The commission will provide appropriate forms for completion by a producer who is seeking a partial refund. Refund applications must

ADMINISTRATIVE RULES

include proof of payment of the assessment, together with any interest and penalties.

(2) To apply for a refund of that portion of the assessment allocated to advertising and product promotion, the producer must:

(a) Produce settlement sheets, copies of checks, credit card statements, or receipts for cash payments as proof of assessment deducted by the handler(s);

(b) State the reason for requesting the refund; and

(c) Make the claim for partial refund within (30) days of the end of the fiscal year.

(d) A producer's statement under (2)(B) of this rule will not affect a producer's liability for a refund.

(3) Refund applications under this rule, together with proof of payment, must bear the notarized signature of the person seeking the refund, certifying the truth of the information contained in the application. If the refund is sought by a business entity (such as a corporation or partnership), the application must bear the notarized signature of a person authorized to make the application on the business entity's behalf. If the refund is sought by a person or entity for an assessment that they paid on behalf of a producer, the application shall include a signed, notarized statement from the producer assenting to the application.

(4) Refund applications under this rule that are incomplete, contain erroneous information, or are otherwise deficient will be returned to the person seeking the refund with an explanation of the deficiency. The Commission may request additional information if necessary to evaluate the refund request.

(5) Within 60 days of receipt, the Commission will either provide the refund or return the application as incomplete, inaccurate, or otherwise deficient.

(6) Any person aggrieved by a decision to deny refund, or to provide a refund in less than the amount sought, may appeal. Appeals shall be in writing, filed with the Executive Director within 30 days of the date of the decision complained of, and shall specifically state all reasons for the appeal and the relief sought.

Stat. Auth.: ORS 576, 2003 OL Ch. 604
Stats. Implemented: ORS 576, OL Ch. 604
Hist.: GRAIN 1-2004, f. & cert. ef. 1-20-04

679-010-0060

Definitions of Advertising and Product Promotion

(1) For purposes of 679-010-0050, advertising and product promotion means any action taken to present a favorable image of barley, rye, triticale, canola or mustard to the general public or to the food and agriculture industry for the purpose of improving the competitive position of barley, rye, triticale, canola or mustard and stimulating the sale of these commodities.

(a) Without limiting the generality of the foregoing, "advertising and production promotion includes:

(A) Providing information to consumers that is designed to enhance the image or sale of barley, rye, triticale, canola or mustard;

(B) Consumer Education;

(C) Nutrition Education; and

(D) Providing funding to another person or entity to carry out any of the above.

(b) Advertising and product promotion does not include the act of carrying out or conducting research, as defined in subsection (5) of this rule, or the communication of the results of research findings to peers through scientific journals, but includes the communication of the results of research findings if the purpose of that communication is to enhance the image or sale of Grains.

(2) Consumer Education. The term "Consumer Education" means any program or action utilizing or funding public relations, advertising or other means devoted to educating the general public.

(3) First Purchaser, Handler, Purchaser. The terms "First Purchaser," "Handler," and "Purchaser" have the meanings given in Oregon Laws 2003, chapter 604.

(4) Nutrition Education. The term "Nutrition Education" means any program or action intended to broaden the understanding of sound nutritional principles including the role of barley, rye, triticale, canola or mustard in a balanced diet;

(5) Research. "Research" means any type of test, study, or analysis. Research may include research concerning how to enhance the image or sale of barley, rye, triticale, canola or mustard, as well as research concerning use, production, product development, quality, nutrition, or other characteristics of said commodities.

Stat. Auth.: ORS 576, 2003 OL Ch. 604
Stats. Implemented: ORS 576, OL Ch. 604
Hist.: GRAIN 1-2004, f. & cert. ef. 1-20-04

679-030-0010

Number of Commissioners, Terms

The Oregon Grains Commission will consist of (5) five persons appointed by the Director of the Oregon Department of Agriculture for a term of three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term.

Stat. Auth.: ORS 576, 2003 OL Ch. 604
Stats. Implemented: ORS 576, OL Ch. 604
Hist.: GRAIN 1-2004, f. & cert. ef. 1-20-04

679-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, share-cropper, boat skipper or otherwise. A producer must have paid the commission assessment, if any, on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Grains Commission will have the following qualifications, which will continue during the term of office of the member:

(a) A majority of the members will be producers;

(b) At least one member will be a handler;

(d) All members who are not a handler or the public member will be producers. The Grains Commission has chosen to provide for a partial refund to producers upon written request and therefore invokes the option not to include a public member at this time;

(3) In addition to the qualifications set forth in subsection (2) of this rule, at least one producer member shall be from each of the following regions with no more than two producer members from one geographic region:

(a) North Central Oregon comprised of the following counties: Gilliam; Hood River; Morrow; Sherman; Wasco; and Wheeler;

(b) Northeast Oregon comprised of the following counties: Baker; Umatilla; Union; and Wallowa;

(c) Southeast Oregon comprised of the following counties: Crook; Deschutes; Grant; Harney; Jefferson; Klamath; Lake; and Malheur;

(4) Notwithstanding subsection (3) of this section, if a position remains vacant for more than 60 sixty days following reasonable efforts to recruit a member from a particular region, a person may be appointed at large and may reside anywhere within the State of Oregon. Once that person's term expires and he or she is not reappointed, the position will again be subject to the geographic qualification requirements of subsection (3) of this section.

Stat. Auth.: ORS 576, 2003 OL Ch. 604
Stats. Implemented: ORS 576, OL Ch. 604
Hist.: GRAIN 1-2004, f. & cert. ef. 1-20-04

679-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for the following reasons:

(1) Two consecutive unexcused absences from regularly scheduled meetings, or other neglect of duty of office;

(2) Use of the commission appointment for financial gain or to avoid financial detriment;

(3) Unauthorized use or disclosure of confidential information;

(4) Conduct in violation of Oregon government standards and practices laws;

(5) Misappropriation or misuse of commission funds;

(6) Failure to satisfy one or more qualifications for appointment;

(7) Failure to work for the positive economic benefit of the commodity.

Stat. Auth.: ORS 576, 2003 OL Ch. 604
Stats. Implemented: ORS 576, OL Ch. 604
Hist.: GRAIN 1-2004, f. & cert. ef. 1-20-04

679-030-0040

Chair and Other Officers

Annually, at the last regular meeting of the Commission before the end of the fiscal year, the Commission will elect from its members a Chair

ADMINISTRATIVE RULES

and a Vice Chair who will serve until their successors are elected and qualified. The Chair or Vice Chair may resign as such or may be removed from that position by vote of four Commissioners. If the Chair or Vice Chair ceases to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant.

Stat. Auth.: ORS 576, 2003 OL Ch. 604
Stats. Implemented: ORS 576, OL Ch. 604
Hist.: GRAIN 1-2004, f. & cert. ef. 1-20-04

**Department of Agriculture,
Oregon Hop Commission
Chapter 643**

Adm. Order No.: HOP 1-2004

Filed with Sec. of State: 1-16-2004

Certified to be Effective: 1-16-04

Notice Publication Date: 12-1-03

Rules Adopted: 643-010-0030, 643-030-0010, 643-030-0020, 643-030-0030, 643-030-0040

Subject: These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and, where necessary may address the commission's assessment rate if necessary to meet the limits in 2003 Oregon Laws, Chapter 604 (section 39) or penalties for non-payment of assessment as stated in 2003 Oregon Laws, Chapter 604 (section 42). In addition, these rules may include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 OR Laws Chapter 604 (section 9).

Rules Coordinator: Michelle L. Palacios—(503) 633-2922

643-010-0030

Penalties

(1) In addition to the penalties prescribed in ORS 576.991, any person who delays transmittal of funds beyond the time set by a commission will pay a penalty of ten (10) percent of the amount due and will also pay one and one-half (1 1/2) percent interest per month on the unpaid balance of the assessment.

(2) A commission may waive the penalty and interest described above upon showing of good cause.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: HOP 1-2004, f. & cert. ef. 1-16-04

643-030-0010

Number of Commissioners, Terms

The Oregon Hop Commission will consist of nine commissioners appointed by the Director of the Oregon Department of Agriculture for a term of three years or, if for a term following a prior term for that person, ending three years from the date of expiration of any prior term.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: HOP 1-2004, f. & cert. ef. 1-16-04

643-030-0020

Qualifications of Commissioners

(1) For purposes of this rule:

(a) A "producer" is a person growing or producing within this state or procuring within the state, its rivers or the offshore waters, but not the Columbia River, for commercial handling within the state, a commodity for market, or receiving a share thereof as landowner, landlord, tenant, share-cropper, boat skipper or otherwise. A producer must have paid the commission assessment on the commodity in each of the preceding three calendar years.

(b) A "handler" is any producer, processor, distributor or other person engaged in handling or marketing of or dealing in the commodity, whether as owner, agent, employee, broker or otherwise. A handler must have collected the commission assessment, if any, each of the preceding three calendar years.

(2) Members of the Hop Commission will have the following qualifications, which will continue during the term of office of the member:

(a) One member of the commission will be a member of the public with an active interest in the positive economic development, production and/or marketing of the commodity, but who is not associated with the production or handling of hop;

(b) A majority of the members will be producers;

(c) At least one member will be a handler;

(d) All members who are not a handler or the public member will be producers.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: HOP 1-2004, f. & cert. ef. 1-16-04

643-030-0030

Removal of Commissioners

The Commission may recommend that the Director of the Department of Agriculture remove a commissioner from office, and declare the position vacant for cause, including the following reasons:

(1) Two consecutive unexcused absences, or other neglect of duty in office;

(2) Use of the commission appointment for financial gain or to avoid financial detriment;

(3) Unauthorized use or disclosure of confidential information;

(4) Conduct in violation of Oregon government standards and practices laws;

(5) Misappropriation or misuse of commission funds;

(6) Failure to satisfy one or more qualifications for appointment.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: HOP 1-2004, f. & cert. ef. 1-16-04

643-030-0040

Chair and Other Officers

Annually, at the first regular meeting of the Commission at the beginning of the new fiscal year, the Commission will elect from its members a Chair, Vice Chair, Treasurer, and Secretary who will serve until their successors are elected and qualified. The Chair, Vice Chair, Treasurer, or Secretary may resign as such or may be removed from that position by vote of five Commissioners. If the Chair, Vice Chair, Treasurer, or Secretary ceases to be a Commissioner, the office will be vacant and a successor will be selected at the next regular meeting of the Commission. The Chair will preside over all meetings of the Commission. The Vice Chair will act in lieu of the Chair when the Chair is unable to perform the duties of the office of Chair or while the office is vacant, the Treasurer will oversee the financial records of the Commission, and the Secretary will oversee the written records of the Commission.

Stat. Auth.: 2003 OL Ch. 604, ORS 576
Stats. Implemented: 2003 OL Ch. 604, ORS 576
Hist.: HOP 1-2004, f. & cert. ef. 1-16-04

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

Adm. Order No.: BCD 1-2004(Temp)

Filed with Sec. of State: 1-29-2004

Certified to be Effective: 1-29-04 thru 7-26-04

Notice Publication Date:

Rules Amended: 918-008-0030

Subject: Amends the filing date deadline of code change proposals submitted to the Division from February 1 to April 1.

Rules Coordinator: Louann P. Rahmig—(503) 373-7438

918-008-0030

Check List and Time Line for Code Change Submittals

(1) Amendments to the **Electrical Specialty Code, Structural Specialty Code, Mechanical Specialty Code, Plumbing Specialty Code** and the **One and Two Family Dwelling Specialty Code** shall be considered for adoption following one of the two following timelines:

(a) Notices shall be sent to interested parties and the general public advising of the due date for code change submittals;

(b) April 1 or August 1 — A complete code change proposal, including those filed under ORS 455.030 by "interested persons," shall be filed with the division for consideration. All filings received or made "complete" after April 1 or August 1 shall be deferred to the next regular submission date;

ADMINISTRATIVE RULES

(c) The division shall submit proposed amendments received under subsection (a) of this section to the appropriate board or its delegated committee for review and recommendations;

(d) If the board refers proposals to one or more committees for review and comments the committee shall submit recommendations to the board;

(e) The board or its delegated committee shall submit its recommendations to the administrator no later than 180 days from the date of formal submittal under subsection (b) of this section. The board or its delegated committee shall attach the cost findings on recommended amendments as required by ORS 455.030 and recommend an implementation schedule;

(f) Following receipt of a board response under subsection (e) of this section, the administrator shall notify the amendment proponent within the time provided in ORS 455.030(5) and, if relevant, begin rulemaking;

(g) If rulemaking is begun, a notice shall be filed scheduling a public hearing. A division report shall be provided to the appropriate board following the hearing;

(h) Formal action on proposed amendments shall be taken by the appropriate board and administrator in the year of the effective date of the amendments. Amendments adopted in this process shall be available in final printed form 60-90 days prior to the effective date; and

(i) All code amendments shall have an April 1 or October 1 effective date.

(2) Exceptions for Filings under ORS 455.030 and Temporary Rules:

(a) Filings received expressly under ORS 455.030 shall be initially evaluated by the division to determine if a temporary rule is justified under 183.335. If justified, it shall be processed under subsection (b) of this section. If not, it shall be processed under section (1) or (2) of this rule; and

(b) Temporary code amendments shall be processed and adopted regardless of the time lines established in this rule when allowed by ORS 183.335. In all cases, board consultation requirements under ORS 455.030 shall be followed. Nothing shall prevent consideration of a related permanent rule in connection with adoption of a temporary rule.

(3) The submission dates in this rule shall be followed by all persons except when:

- (a) Controversial proposals are involved;
- (b) It is necessary to respond to statutory mandates;
- (c) Additional findings or documentation are required; or
- (d) When legal consultation is necessary.

(4) Nothing in the schedules established in sections (1) and (2) of this rule prevents a board from internally generating proposed adoptions or amendments of codes if it meets the submission date to the administrator for rule adoption.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 447.020, 455.030 & 479.730
Stats. Implemented: ORS 447.020, 455.030 & 479.730
Hist.: BCD 26-1994, f. & cert. ef. 11-15-94; BCD 6-1997, f. & cert. ef. 4-1-97; BCD 1-2004(Temp), f. & cert. ef. 1-29-04 thru 7-26-04

Adm. Order No.: BCD 2-2004

Filed with Sec. of State: 2-13-2004

Certified to be Effective: 4-1-04

Notice Publication Date: 1-1-04

Rules Adopted: 918-030-0100, 918-030-0900

Subject: Adopts rules establishing a process that allows contractors and business holders to renew licenses on one form, pay one fee and have one renewal date.

Rules Coordinator: Louann Rahmig—(503) 373-7438

918-030-0100

Contractor Licensing Expiration Dates

(1) Notwithstanding any other provision of rule or law, all contractor and business licenses established under ORS 479.510 to 479.945, except elevator contractors, and ORS Chapter 447 shall be issued for a period of two years and expire on July 1.

(2) The division, with the approval of the appropriate advisory board, shall establish license categories for contractors or businesses who hold two or more contractor or business licenses established under ORS 479.510 to 479.945, 480.510 to 480.670, chapter 447 and chapter 460 that are valid for two years.

Stat. Auth.: Ch. 75, 2003 OL, ORS 447.030, 670.410
Stats. Implemented: Ch. 75, 2003 OL, ORS 447.030, 670.410
Hist.: BCD 2-2004, f. 2-13-04, cert. ef. 4-1-04

918-030-0900

Revocation, Cancellation or Suspension of License

In accordance with ORS Chapter 183, the director may revoke, cancel or suspend a contractor license, business license or registration to conduct business when the contractor or business holds more than one license under ORS 479.510 to 479.945, 480.510 to 480.670, chapter 447 and chapter 460, if the contractor or business:

(1) Does not meet the minimum qualifications prescribed in ORS 460.085, 479.630, 480.630 or 447.030, any rule adopted thereunder;

(2) Falsifies an application;

(3) Establishes a pattern of conduct that may include:

(a) Working or employing persons without proper license or certification;

(b) Making, directing or supervising installations that are unsafe or do not meet minimum safety standards; or

(c) Failing to meet the minimum requirements in the State Building Code; or

(4) Any other activity prejudicial to the electrical, plumbing, elevator or boiler or pressure vessel safety programs under ORS 479.510 to 479.945, 480.510 to 480.670, chapter 447 and chapter 460, or any rules adopted thereunder.

Stat. Auth.: Ch. 75, 2003 OL
Stats. Implemented: Ch. 75, 2003 OL
Hist.: BCD 2-2004, f. 2-13-04, cert. ef. 4-1-04

Department of Consumer and Business Services,

Insurance Division

Chapter 836

Adm. Order No.: ID 1-2004

Filed with Sec. of State: 2-3-2004

Certified to be Effective: 2-3-04

Notice Publication Date: 12-1-03

Rules Amended: 836-052-0700

Subject: This rulemaking amends the Insurance Division rule that adopts the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application in order to incorporate recent changes recommended by the Advisory Committee on Physician Credentialing Information in the Office for Oregon Health Plan Policy and Research. The applications allow collection of uniform information needed by health care service contractors to credential and recredential physicians seeking designation as participating providers for health plans. The Director of the Department of Consumer and Business Services and the Director of Human services are required to adopt identical rules in a timely manner to carry out the recommendations.

The Oregon Practitioner Credentialing Application with the changes incorporated may be accessed at www.ohpr.state.or.us/advisory/CredentialMenu.htm. The Oregon Practitioner Recredentialing Application with the changes incorporated may be accessed at www.ohpr.state.or.us/advisory/RecredentialMenu.htm.

Rules Coordinator: Sue Munson—(503) 947-7272

836-052-0700

Physician Credentialing, Health Care Service Contractors

(1) The Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPCI) on November 14, 2000, are adopted with respect to health care service contractors as Exhibits 1 and 2 to this rule.

(2) Each health care service contractor shall use the application forms adopted in section (1) of this rule

(3) This rule is adopted pursuant to the authority of ORS 442.807 for the purpose of enabling the collection of uniform information necessary for health care service contractors to credential physicians seeking designation as a participating provider for a health plan, thereby implementing ORS 422.800 to 422.807 with respect to health care service contractors.

Stat. Auth.: ORS 422.807
Stats. Implemented: ORS 422.800- 422.807
Hist.: ID 12-2001, f. & cert. ef. 10-15-01; ID 1-2004, f. & cert. ef. 2-3-04

ADMINISTRATIVE RULES

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

Adm. Order No.: WCD 1-2004(Temp)

Filed with Sec. of State: 1-21-2004

Certified to be Effective: 1-21-04 thru 7-18-04

Notice Publication Date:

Rules Amended: 436-035-0500

Subject: Promulgation of temporary disability standards to address the impairment of an individual worker in: WCD files BAC-1997, GAD-9630 and HAE-2463.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-035-0500

Temporary Rule Promulgation for Individual Claims

(1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases pursuant to ORS 656.726(4)(f)(C) which requires the director to stay the reconsideration proceeding and adopt temporary rules in cases where the director finds that the worker's impairment is not adequately addressed in the disability standards.

(2) Temporary rules promulgated pursuant to ORS 656.726(4)(f)(C) will be incorporated by reference to the Workers' Compensation Division claim file number and will be applicable solely to the rating of that claim. The temporary rule will be effective upon filing with the Secretary of State and elapse 180 days thereafter in accordance with ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-001-0000(3).

BAC-1977 As a result of the accepted perilymph fistula and resulting surgery with fat grafting, the worker is unable to perform heavy lifting, working at heights, excessive bending and activities that require excessive head movement. The standards do not address this disability. The Director finds this loss of function similar to the loss of function experienced with a chronic condition and assigns an impairment value of 5% unscheduled impairment of the auditory system. This value shall be combined with any other applicable unscheduled impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file No. BAC-1977.

GAD-9630 As a result of the accepted fractures and laceration of the right fingers and hand with post traumatic neurologic dysfunction the worker experiences a loss of function due to cold intolerance. The standards do not address cold intolerance due to neurologic dysfunction. The Director finds this loss of function similar to the loss of function experienced with Class 3 vascular dysfunction and assigns an impairment value of 35% of the right hand. See OAR 436-035-0110(6). This value shall be combined with any other applicable impairment values for the involved right hand. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. GAD-9630.

HAE-2463 This worker was injured when she cut her index finger with a knife. As a result of the accepted conditions and the surgeries to repair the injured nerves and tendons, there was a resulting loss of sensation in the left index finger. The Director assigns an impairment value of 14% for the loss of sensation in the proximal and middle phalanges of the left index finger. This value shall be combined with other applicable impairment values for the left index finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. HAE-2463.

Stat Auth.: ORS 656.726(4)

Stats Implemented: ORS 656.268(6); ORS 656.726(4)(f)(C)

Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & cert. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & 159-2031, f. & cert. 4-28-93 - 10-25-93; WCD 4-1993, f. & cert. 6-29-93; WCD 5-1993(Temp), Case #I64-3064, f. & cert. 9-2-93 - 3-2-94; WCD 6-1993(Temp), Case #I64-3064, f. & cert. 10-22-93 - 4-19-94; WCD 4-1994(Temp), f. & cert. 5-26-94; WCD 6-1994(Temp), f. & cert. 7-15-94; WCD 8-1994(Temp), f. & cert. 8-31-94; WCD 11-1994(Temp), f. & cert. 11-10-94; WCD 1-1995(Temp), f. & cert. 1-26-95; WCD 2-1995(Temp), f. & cert. 3-2-95; WCD 3-1995(Temp), f. & cert. 4-13-95; WCD 4-1995(Temp), f. & cert. 5-31-95; WCD 5-1995(Temp), f. & cert. 7-11-95; WCD 14-1995(Temp), f. & cert. 10-5-95; WCD 16-1995(Temp), f. & cert. 11-2-95; WCD 19-1995(Temp), f. & cert. 12-7-95; WCD 4-1996(Temp), f. & cert. 2-1-96; WCD 11-1996(Temp), f. & cert. 3-20-96; WCD 15-1996(Temp), f. & cert. 7-3-96; WCD 18-1996, f. 8-6-96, cert. 8-7-96; WCD 22-1996(Temp), f. & cert. 10-31-96; WCD 1-1997, f. 1-9-97, cert. 2-15-97; WCD 2-1997(Temp), f. & cert. 1-15-97; WCD 3-1997(Temp), f. 3-12-97, cert. 3-13-97; WCD 6-1997(Temp), f. & cert. 5-14-97; WCD 12-1997(Temp), f. & cert. 9-9-97; WCD 4-1998(Temp), f. & cert. 3-31-98 thru 9-26-98; WCD 7-1998(Temp), f. 7-13-98, cert. 7-15-98 thru 1-11-99; WCD 9-1998(Temp), f. & cert. 10-15-98 thru 4-12-99; WCD 1-1999(Temp), f. 1-12-99, cert. 1-15-99 thru 7-13-99; WCD 5-1999(Temp), f. & cert. 4-15-99 thru 10-12-99; WCD 10-1999(Temp), f. & cert. 7-15-99 thru 1-10-2000; WCD 12-1999(Temp), f. 10-14-99, cert. 10-15-99 thru 4-12-00; WCD 1-2000(Temp), f. 1-12-00, cert. 1-14-00 thru 7-12-00; WCD 5-2000(Temp), f. 4-13-00, cert. 4-14-00 thru 10-10-00; WCD 7-2000(Temp), f. 7-14-00, cert. 7-14-00 thru 1-9-01; WCD 8-2000(Temp), f. &

cert. 10-13-00 thru 4-10-01; WCD 1-2001(Temp), f. & cert. 1-12-01 thru 7-10-01; WCD 3-2001(Temp), f. & cert. 4-13-01 thru 10-9-01; WCD 6-2001(Temp), f. & cert. 7-13-01 thru 1-8-02; WCD 9-2001(Temp), f. & cert. 10-12-01 thru 4-9-02; WCD 1-2002(Temp), f. & cert. 1-15-02 thru 7-13-02; WCD 5-2002(Temp), f. 4-12-02, cert. 4-15-02 thru 10-11-02; WCD 8-2002(Temp), f. 7-12-02 cert. 7-15-02 thru 1-10-03; WCD 11-2002(Temp), f. 10-11-02, cert. 10-15-02 thru 4-12-03; WCD 1-2003(Temp), f. & cert. 1-15-03 thru 7-13-03; WCD 2-2003, f. 1-15-03 cert. 2-1-03; WCD 4-2003(Temp), f. 4-14-03, cert. 4-15-03 thru 10-11-03; WCD 7-2003(Temp), f. & cert. 7-15-03 thru 1-10-04; WCD 1-2004(Temp), f. & cert. 1-21-04 thru 7-18-04

Department of Corrections Chapter 291

Adm. Order No.: DOC 2-2004(Temp)

Filed with Sec. of State: 1-20-2004

Certified to be Effective: 1-20-04 thru 7-18-04

Notice Publication Date:

Rules Amended: 291-117-0020

Subject: These rule amendments are necessary to allow the department to continue to address safety concerns identified by the State Fire Marshal's Office concerning the control and storage of inmate personal property in inmate living quarters. Based on those safety concerns the department has changed the type of storage container that previously had been used throughout the department by inmates for storage of authorized legal materials in their assigned living quarters.

Rules Coordinator: Carolyn Schnoor—(503) 945-0933

291-117-0020

Authorized Personal Property in Department of Corrections Facilities (Other Than at Intake)

(1) Each inmate may possess authorized personal property and state-issued clothing not to exceed the capacity of container(s) located in the inmate's assigned housing area designated by the functional unit manager for the storage of inmate personal property. Except as provided in these rules, all inmate personal property must be stored in the designated storage container(s) when not in use. Inmate personal property required to be stored in designated storage container(s), which does not fit, shall be considered excess property and shall be confiscated and disposed of in accordance with the procedures set forth in the section entitled Control of Property (OAR 291-117-060). The following authorized items are not subject to the space restrictions referred to above, and need not be stored in the designated storage container(s):

- (a) One approved musical instrument;
- (b) One television, one radio, and/or one radio/tape player;
- (c) Medically necessary and approved prosthesis.

(2) Authorized Personal Property: Each inmate is authorized to possess only the following personal property items, subject to the space restrictions provided in these rules (where applicable):

- (a) Television/Radio/Tape Player:

(A) In Department of Corrections facilities that are designated for and permit individual television viewing and/or radio/tape player use, inmates may possess one personally-owned television, and one radio or one radio/tape player (including headphones) purchased through the facility canteen, or where applicable, one Department-issued radio and/or headphones;

(B) An existing personally-owned television, radio or radio/tape player possessed by an inmate in a Department of Corrections facility prior to the effective date of this rule may be retained by the inmate until transfer or release.

(b) Jewelry: One plain, smooth wedding band, without stones or protrusions, and one watch purchased through the canteen.

(c) Religious Items: Items authorized for religious use by inmates in accordance with the rule on Religious Activities (Inmate) that are purchased through the canteen or authorized in writing by the staff chaplain. Written authorization for religious items not available for purchase through the facility canteen shall appear on a Personal Property Record (CD 353) and shall transfer with the inmate to other Department of Corrections facilities. Violation of the written authorization or alteration or use of a religious item for other than its intended purposes shall result in confiscation of the item and/or disciplinary action.

(d) Personal and authorized books, magazines, newspapers, unframed photos, personal mail, and canteen purchased items.

- (e) Authorized Legal Material:

(A) Each inmate is authorized to possess in his/her assigned cell or other living quarters, and in the facility law library, legal material in or

ADMINISTRATIVE RULES

directly pertaining to his/her own pending and active case(s)/lawsuit(s) before the courts or paroling authorities, not to exceed the capacity of storage container(s) designated by the functional unit manager for storage of inmate personal property and such additional storage container(s) as the department may make available for purchase and specifically authorize for storage of authorized legal material in the inmate's assigned cell or other living quarters

(B) Indigent Inmates: An inmate lacking sufficient funds in his/her trust account to pay for an additional storage container(s) for storage of authorized legal material in the inmate's assigned cell or other living quarters will be provided with an additional storage container(s) upon written request of the facility library coordinator or other official designated by the functional unit manager. The written request must be accompanied by a signed Inmate Withdrawal Request Form (CD 28). The inmate's trust account will be debited by canteen for collection of the cost(s) of the container(s) as funds become available.

(C) Excess Authorized Legal Material: A reasonable amount of secure space for storage of excess authorized legal material will be provided for inmate use, on an as-needed and availability basis, in the facility law library and/or in such other storage areas as designated by the functional unit manager. If an inmate accumulates large amounts of authorized legal material that exceeds the capacity of storage available to the inmate in his/her assigned cell or other living quarters, the following procedures will be utilized to provide for the inmate's access to and security of such materials:

(i) The inmate shall organize and inventory his/her authorized excess legal material by case number, and place the material in letter-sized accordion file folder(s) with flap supplied by the Department. All folders shall be labeled with the inmate's name and SID number, and with the case number and name on the flap, and shall be secured. The inmate shall complete an Excess Authorized Legal Material Inventory List (CD 1242a). The original shall be placed in the inmate's working file, one copy shall be retained by the inmate, and one copy shall be placed with the material to be stored. Upon completion of the inventory list, the material shall be collected by designated employee(s) and placed in a designated storage area(s). If the facility law library has been designated for storage of excess authorized legal material, the inmate may collect and place his/her excess authorized legal material under staff supervision in the area designated for storage in the facility law library.

(ii) Only legal material in or directly pertaining to the inmate's own pending and active case(s)/lawsuit(s) before the courts or paroling authorities, shall be authorized for storage. All material shall be subject to cursory review by employees to ensure compliance with these and other Department rules. Any material which is determined by employees, with the assistance of legal counsel where necessary, to not directly pertain to the inmate's own pending and active case(s)/lawsuit(s) before the courts or paroling authorities, shall be collected by two designated employees and placed in a standard storage box(es) with interlocking flap for storage pending disposition in accordance with procedures set forth in the section entitled Control of Property (OAR 291-117-060).

(iii) Upon receiving a written order from an employee, an inmate shall have a reasonable period of time, not to exceed one week (seven calendar days), within which to organize and inventory his/her legal material, and complete an Excess Authorized Legal Material Inventory List (CD 1242a). In the event the inmate refuses to organize and inventory his/her excess authorized legal material as ordered, the inmate shall receive a misconduct report and the material will be collected by designated employee(s) and placed in a standard storage box(es) with interlocking flap for storage. The box(es) will be labeled with the inmate's name and SID number and marked "Legal Material" and stored in a designated storage area. In no event will such material be destroyed or removed from the facility by employees except as authorized and directed in writing by the inmate, in accordance with procedures for disposition of inmate personal property provided in this rule. The inmate shall not have access to the stored material until he/she agrees to properly organize and inventory the material as ordered. In such event, the inmate will be permitted a reasonable amount of time for this activity, not to exceed one week (seven calendar days).

(iv) An inmate will be permitted reasonable access to his/her stored excess authorized legal material. Where space has been designated for the storage of excess authorized legal material in the facility law library, inmates may access their stored excess authorized legal material through normal law library access procedures. An inmate may request his/her authorized legal material from designated storage outside of a facility law library at any time upon showing written documentation that an imminent court deadline (within 30 days) exists, or once each month, on an exchange basis, (i.e., by trading an equivalent amount of authorized legal material

from his/her assigned cell or housing area or from the facility law library). The request must be directed to and approved by the facility library coordinator, and identify the specific file folder(s) requested by case number and name. Removal and exchange of excess authorized legal material from designated storage outside the facility law library shall be documented on the Excess Authorized Legal Material Inventory List (CD 1242a) and a Legal Material Transaction form (CD 1242). Both the inmate and the responsible employee shall sign the inventory list and transaction forms.

(D) Possession of Authorized Legal Material by Assigned Inmate Legal Assistants: Assigned inmate legal assistants are authorized to receive and possess legal material pertaining to another inmate's pending and active case(s)/lawsuit(s) before the courts or paroling authorities, only in the facility law library, at the request of the inmate seeking assistance, for purposes of assisting the inmate with legal research and the preparation and filing of legal documents with the courts and paroling authorities.

(f) Oregon driver's license (for individual inmates assigned to minimum security facilities who have received written authorization from the functional unit manager for work-related activity only). Written authorization must accompany the driver's license throughout the inmate's incarceration.

(g) Personal Clothing:

(A) Each inmate may possess personal footwear purchased through the facility canteen. Except as authorized in subsections (B) and (C), other personal clothing is authorized only if medically necessary and approved.

(B) An inmate participating in an approved work release program at a minimum custody facility may be authorized by the functional unit manager to possess additional items of personal clothing (including footwear) necessary for the approved work activity. Upon return to a medium or maximum custody facility, those additional items will be disposed of in accordance with Control of Property (OAR 291-117-060(2)).

(C) Existing personal footwear acquired through authorized means and possessed by an inmate prior to the effective date of this rule may be retained by and transfer with the inmate to other Department of Corrections facilities.

(h) Musical Instruments:

(A) Each inmate may possess one acoustic guitar or other stringed instrument similar to and no larger than a guitar, or one harmonica, ordered/purchased through the facility canteen from a vendor approved by the Department of Corrections. In addition, each inmate may possess supporting equipment as appropriate and listed: one instrument case, one instrument strap, one pitch pipe, and six plastic picks.

(B) Instrument strings will be available for purchase through the facility canteen on a one-for-one exchange basis.

(C) An existing musical instrument (and supporting equipment) acquired through authorized means and possessed by an inmate prior to the effective date of this rule may be retained by the inmate until transfer or release, unless the item(s) is determined to present an undue risk to the safe, secure, orderly and/or efficient operation of the facility.

(i) Cosmetic Appliances (female inmates only): Each female inmate may possess one electric hair dryer and one electric curling iron/brush purchased through the facility canteen.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: CD 18-1978, f. 8-21-78, ef. 8-23-78; CD 3-1981(Temp), f. & ef. 2-5-81, CD 9-1981, f. & ef. 5-5-81; CD 21-1985, f. & ef. 8-2-85; CD 14-1987, f. & ef. 2-6-87; CD 11-1992(Temp), f. 3-31-92, cert. ef. 4-15-92; CD 22-1992, f. & cert. ef. 10-9-92; DOC 2-2004(Temp), f. & cert. ef. 1-20-04 thru 7-18-04

Adm. Order No.: DOC 3-2004(Temp)

Filed with Sec. of State: 1-27-2004

Certified to be Effective: 1-27-04 thru 7-25-04

Notice Publication Date:

Rules Amended: 291-013-0010, 291-013-0100, 291-013-0215

Subject: These rules amendments are necessary to clarify and reflect a change in operational policy and procedures governing the use of lethal force by Department of Corrections staff.

Rules Coordinator: Carolyn Schnoor—(503) 945-0933

291-013-0010

Definitions

(1) Airborne Craft: Any vehicle or device that enables air transportation, such as, but not limited to, an airplane, helicopter or airborne balloon.

(2) Co-Located Minimum Security Facility: A minimum security facility on the grounds of a medium or higher security facility, but not within the fenced perimeter of this higher security facility.

ADMINISTRATIVE RULES

(3) Corporal Punishment: The use of physical force for the purpose of punishment.

(4) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(5) Electronic Immobilizing Devices: Security equipment designed to stop, control or temporarily immobilize through the use of high voltage, low amperage electric shock.

(6) Excessive Force: A type or amount of force beyond that which is reasonably necessary to control the situation and achieve the correctional objective; or the continued use of force after it is no longer reasonably necessary.

(7) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, an Assistant Director or administrator and has responsibility for delivery of program services or coordination of program operations.

(8) Hogtie Method: Binding a person's wrists and ankles together behind the back while in a prone position.

(9) Lethal Force: Physical force that has substantial risk of causing death.

(10) Level of Force: The type of force employed, amount of that type of force employed, and the circumstances within which the force is employed.

(11) Medium or Higher Security Facility: A medium or higher security facility may house multiple custody classifications of inmates within its secure perimeter, including minimum custody inmates. Security procedures, including the use of lethal force, at medium or higher security facilities will treat all inmates as if they are classified medium or higher custody.

(12) Officer-in-Charge: That person designated by the functional unit manager to supervise and make operational decisions in accordance with Department policy, rule or procedure during periods when the functional unit manager or officer-of-the-day are not readily available.

(13) Physical Force: The use of hands, other parts of the body, objects, instruments, chemical devices, electronic devices, firearms or other physical methods used to restrain, subdue, control, intimidate or to compel persons to act in a particular way, or to stop acting in a particular way.

(14) Planned Use of Force: The use of force in situations where time and circumstances allow for consultation with, and approval by, higher ranking employees, and where there is some opportunity to plan the actual use of force.

(15) Reactive Use of Force: The use of force in situations where time and circumstances do not permit approval by higher ranking employees, or consultation or planning.

(16) Reasonable Force: The use of physical force to achieve a legitimate correctional objective, where the type and amount of force are consistent with the situation and the objective to be achieved; and where alternatives to physical force are unavailable or ineffective; and where the force used is the minimum necessary to control the situation.

(17) Secure Custody: Custody exercised upon a person under the jurisdiction of the Department of Corrections by means of physical confinement within a facility of the Department of Corrections, or direct physical supervision of a person with or without use of restraints while outside a Department of Corrections facility.

(18) Security Equipment: Firearms, ammunition, batons, chemical agents, security restraints, electronic immobilizing devices, and similar devices.

(19) Security Restraints: Handcuffs, temporary cuffs, leg irons, belly chains, restraining chairs, and other similar equipment designed to restrict and control the person's movement from injuring himself/herself, others, and escape.

(20) Show of Force: A demonstration of the current ability to use force, such as the massing of officers or tactical squads.

(21) Stand Alone Minimum Security Facility: A minimum security facility that is not on the grounds of a medium or higher security facility.

(22) Therapeutic Restraints: A type of restraint applied to an inmate for medical or mental health treatment, and designed to limit an inmate's movement. The kinds of restraints that may be used for therapeutic purposes include, but are not limited to, leather, rubber or canvas restraints for the arms, legs and upper torso.

(23) Use of Force: Any situation in which an employee uses physical force against an inmate or other person, except those situations in which security restraints are used in a standard manner for arrest, escort, or transport, or in which therapeutic restraints are used.

(24) Use of Force Continuum: A concept that force must be used starting at the lowest level and should be escalated to higher levels on the continuum until a level is reached to control the situation.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.030

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.030

Hist.: CD 35-1978, f. 11-9-78, ef. 11-13-78; CD 7-1982(Temp), f. & ef. 1-29-82; CD 12-1982, f. & ef. 3-19-82; CD 3-1983, f. & ef. 1-20-83; CD 40-1985, f. & ef. 8-16-85; CD 42-1986, f. & ef. 10-17-86; CD 26-1987, f. & ef. 6-5-87; CD 12-1988, f. & cert. ef. 9-30-88; CD 21-1988(Temp), f. & cert. ef. 12-30-88; CD 9-1989, f. & cert. ef. 6-20-89; CD 20-1991, f. & cert. ef. 8-28-91; CD 3-1995, f. & cert. ef. 1-19-95; CD 20-1995, f. 10-26-95, cert. ef. 11-1-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 3-2004(Temp), f. & cert. ef. 1-27-04 thru 7-25-04

291-013-0100

Lethal Force

(1) Employees shall consider every reasonable means of control before resorting to the use of lethal force.

(2) Use of Lethal Force in Medium or Higher Security Facilities: Lethal force may be used to the extent that an employee reasonably believes it necessary to:

(a) Prevent imminent serious bodily injury or death to one's self or another person.

(b) To prevent escape by an inmate from secure custody, whether inside or outside the secure perimeter of the facility.

(c) To prevent or stop a riot or other group disturbance by inmates where there is reason to believe an inmate poses a threat of escape or imminent serious bodily injury or death to another person.

(d) To prevent an unauthorized person(s) or motor vehicle(s) from attempting to breach the secure perimeter of the Department of Corrections facility in order to assist in an escape or insurrection by an inmate(s).

(e) To prevent or stop extensive damage or property if, and only if, it's loss or destruction would lead directly to escape or imminent serious bodily injury or death to another person.

(f) To prevent or stop an inmate or other person from setting or spreading fire to or within a building within the secure perimeter of a Department of Corrections facility, where there is reason to believe the fire poses a threat of escape or imminent serious bodily injury or death to another person.

(g) Any inmate moving toward an unauthorized motor vehicle or airborne craft, whether inside or outside the secure perimeter of the facility, shall be considered to be a potential escape attempt. Shots shall not be fired at an airborne craft in a flight over the perimeter, landing, on the ground, or taking off from the facility except in self defense to one's self or another person where the situation is a clear and immediate threat to life.

(3) Use of Lethal Force in Stand Alone Minimum Security Facilities: Lethal force may not be used to prevent the escape of an inmate from a stand alone minimum security facility.

(4) Use of Lethal Force in Co-Located Minimum Security Facilities: Lethal force may not be used to prevent the escape of an inmate from a co-located minimum security facility if it can be ascertained the inmate is classified as minimum custody.

(5) Use of Lethal Force When Supervising Minimum Custody Inmates Engaged in Work Crews or Other Approved Activities in the Community: Supervisors of minimum custody inmates engaged in work crews or other authorized activities in the community are not authorized to use lethal force to prevent an escape.

(6) Use of Lethal Force During Transporting of Inmates: An employee may use lethal force when transporting an inmate(s) to the extent that an employee reasonably believes it necessary to:

(a) Prevent imminent serious bodily injury or death to the employee or another person.

(b) Prevent the escape of an inmate classified as medium custody or higher.

(c) Lethal force may not be used if the inmate is classified as minimum custody and the inmate is not being transported with an inmate(s) who is classified as medium custody or higher.

(7) Warning:

(a) Prior to resorting to the use of lethal force against an inmate or other person, time and circumstances permitting, an employee shall first issue an appropriate warning to the inmate or other person in a readily understandable fashion.

(b) An appropriate warning may include, but is not limited to, one or more of the following:

(A) Shouting;

(B) Blowing a whistle;

(C) Hand signals; or

(D) Firing a warning shot.

ADMINISTRATIVE RULES

(c) Warning shot: A warning shot is the least preferred method of warning. It should be used only in situations where other warning methods are not practical or effective, and when there is a target that is sufficiently large to minimize the risk of harm to others from a missed shot or ricochet.

(d) Time and circumstances permitting, an employee shall attempt to warn an inmate that is observed to be:

(A) Entering or inside a restricted security perimeter zone;

(B) Tampering with or cutting security perimeter equipment or fence/wall;

(C) On or climbing a security fence/wall;

(D) Moving toward any motor vehicle or airborne craft in an obvious attempt to escape;

(E) Engaged in any other behavior that is a clear or obvious attempt to escape; or

(F) Engaged in any behavior that poses serious bodily injury or death to oneself or another person.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.030

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.030

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98, Renumbered from 291-013-0155; DOC 3-2004(Temp), f. & cert. ef. 1-27-04 thru 7-25-04

291-013-0215

Lethal Force

(1) Employees shall consider every reasonable means of control before resorting to the use of lethal force.

(2) Employees authorized to carry firearms may use lethal force only under the circumstances and situations described in OAR 291-013-0100

(3) A warning shot will not be used in the community before the use of lethal force. Other practical warning methods will be used, if time and circumstances permit, before using lethal force.

(4) Firearms will not be fired at or from a moving vehicle or airborne craft, except in self defense or defense of another from the imminent use of lethal force.

(5) Firearms will not be used if innocent people are in the line of fire.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.030

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.030

Hist.: CD 3-1995, f. & cert. ef. 1-19-95; DOC 14-1998, f. & cert. ef. 6-18-98; DOC 3-2004(Temp), f. & cert. ef. 1-27-04 thru 7-25-04

Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 4-2004(Temp)

Filed with Sec. of State: 1-22-2004

Certified to be Effective: 2-1-04 thru 7-29-04

Notice Publication Date:

Rules Amended: 635-023-0090

Subject: Amend rules to establish sturgeon sport fishing season in the Columbia River downstream of Bonneville Dam.

Rules Coordinator: Cristy Mosset—(503) 947-6033

635-023-0090

Inclusions and Modifications

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, all adjacent Washington tributaries, and the Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Sunday, February 1, 2004 through Saturday, July 31, 2004, and

(b) Friday, October 1, 2004 through Friday, December 31, 2004.

(3) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay, and all adjacent Washington tributaries, is open to the retention of sturgeon seven days per week during the following periods:

(a) Thursday, January 1, 2004 through Friday, April 30, 2004; and

(b) Saturday, May 15, 2004 through Friday, July 23, 2004.

(4) During the fishing period as identified in section (3)(b) of this rule, only sturgeon 45-60" in overall length may be retained.

(5) All other specifications and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulations** apply.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-00, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02, cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02, cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72-2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04

Adm. Order No.: DFW 5-2004(Temp)

Filed with Sec. of State: 1-26-2004

Certified to be Effective: 2-2-04 thru 4-1-04

Notice Publication Date:

Rules Amended: 635-041-0065

Subject: Amend rules in the winter season for Treaty Indian fishers in the Columbia River above Bonneville Dam. Revisions consistent with action taken January 23, 2004 by the Columbia River Compact.

Rules Coordinator: Cristy Mosset—(503) 947-6033

635-041-0065

Winter Salmon Season

(1) Salmon, steelhead, shad, sturgeon between 4 and 5 feet in length, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, Zone 6, from 12 noon February 2, 2004 to 12 noon March 21, 2004.

(2) There are no mesh size restrictions.

(3) Closed areas are set forth in OAR 635-041-0045, with the exception of Spring Creek Hatchery, remain in effect.

(4) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

ADMINISTRATIVE RULES

(5) In the Columbia River Treaty Indian Fishery, Zone 6, between Bonneville Dam and The Dalles Dam, effective 12 noon, February 2, 2004 through 12 noon, March 21, 2004, sturgeon 45-60" in overall length may be taken for commercial purposes.

(6) In addition to regulations as defined in OAR-041-0005 through OAR-041-0030, sturgeon 45-60" in overall length may be taken for subsistence purposes from that area as identified in section (5) of this rule.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 thru 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04

Adm. Order No.: DFW 6-2004(Temp)

Filed with Sec. of State: 1-28-2004

Certified to be Effective: 1-31-04 thru 3-31-04

Notice Publication Date:

Rules Amended: 635-006-0910

Subject: Suspend deadline for new applications and potential lottery for Developmental Fisheries Permits for hagfish fishery.

Rules Coordinator: Cristy Mosset—(503) 947-6033

635-006-0910

Procedures for Issuance, Transfer and Renewal of Developmental Fisheries Species Permits

(1) Applications:

(a) An applicant for a permit must submit a complete application in writing accompanied by an annual fee of up to \$75. The application shall include the species of fish to be taken, the method and gear proposed to be used, and the area from which the Developmental Fisheries Species are to be taken, and other information as the Department may require;

(b) Except as listed below, complete applications must be received postmarked or date-stamped by January 1 of the year of issue for new species added to the developmental fishery list in OAR 635-006-0850, and thereafter by the annual filing date of February 1 of the year of issue.

(A) Applications for box crab permits must be postmarked or date-stamped by January 1 of the year of issue; and

(B) In 2004, applications for new hagfish permits will be accepted on a first-come, first-serve basis.

(c) An application shall be considered complete if it is legible, has all information requested on the form, and is accompanied by the required fee in full. Any application which is not complete shall be returned and, unless it is thereafter resubmitted and deemed complete by the filing date, the individual shall not be considered to have applied in a timely manner;

(d) Before applying for a permit, an applicant must first have obtained the appropriate vessel license (or individual license if permit is issued to individual) for the year the permit will be issued.

(2) Number of permits allowed:

(a) An individual shall not submit more than one application, per permittee, for each developmental fishery species gear category;

(b) No permittee who holds a valid developmental fisheries permit may apply for any additional permits for the same species gear category unless the Department proposes to deny that permit;

(c) If a permittee, who holds a permit at issue either before the Commission or a court of law, is awarded another permit for the same species gear category through the lottery and thereafter prevails before the Commission or in court, the permittee shall immediately surrender one of

the permits to any Department office, so that only one valid permit per species gear category is held.

(3) Issuance of permits:

(a) Except for new hagfish permits in 2004, if the number of applications received by the filing date is less than the number of permits available, all applicants who have submitted complete applications shall be issued a permit within 14 days of the filing date.

(A) Any remaining permits shall be issued on a first-come, first-served basis, within 14 days of receipt of each completed application, until the maximum number of permits is issued. Priority shall be based on postmark or date-stamped date;

(B) The names of applicants who did not receive a permit shall be placed on an alternates list, in the order they are received, until the next annual filing date. Applicants whose names are placed on the alternates list shall be refunded their permit fee minus a \$10 application fee. Permits which become available before the end of the year shall be made available to the alternates list, in the order listed. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply, he shall forfeit the permit and the permit shall then be made available to the next name on the alternates list.

(b) Except for new hagfish permits in 2004, if the number of applications received by the filing date is greater than the number of permits available, the Department shall determine first how many applications there are with preference points as accrued under OAR 635-006-0915, except for new species that have qualification restrictions set forth in OAR 635-006-0850. Evidence of landings must be supplied by the applicant and submitted with the application.

(A) If the number of these applicants does not exceed the number of permits, they shall be given all available permits and any remaining applicants shall be placed in a lottery;

(B) If the number of applicants who have preference points exceeds the number of permits, then these applicants only shall be placed in a lottery, and grouped by the number of preference points they have accrued for each species gear category. Applicants with the highest number of preference points for each species gear category will be drawn first. Applicants having the highest number of preference points per species gear category will be drawn next. This permit issuance process will continue through descending numbers of preference points until all the available permits have been issued, unless all qualified applicants with preference points have been issued permits prior to that point. Permits shall be issued within 14 days of the lottery;

(C) In addition, remaining applicants (who do not have preference points) shall be placed in a lottery and their names shall be drawn;

(D) The Department then shall prepare an alternates list, in which applicants who have preference points are listed first (in the order drawn), and thereafter remaining applicants are listed, in the order in which they were drawn. All applicants whose names are placed on the alternates list shall be refunded their permit fee minus a \$10 application fee. Any permits available before the end of the year shall be made available to the first name on the alternates list. The applicant shall be notified of an available permit and shall resubmit a complete application and permit fee within 30 days of the date the notification is mailed. The permit shall be issued within 14 days of receipt of the resubmitted application and fee. If an alternate fails to apply for the lottery permit within 30 days, he shall forfeit such permit and the permit shall then be made available to the next name on the alternates list.

(c) Permits may be made available before the end of the year by a permittee voluntarily turning in a permit.

(4) Persons to whom permits are issued: Permits shall be issued to either a vessel or an individual person when hand harvest methods are used. The permit holder is the owner or controller of the vessel or the individual person when hand harvest methods are used.

(5) Transfer of permits: Permits for Developmental Fisheries Species are not transferable to another person or entity; provided however that permits may be transferred to another vessel owned or controlled by the permit holder up to two times annually.

(a) In the event of the death of a permit holder, the permit of the deceased may be issued to an immediate family member as defined by OAR 635-006-0810. Permit transfer shall require a copy of the death certificate and the original permit, and must be requested by the family member to the deceased which shall be presumed by possession of the permit and death certificate.

ADMINISTRATIVE RULES

(b) To transfer a permit, a permittee shall first apply on a form provided by the Department and shall include a \$25 transfer fee;

(c) No transfer shall be considered effective until the permittee has received approval from the Department and an updated permit.

(6) **Renewal of permits:**

(a) Permits may be renewed by submission, to the Department, of the appropriate fee and a complete application date-stamped or postmarked before January 1 of the year for which renewal is sought, except renewal applications for box crab permits must be postmarked or date-stamped before December 1 of the year prior to which renewal is sought;

(b) An application for renewal shall be considered complete if it is legible and has all information requested on the form and is accompanied by the required fee in full. Any application which is not complete shall be returned, and unless it is thereafter resubmitted and deemed complete before the deadline listed in (6)(a) above, the individual shall not be considered to have applied for renewal in a timely manner;

(c) It is the responsibility of the permit holder to ensure an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner;

(d) In addition to timely and complete filing to renew a permit, a permittee must annually lawfully land the required pounds and/or landings listed in OAR 635-006-0850. However, if a permittee obtained a permit later than July 1 of the prior year, the permittee shall not be required to make the annual landing requirement by the following January. Instead, at the next renewal thereafter, the permittee shall be required to demonstrate the annual landing requirement was fulfilled during the first full year in which the permit was held.

(e) Landings made by one vessel can not be used for qualification to renew more than one permit per permit category in any given year.

(f) In addition to the above landing requirements, logbooks required under OAR 635-006-0890 must be turned into an ODFW office by the application deadline for renewal of a permit.

(7) Authority of Director: Consistent with OAR 635-006-0810 through 635-006-0950, the Director is authorized to issue Developmental Fisheries Permits under the authority of ORS 506.460.

Stat. Auth.: ORS 506.109 & ORS 506.119

Stats. Implemented: ORS 506.129 & ORS 506.450

Hist.: FWC 85-1994, f. & cert. ef. 10-31-94, cert. ef. 11-1-94; FWC 2-1996, f. & cert. ef. 1-23-96; FWC 1-1997, f. & cert. ef. 1-16-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 102-2001, f. & cert. ef. 10-23-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 48-2002(Temp), f. & cert. ef. 5-13-02 thru 11-8-02; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 6-2004(Temp), f. 1-28-04, cert. ef. 1-31-04 thru 3-31-04

Adm. Order No.: DFW 7-2004(Temp)

Filed with Sec. of State: 2-2-2004

Certified to be Effective: 2-2-04 thru 4-1-04

Notice Publication Date:

Rules Amended: 635-042-0135

Subject: Amend rules to establish vessel limits for commercial sturgeon fishing seasons in the Columbia River below Bonneville Dam. Amend fishing seasons to include historical data. Revisions consistent with action taken February 2, 2004 by the Columbia River Compact.

Rules Coordinator: Christy Mosset—(503) 947-6034

635-042-0135

Sturgeon Season

(1) Sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Sturgeon and salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Adipose fin-clipped salmon and sturgeon only may be sold from this fishery. The open fishing periods are as follows: 6:00 a.m. Tuesday, January 13, 2004 to 6:00 a.m. Wednesday, January 14, 2004; 6:00 a.m. Tuesday, January 20, 2004 to 6:00 a.m. Wednesday, January 21, 2004; 6:00 a.m. Tuesday, January 27, 2004 to 6:00 a.m. Wednesday, January 28, 2004; 6:00 a.m. Tuesday, February 3, 2004 to 6:00 a.m. Wednesday, February 4, 2004; and 6:00 a.m. Tuesday, February 10, 2004 to 6:00 a.m. Wednesday, February 11, 2004.

(3) Effective February 2, 2004, a maximum of twenty green or white sturgeon in the aggregate may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) of the open fishing periods.

(4) Sturgeon and salmon must be delivered to wholesale fish dealers, cannerys, or fish buyers undressed (in the round).

(5) It is unlawful to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or cannery;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any green sturgeon smaller than 48 inches or larger than 66 inches in overall length or any white sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(6) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection 2 of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & cert. ef. 1-28-77; FWC 2-1978, f. & cert. ef. 1-31-78; FWC 7-1978, f. & cert. ef. 2-21-78; FWC 2-1979, f. & cert. ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & cert. ef. 1-28-80; FWC 1-1981, f. & cert. ef. 1-19-81; FWC 6-1982, f. & cert. ef. 1-28-82; FWC 20-1982(Temp), f. & cert. ef. 3-25-82; FWC 3-1983, f. & cert. ef. 1-21-83; FWC 4-1984, f. & cert. ef. 1-31-84; FWC 4-1986 (Temp), f. & cert. ef. 1-28-86; FWC 79-1986(Temp), f. & cert. ef. 12-22-86; FWC 2-1987, f. & cert. ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04

Adm. Order No.: DFW 8-2004(Temp)

Filed with Sec. of State: 2-2-2004

Certified to be Effective: 2-2-04 thru 7-31-04

Notice Publication Date:

Rules Amended: 635-070-0000, 635-070-0005

Subject: Amend rule to change the open dates for the Upper North Umpqua elk hunt (Hunt 222A) to November 20-26, 2004. Open dates published in the 2004 Oregon Big Game Regulations are November 13-19, 2004, which would overlap the entire SW Cascade Muzzleloader Hunt (200M2) in this area. Such an overlap will cause significant hunter conflicts.

Rules Coordinator: Cristy Mosset—(503) 947-6034

635-070-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2004 are listed in **Tables 1** and **2** and are adopted and incorporated into OAR chapter 635, division 070 by reference.

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled "**2004 Oregon Big Game Regulations**," into Oregon Administrative Rules. Therefore, persons must consult the "**2004 Oregon Big Game**

ADMINISTRATIVE RULES

Regulations in addition to OAR Chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife. Notwithstanding this, the **2004 Oregon Big Game Regulations** are amended to change the open season for Hunt 222A-Upper N. Umpqua on page 76. The new language can be found under 635-070-0005.

[Publications: Publications referenced are available from the agency.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. & cert. ef. 12-4-03, cert. ef. 4-1-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04

635-070-0005

Controlled Coast Elk Rifle Hunts

Hunt 222A — Hunt Name; Upper N. Umpqua:

- (1) Bag Limit: one antlerless elk.
- (2) Open Season: November 20-26, 2004.
- (3) Hunt Area: 80% public lands. That part of Unit 21 in Umpqua River drainage and that part of Unit 22 in N Umpqua River drainage).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 37-1982, f. & cert. ef. 6-25-82; FWC 28-1983, f. & cert. ef. 7-8-83; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 44-1987, f. & cert. ef. 7-6-87; FWC 17-1988, f. & cert. ef. 3-10-88; FWC 41-1988, f. & cert. ef. 6-13-88; FWC 19-1989, f. & cert. ef. 3-28-89; FWC 68-1989, f. & cert. ef. 8-15-89; FWC 28-1990, f. & cert. ef. 3-21-90; FWC 60-1990, f. & cert. ef. 6-21-90; FWC 24-1991, f. & cert. ef. 3-12-91; FWC 48-1992, f. & cert. ef. 7-15-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 18-1994, f. & cert. ef. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 6-1995, f. & cert. ef. 1-23-95, cert. ef. 4-1-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 17-1996, f. & cert. ef. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04

Adm. Order No.: DFW 9-2004

Filed with Sec. of State: 2-11-2004

Certified to be Effective: 2-11-04

Notice Publication Date: 1-1-04

Rules Amended: 635-050-0045

Subject: Rules were amended to define "regular basis" trap check requirements for predatory animals.

Rules Coordinator: Cristy Mosset—(503) 947-6033

635-050-0045

General Furbearer Regulations

The following general regulations apply to furbearer seasons:

(1) Any person possessing a valid furtaker's license or hunting license for furbearers is required to fill out and return a completed harvest report form to the Department at 2501 SW First Avenue or P.O. Box 59, Portland, Oregon 97207. The form shall be postmarked by April 15, 2003 for the 2002-03 seasons and April 15, 2004 for the 2003-04 seasons. Failure to do so shall deny the license holder the opportunity to purchase a hunting license for furbearers or furtakers license for the following furbearer season.

(2) Any person may sell or exchange the hide, carcass, or any part thereof, of any legally taken furbearing or unprotected mammal.

(3) All traps and snares, whether set for furbearing or other unprotected mammals, shall be legibly marked or branded with the owner's license (brand) number that has been assigned by the Department; except that unmarked traps or snares may be set for nongame mammals unprotected by law or Department regulations by any person or member of his immediate family upon land of which he is the lawful owner. A landowner is required to register the location of such land with the Department and shall possess each year a free landowner's license before hunting or trapping furbearing mammals.

(4) No branded trap or snare may be sold unless accompanied by a uniform bill of sale.

(5) Bobcat, raccoon and opossum may be hunted with the aid of an artificial light provided the light is not cast from or attached to a motor vehicle or boat.

(6) Use of dogs is permitted to hunt or pursue bobcat, raccoon, fox, and unprotected mammals except in game bird nesting habitat during April,

May, June or July, except as authorized by the Fish and Wildlife Commission.

(7) It is unlawful for any person to trap for furbearers or unprotected mammals using:

(a) A steel leghold trap with a jaw spread greater than 9 inches.

(b) A No. 3 or larger leghold trap not having a jaw spacing of at least 3/16 of one inch when the trap is sprung (measurement excludes pads on padded jaw traps) and when the trap is placed in a manner that is not capable of drowning a trapped animal.

(c) The flesh of any game bird, game fish, game mammal for trap bait.

(d) Any instant-kill trap having a jaw spread of 9 inches or more in any land set.

(e) Any toothed trap, or trap with a protuberance on the facing edge of the jaws that is intended to hold the animal (except pads on padded jaw traps).

(f) Or possessing the branded traps or snares of another unless in possession of written permission or a bill of sale from the person to whom the brand is registered.

(g) Sight bait within 15 feet of any leghold trap set for carnivores.

(8) Except for persons authorized to enforce the wildlife laws, it is unlawful to disturb or remove the traps or snares of any licensed trapper while he is trapping on public lands or on land where he has permission to trap.

(9) All traps or snares set or used for the taking of furbearing or unprotected mammals shall be inspected at least every 48 hours and all trapped animals removed. This regulation does not apply to the taking of predatory animals.

(10) Any person setting a trap for predatory animals, as defined in ORS 610.002, must check the trap as follows:

(a) for killing traps and snares, at least once every 30 days and remove all animals;

(b) for restraining traps and snares, at least once every 76 hours and remove all animals. However, restraining traps and snares set by a person owning, leasing, occupying, possessing or having charge of or dominion over any land, place, building, structure, wharf, pier or dock or their agent, and set for predatory animals damaging land, livestock or agricultural or forest crops, shall be checked at least once every 7 days. Any person(s) acting as an agent for a landowner shall have in their possession written authority from the landowner or lawful occupant of the land. Such written authority shall contain at least all of the following:

(A) The date of issuance of the authorization;

(B) The name, address, telephone number and signature of the person granting the authorization;

(C) The name, address and telephone number of the person to whom the authorization is granted; and

(D) The expiration date of the authorization, which shall be not later than one year from the date of issuance of the authorization.

(11) A "killing trap" means a device used to kill a mammal as part of a killing trap system. A killing trap system is a system set with the intent to kill a mammal comprising a combination of: equipment (the trap and trigger configuration), and set (including site modifications, lures, baits, location and other relevant requirements).

(12) A "restraining trap" means a device used to capture and restrain (but not kill) a mammal as part of a restraining trap system. A restraining trap system is a system set with the intent to capture and restrain (but not kill) a mammal comprising a combination of: equipment (the trap and the trigger configuration), and set (including site modifications, lures, baits, location and other relevant requirements).

(13) These general furbearer regulations do not apply to the trapping of gophers, moles, ground squirrels and mountain beaver.

(14) When any furbearer or raw furbearer pelt is transferred to the possession of another person, a written record indicating the name and address of the person from whom the raw pelt was obtained shall accompany such transfer and remain with same so long as preserved in raw pelt form.

(15) It is unlawful for any person to damage or destroy any muskrat house at any time except where such muskrat house is an obstruction to a private or public ditch or watercourse.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 59-1989, f. & cert. ef. 8-15-89; FWC 70-1990, f. & cert. ef. 7-25-90; FWC 60-1992, f. & cert. ef. 7-30-92; FWC 49-1994, f. & cert. ef. 8-12-94; FWC 43-1996, f. & cert. ef. 8-12-96; DFW 62-1998, f. & cert. ef. 8-10-98; DFW 39-2000, f. & cert. ef. 7-25-00; DFW 73-2002, f. & cert. ef. 7-16-02; DFW 9-2004, f. & cert. ef. 2-11-04

ADMINISTRATIVE RULES

Adm. Order No.: DFW 10-2004
Filed with Sec. of State: 2-13-2004
Certified to be Effective: 2-13-04
Notice Publication Date: 1-1-04
Rules Adopted: 635-005-0048
Rules Amended: 635-006-0210
Rules Repealed: 635-005-0048(T), 635-006-0210(T)

Subject: These rules permanently adopt and amend regulations temporarily in effect which requires all commercial fishermen to report primary catch areas of Dungeness crab and include Dungeness crab catch location details, as required, on the Fish Receiving Ticket, at time of landing.

Rules Coordinator: Cristy Mosset—(503) 947-6034

635-005-0048

Reporting Requirements

All commercial fisherman landing Dungeness crab must report the area of primary catch to the dealer at the time of landing.

Stat. Auth.: ORS 506.119, 506.129

Stats. Implemented: ORS 506.129

Hist.: DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; DFW 10-2004, f. & cert. ef. 2-13-04

635-006-0210

Fish Receiving Ticket — All Fish

(1) Except as provided in OAR 635-006-0211, for each purchase of food fish or shellfish by a licensed wholesale fish dealer, wholesale fish bait dealer, food fish canner, or shellfish canner from a commercial fisherman or commercial bait fisherman, the dealer or canner shall prepare a Fish Receiving Ticket at time of landing. Fish receiving tickets are prenumbered in books of 50 tickets. Fish dealers shall be required to account for all fish receiving tickets received from the Department. Fish receiving tickets shall be issued in numerical sequence. The fish receiving ticket shall include the following:

(a) Fish dealer's name and license number, including the buying station and location if the food fish or shellfish were received at any location other than the licensed premises of the fish dealer;

(b) Date of landing;

(c) Fisherman's name from whom purchase is made. If not landed from a vessel, then fisherman's commercial license number shall be added. If received from a Columbia River treaty Indian, his/her tribal affiliation and enrollment number as shown on the official identification card issued by the U.S. Department of Interior, Bureau of Indian Affairs, or tribal government, shall be used in lieu of an address or commercial fishing license;

(d) Boat name, boat license number, and federal document or State Marine Board number from which catch made;

(e) Fishing gear used by the fisherman;

(f) For salmon and Dungeness crab, zone or area of primary catch;

(g) Species of food fish or shellfish received;

(h) Pounds of each species received;

(A) Pounds may be determined using any one of the following methods:

(i) Actual round weights based on certified scale measurements;

(ii) Actual round weights measured using a hopper scale;

(iii) Weights converted to round weight by multiplying the appropriate conversion weight listed in OAR 635-006-0215.

(B) Pounds shall include "weighbacks" by species. "Weighbacks" are those fish or shellfish with no commercial value.

(i) For Columbia River sturgeon the exact number of fish received and the actual round weight of that number of fish;

(j) Price paid per pound for each species received;

(k) Signature of the individual preparing the fish receiving ticket;

(l) Signature of the fisherman making the landing;

(m) Species name, pounds and value of fish retained by fisherman for personal use.

(2) Except as provided in OAR 635-006-0212 and 0213, the original of each fish receiving ticket covering food fish and shellfish received shall be forwarded within five working days of the date of landing to the Oregon Department of Fish and Wildlife, 3406 Cherry Avenue, NE, Salem, OR 97303.

(3) Wholesale fish bait dealers landing small quantities of food fish or shellfish may request authorization to combine multiple landings on one fish ticket and to deviate from the time in which tickets are due to the Department. Such request shall be in writing, and written authorization

from the Department shall be received by the wholesale fish bait dealer before any such deviations may occur.

Stat. Auth.: ORS 496.138, 496.146, 496.162, 506.119, 506.129, 508.530 & 508.535

Stats. Implemented: ORS 506.129, 508.025, 508.040 & 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76. Renumbered from 625-040-0135, Renumbered from 635-036-0580; FWC 1-1986, f. & ef. 1-10-86; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-91; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 16-1995(Temp), f. & cert. ef. 2-16-95; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; DFW 10-2004, f. & cert. ef. 2-13-04

Adm. Order No.: DFW 11-2004
Filed with Sec. of State: 2-13-2004
Certified to be Effective: 2-13-04
Notice Publication Date: 1-1-04

Rules Adopted: 635-023-0125, 635-042-0022

Rules Amended: 635-042-0110, 635-042-0145, 635-042-0160, 635-042-0180

Rules Repealed: 635-023-0100

Subject: The Columbia River Compact Agencies of Oregon and Washington met, adopted guidelines and amended rules related to

1) commercial fishing in the Columbia River below Bonneville Dam and select areas;

2) treaty Indian commercial, subsistence and ceremonial fishing in the Columbia River above Bonneville Dam; and

3) sport fishing in the mainstem Columbia River.

Rules Coordinator: Cristy Mosset—(503) 947-6034

635-023-0125

Spring Sport Fishery

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1, 2004 through May 15, 2004, from the mouth at Buoy 10 upstream to the I-5 Bridge; from March 16, 2004 through May 15, 2004 from I-5 Bridge upstream to Bonneville Dam and from Tower Island power lines upstream to McNary Dam plus the Oregon between Bonneville Dam and the Tower Island power lines with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead, and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(3) Effective February 16, 2004 through May 15, 2004, in the mainstem Columbia River upstream of the Rocky Point/Tongue Point line it is unlawful to totally remove from the water any salmon or steelhead required to be released.

(4) All other specifications and restrictions as outlined in the current **2004 Oregon Sport Fishing Regulations** apply.

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

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162, 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped chinook salmon, sturgeon, and shad may be taken by gill net or tangle net for commercial purposes from the mouth of the Columbia River upstream to Kelley Point (Zones 1-3 and part of Zone 4).

(a) Individual fishing periods will not exceed sixteen hours in length and may occur on Tuesdays and Thursdays, beginning February 24, 2004, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

ADMINISTRATIVE RULES

(3) During the gill net fishery it is *unlawful* to use a gill net having a mesh size less than 9 inches and more than 9-3/4 inches. Use of monofilament nets is allowed.

(4) During the tangle net fishery it is unlawful to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut.

(5) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(6) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(7) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in part (c) above, must have two red corks at each end of the net.

(8) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(9) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(10) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(11) It is unlawful for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(12) It is unlawful to fish more than one net from a licensed commercial fishing boat at any one time.

(13) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(14) Nonlegal sturgeon, nonadipose fin-clipped chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box:

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding or in lethargic condition must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system; pumping system must be capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per

minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(15) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. A tangle net certificate shall expire on December 31, 2004. No individual may obtain more than one tangle net certificate between January 1, 2004 and December 31, 2004.

(a) The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(b) Nothing in this section sets any precedent for any fishery after the 2004 spring chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2004 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2005 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2004. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, Lewis-B sanctuary, and Gnat Creek, are in effect during the open fishing periods described.

Stat. Auth.: ORS 496.138, 496.146, 506.119
Sats. Implemented: ORS 496.162, 506.129, 507.030
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04

635-042-0110

Gary Island to Bonneville Dam Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) of this rule, from 3:00 p.m. to 10:00 p.m. daily during the following open fishing periods: May 17, 2004 thru May 21, 2004; May 24, 2004 thru May 28, 2004; June 1, 2004 thru June 4, 2004; June 7, 2004 thru June 11, 2004; June 14, 2004 thru June 18, 2004; and June 21, 2004 thru June 25, 2004.

(2) The area of the Columbia River open to fishing during the season indicated in section (1) of this rule is from a downstream boundary of a true north/south line through flashing red 4-second light "50" near the Oregon bank to an upstream boundary of a straight line from a deadline marker on the Oregon bank to a deadline marker on the Washington bank, both such deadline markers located approximately five miles downstream from Bonneville Dam.

(3) During the season indicated in section (1) of this rule, it is unlawful to use a gill net having a mesh size less than 5-3/8 inches or more than 6-1/4 inches with a breaking strength greater than a 10-pound pull, or to use a gill net other than a single wall floater net, or to use a gill net having slackers, or to use a gill net of more than 150 fathoms in length or 40 meshes in depth. Rip lines are authorized spaced not closer than 20 corks apart.

(4) All salmon, steelhead, walleye, and sturgeon taken in shad nets during the season indicated in section (1) of this rule must be immediately returned to the water and those alive must be released unharmed.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 116(Temp), f. & ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & ef. 1-28-80; FWC 25-1980(Temp), f. & ef. 6-13-80; FWC 1-1981, f. & ef. 1-19-81; FWC 18-1981(Temp), f. & ef. 6-10-81; FWC 6-1982, f. & ef. 1-28-82; FWC 36-1982 (Temp), f. & ef. 6-11-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 21-1983(Temp), f. & ef. 6-10-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 19-1985, f. & ef. 5-1-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 16-1986 (Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. 5-19-92, cert. ef. 5-

ADMINISTRATIVE RULES

20-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04

635-042-0145

Youngs Bay Salmon Season

Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(1) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A), the spring fishery, paragraph (B), and summer fishery, paragraph (C), as follows:

(a) Winter Season: 6 p.m. February 14 — 12 Noon February 15, 2004; 6 a.m. to 6 p.m. February 18, 2004; 6 p.m. February 21 — 12 Noon February 22, 2004; 6 a.m. to 6 p.m. February 25, 2004; 6 p.m. February 28 — 12 Noon February 29, 2004; 6 a.m. to 6 p.m. March 3, 2004; 6 p.m. March 6 — 12 Noon March 7, 2004;

(b) Spring Season: 6 p.m. April 22 — 6 a.m. April 23, 2004; 6 p.m. April 26 — 6 a.m. April 27, 2004; 6 p.m. April 29 — 6 a.m. April 30, 2004; 6 p.m. May 3 — 12 Noon May 4, 2004; 6 p.m. May 6 — 12 Noon May 7, 2004; 12 Noon May 11 — 12 Noon May 14, 2004; 12 Noon May 17 — 12 Noon May 21, 2004; 12 Noon May 24 — 12 Noon May 28, 2004; 12 Noon May 31 — 12 Noon June 4, 2004; 12 Noon June 7 — 12 Noon June 11, 2004; 12 Noon June 15 — 12 Noon June 18, 2004;

(c) Summer Season: 12 Noon June 23 — 12 Noon June 25, 2004; 12 Noon June 30 — 12 Noon July 2, 2004; 12 Noon July 7 — 6 p.m. July 8, 2004; 12 Noon July 14 — 6 p.m. July 15, 2004; 12 Noon July 21 — 6 p.m. July 22, 2004; 12 Noon July 28 - 6 p.m. July 29, 2004;

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is unlawful to use a gill net having a mesh size that is less than 7-1/4 inches during February 14, 2004 to March 7, 2004, and it is unlawful to use a gill net having a mesh size that is more than 8 inches April 22, 2004 to June 18, 2004 and June 23, 2004 to July 29, 2004.

(3) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period between February 14, 2004 and March 7, 2004.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & cert. ef. 8-22-79; FWC 28-1980, f. & cert. ef. 6-23-80; FWC 42-1980(Temp), f. & cert. ef. 8-22-80; FWC 30-1981, f. & cert. ef. 8-14-81; FWC 42-1981(Temp), f. & cert. ef. 11-5-81; FWC 54-1982, f. & cert. ef. 8-17-82; FWC 37-1983, f. & cert. ef. 8-18-83; FWC 61-1983(Temp), f. & cert. ef. 10-19-83; FWC 42-1984, f. & cert. ef. 8-20-84; FWC 39-1985, f. & cert. ef. 8-15-85; FWC 37-1986, f. & cert. ef. 8-11-86; FWC 72-1986(Temp), f. & cert. ef. 10-31-86; FWC 64-1987, f. & cert. ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992(Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the early spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough. Blind Slough is those waters adjoining the

Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge. In addition, Knappa Slough is open to fishing for salmon, sturgeon and shad during open fishing periods described as the spring fishery in paragraph (1)(a)(B) of this rule. Knappa Slough is all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in paragraph (B). The seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only: February 14 — February 15, 2004; February 21 — February 22, 2004; February 28 — February 29, 2004; and March 6 — March 7, 2004.

(B) Blind and Knappa Sloughs: April 22 — April 23, 2004; April 29 — April 30, 2004; May 3 — May 4, 2004; May 6 — May 7, 2004; May 10 — May 11, 2004; May 13 — May 14, 2004; May 17 — May 18, 2004; May 20 — May 21, 2004; May 24 — May 25, 2004; May 27 — May 28, 2004; May 31 — June 1, 2004; June 3 — June 4, 2004; June 7 — June 8, 2004; June 10 — June 11, 2004; June 14 — June 15, 2004; and June 17 — June 18, 2004.

(b) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period between February 14, 2004 and March 7, 2004.

(c) Gear restrictions are as follows:

(A) During the winter fishery (see paragraph (1)(a)(A) of this rule) gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-1/4 inches;

(B) During the spring fishery (see paragraphs (1)(a)(B) of this rule) gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is more than 8 inches.

(2) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, shad, and sturgeon may be taken for commercial purposes from Highway 4 Bridge, downstream to the Deep River boat ramp.

(2) The fishing seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows: April 22 — April, 23, 2004; April 29 — April 30, 2004; May 3 — May 4, 2004; May 6 — May 7, 2004; May 10 — May 11, 2004; May 13 — May 14, 2004; May 17 — May 18, 2004; May 20 — May 21, 2004; May 24 — May 25, 2004; May 27 — May 28, 2004; May 31 — June 1, 2004; June 3 — June 4, 2004; June 7 — June 8, 2004; June 10 — June 11, 2004; June 14 — June 15, 2004; and June 17 — June 18, 2004.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is more than 8 inches.

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04

ADMINISTRATIVE RULES

Department of Forestry Chapter 629

Adm. Order No.: DOF 1-2004

Filed with Sec. of State: 1-30-2004

Certified to be Effective: 1-30-04

Notice Publication Date: 10-1-03

Rules Amended: 629-043-0041

Subject: This rule amendment raises the burning fee for piled burns on forest land from \$2.00/acre to \$5.00/acre. The fees would be paid by landowners and land managers who pile and burn forest residue on state/local government, private or federal forestland in western Oregon or in the Deschutes National Forest.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-043-0041

Burning in Restricted Areas

Pursuant to ORS 477.013, burning on forestland within the boundaries of a forest protection district and lying within a restricted area as set forth in the plan for managing smoke, on file with the Secretary of State (OAR 629-043-0043), shall be subject to the following conditions:

(1) A permit to burn from the Forester shall be required for applicable prescribed burning on non-federal lands during any time of the year within the restricted area as set forth in Exhibit 2 of the above referenced plan. Applicable prescribed burning is that which is regulated by the Oregon Smoke Management Plan (OAR 629-043-0043).

(2) Any prescription burning on forestland assessed at Class I timber rates or on federal forest land in the restricted area subject to provisions of the Smoke Management Plan (OAR 629-043-0043) shall be subject to an annual (calendar year) non-refundable registration fee of \$.50/acre and a burning fee of \$5/acre for broadcast burns, underburns and pile burns, except as noted in section (3) of this rule:

(a) Any burning identified in sections (3) of this rule as being exempt from fees still must be reported in a manner consistent with other requirements of the Smoke Management Plan (OAR 629-043-0043);

(b) The operator, federal land manager, landowner, or timber owner shall register with the Forester all forestland that is intended to be burned at least seven days prior to the day of burning;

(c) The Forester may waive the seven day waiting period required in subsection (2)(b) of this rule contingent upon a burning plan or conditions of Federal prescribed fire policies having already been approved;

(d) In no event shall an operator, landowner, federal land manager, or timber owner burn without having registered the forestland for burning;

(e) Information for registering acres and recording acres burned shall be recorded on forms approved by the Forester;

(f) The Forester shall prepare monthly billings to collect the appropriate registration and burning fees from the operator, federal land manager, landowner or timber owner whose name is recorded on the registration form for billing purposes;

(g) No operator, federal land manager, landowner or timber owner shall be allowed to register additional forestland for burning if payment for previous registration or burning is more than 90 days past due.

(3)(a) Areas two acres or less in size shall not be subject to registration or burning fees, except for landing burning noted in subsection (3)(c) of this rule;

(b) Burning of right-of-way slashing shall not be subject to registration or burning fees;

(c) Landings shall not be subject to registration or burning fees, except if in the opinion of the Forester the landing debris includes a significant amount of debris from whole-tree yarding or the yarding of unmerchantable wood (YUM). If the majority of the landing debris from whole-tree yarding or YUM yarding is reduced by utilization, then the registration and burning fees shall not apply. If the fire from a landing not subject to fees spreads to other areas identified in a burn plan the total acres listed in the burn plan shall then be subject to the fees;

(d) Underburning shall be exempt from fees when the primary intent of the burning is for forest health reasons to:

(A) Maintain the natural vegetative species of a site; or

(B) Alter the vegetative species on the site to the natural vegetative species of the area; and

(C) When such burning is done in eastern Oregon on stands that have at least 15 trees per acre that are well-distributed over the unit and that measure at least ten inches DBH; or

(D) When such burning is done in western Oregon on stands that have at least 50 trees per acre that are well-distributed over the unit and that measure at least 11 inches at DBH; and

(E) When there are no slashing piles on the site.

(e) Fees for the burning of piled debris, including whole-tree yarded debris and YUM debris on landings, shall be assessed against the acres from which the debris was accumulated;

(f) Burning fees for piled burning or broadcast burning or underburning shall be assessed against the total acres within the registered area after the first time that fire is applied to the area regardless of the number of acres actually burned. Subsequent reburning in the same registered area shall not be subject to additional registration or burning fees in the same calendar year or the following calendar year;

(g) Areas burned as a result of escaped fires that are outside the boundaries of the registered burn area shall not be assessed fees if the area outside of the boundaries is managed as a wildfire. If the area outside of the boundaries is managed as a prescribed fire then the fee provisions in sections (2) and (3) of this rule shall apply.

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

Stat. Auth.: ORS 477.013, 477.562, 526.016, 526.041 & ORS 527.

Stats. Implemented: ORS 477.013, 477.552, 477.554, 477.556, 477.558, 477.560 & 477.562

Hist.: FB 26(Temp), f. & ef. 10-1-71 thru 1-28-72; FB 28, f. 2-14-72, ef. 7-1-72; FB 8-1986,

f. & ef. 9-25-86; FB 3-1989(Temp), f. & cert. ef. 12-29-89; FB 2-1990, f. & cert. ef. 6-14-

90; FB 1-1992, f. & cert. ef. 1-6-92; FB 2-1993, f. & cert. ef. 1-22-93; DOF 11-1998, f. &

cert. ef. 8-13-98; DOF 1-2004, f. & cert. ef. 1-30-04

Adm. Order No.: DOF 2-2004

Filed with Sec. of State: 2-10-2004

Certified to be Effective: 2-10-04

Notice Publication Date: 10-1-03

Rules Adopted: 629-001-0055

Rules Amended: 629-001-0015, 629-001-0025, 629-001-0040, 629-001-0045

Rules Repealed: 629-001-0055(T)

Subject: Adopt OAR 629-001-0055 in which the Board of Forestry delegates certain authorities regarding contested cases to the State Forester.

Amend OAR 629-001-0015 to include the new rule, OAR 629-001-0055, in the range of rule application.

Amend OARs 629-001-0025, 629-001-0040, and 629-001-0045 to change hearing officer to administrative law judge.

Repeal OAR 629-001-0055(T).

Rules Coordinator: Gayle Birch—(503) 945-7210

629-001-0015

Rules of Procedure for Contested Cases; Applicability

The rules of procedure in this Division, OAR 629-001-0010 to 629-001-0055, apply to all contested cases before the board and State Forester, unless otherwise provided by law, and are in addition to the procedural requirements of the Attorney General's Model Rules adopted in OAR 629-001-0005. Contested cases covered by these rules include the following:

(1) Appeal of civil penalties assessed under ORS 527.687;

(2) Appeal of "any finding or order" under ORS 527.610 through 527.770 and 527.992;

(3) Hearings requested by persons adversely affected or aggrieved by an operation requiring a written plan under ORS 527.700(3) through (9);

(4) Appeal of temporary orders to cease further activity under ORS 527.680(3) and 527.680(4);

(5) Appeal of repair orders issued under ORS 527.680(2)(b) and 527.690(1);

(6) Appeal of orders prohibiting new operations under ORS 527.680(5);

(7) Appeal by any person adversely affected by operations to be conducted under an approved or amended stewardship agreement under ORS 527.662;

(8) Review of State Forester's proposal to conduct repair work at state expense under ORS 527.690(2);

(9) Appeals and requests for hearings on forest protection district budgets or protection administration, under ORS 477.260 and OAR 629-041-0035; and

(10) Appeals of decisions on land exchanges under OAR 629-033-0055.

Stat. Auth.: ORS 526.016(4), 527.687(3), 527.715

Stats. Implemented: ORS 183.310 - 183.550

Hist.: DOF 5-2002, f. & cert. ef. 7-1-02; DOF 2-2004, f. & cert. ef. 2-10-04

ADMINISTRATIVE RULES

629-001-0025

Conduct of Hearings

(1) Unless otherwise provided by law or order of the board or State Forester in a specific case, contested case hearings will be conducted by an administrative law judge, who shall prepare a proposed order for consideration by the board or State Forester.

(2) Unaccepted proposals of settlement shall be privileged and shall not be admissible as evidence in the proceeding.

(3) In civil penalty proceedings, conferences and hearings shall be held at locations which are within the forest practices region of the person being assessed the penalty, unless otherwise agreed to by the State Forester and parties.

(4) The issues for hearing shall be limited to those raised by the parties or by the State Forester in a request for hearing or other pre-hearing filings.

(5) Timing of hearings and orders are stated as follows, unless all parties agree to an extension of the time limits:

(a) For appeals from orders of the State Forester under ORS 527.700(1), hearings shall be commenced within 14 days after receipt of the request for hearing, and a final order shall be issued within 28 days of the request for hearing.

(b) For appeals by persons adversely affected or aggrieved by an operation under ORS 527.700(3), hearings shall be commenced within 14 calendar days after receipt to the request for hearing. A final order shall be issued within 28 days after the request for hearing was filed.

(c) For appeals by persons adversely affected or aggrieved by a proposed or amended stewardship agreement, hearings shall be commenced within 45 calendar days after receipt of the request for hearing. A final order shall be issued within 45 calendar days of the concluded hearing.

(d) Hearings on notices of civil penalty under ORS 527.687 shall not be held less than 45 days from the date of service of the notice of penalty. The hearing shall be held not more than 180 days following issuance of the notice.

(6) In order to comply with statutory timelines, the administrative law judge may establish time limits different from those under OAR 137-003-0580 for making and responding to motions for ruling on legal issues. The administrative law judge shall not consider a motion for ruling on a legal issue if the agency requests that the case proceed to a hearing on that issue.

Stat. Auth.: ORS 526.016(4), 527.687(3), 527.715

Stats. Implemented: ORS 183.310 - 183.550

Hist.: DOF 5-2002, f. & cert. ef. 7-1-02; DOF 2-2004, f. & cert. ef. 2-10-04

629-001-0040

Exceptions to Proposed Orders

(1) In all cases in which the administrative law judge is to issue a proposed order, exceptions by a party or the agency must be filed in the manner and time specified by the administrative law judge, making allowance for any statutory timeline applicable to the proceeding. If no time is specified, exceptions must be filed with the administrative law judge within seven days after the proposed order is issued.

(2)(a) The exceptions shall be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding, and shall be based only on grounds that:

(A) A necessary finding of fact is omitted, erroneous, or unsupported by the preponderance of the evidence on the record;

(B) A necessary legal conclusion is omitted or is contrary to law or the board's policy; or

(C) Prejudicial procedural error occurred.

(b) The exceptions shall be numbered and shall specify the disputed finding, opinions, or conclusions. The nature of the suggested error shall be specified and the alternative or corrective language provided.

(3) A proposed order will become a final order if no exceptions are filed within the time specified, unless the agency notifies the parties and the administrative law judge that the agency will issue the final order. All proposed orders shall include a statement to this effect.

Stat. Auth.: ORS 526.016(4), 527.687(3), 527.715

Stats. Implemented: ORS 183.310 — 183.550

Hist.: DOF 5-2002, f. & cert. ef. 7-1-02; DOF 2-2004, f. & cert. ef. 2-10-04

629-001-0045

Final Orders in Contested Cases

(1) Following hearing, the administrative law judge will prepare the record and proposed order for filing with the board as expeditiously as possible. In the case of hearings related to orders of the State Forester pursuant to ORS 527.700, the record and proposed order shall be filed with the board within five working days of the close of hearing unless an extension has been agreed to by the parties and State Forester. Except as provided in sec-

tion (2) of this rule, no less than a majority of the board shall then review and consider the proposed order and record, hold a meeting or telephone conference, and take final action as provided for in this rule.

(2) If upon a determination by the board chairperson, the board cannot complete a final order within applicable statutory time limits, the chairperson may delegate authority to issue a final order to the administrative law judge.

(3) After reviewing and considering the proposed order and record, the board may do any of the following:

(a) Schedule written or oral argument from the State Forester and any party that filed exceptions to the proposed order. The board chairperson shall determine whether oral argument, written argument, or both will be permitted after consulting with the board members.

(A) Oral argument shall be allowed only if the board determines it is necessary or appropriate to assist in the proper disposition of the case, and shall be:

(i) Limited to matters raised in written exceptions; and

(ii) Conducted under such time limits as the board chairperson determines are appropriate.

(B) The board chairperson shall notify the agency and parties of the form of argument, if any, to be allowed.

(b) Remand the matter to the administrative law judge for further hearing on such issues as the board specifies, and to prepare a revised proposed order as appropriate, under OAR 137-003-0655(2).

(c) Enter a final order adopting the recommendation of the administrative law judge.

(d) Enter an amended proposed order or final order that modifies or rejects the recommendation of the administrative law judge. If the board decides to modify or reject the proposed order, the board must comply with OAR 137-003-0655 and 137-003-0665.

Stat. Auth.: ORS 526.016(4), 527.687(3), 527.715

Stats. Implemented: ORS 183.310 - 183.550

Hist.: DOF 5-2002, f. & cert. ef. 7-1-02; DOF 2-2004, f. & cert. ef. 2-10-04

629-001-0055

Delegation of Authority to State Forester

In addition to any duties and responsibilities conferred upon the State Forester by law or delegation of authority from the Board of Forestry, the State Forester may, with regard to the administration of contested cases:

(1) Execute any written order, on behalf of the board, which has been consented to in writing by the person or persons adversely affected by the order;

(2) Prepare and execute written orders, on behalf of the board, implementing any action taken by the board on any matter;

(3) Prepare and execute orders, on behalf of the board, upon default where:

(a) The adversely affected party or parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or

(b) Having requested a hearing, the adversely affected person or persons have failed to appear at the hearing.

Stat. Auth.: ORS 526.016(4), 527.685(4), 527.687(3), 527.715

Stats. Implemented: ORS 527.685, 83.310 - 183.550

Hist.: DOF 3-2003(Temp), f. 9-5-03, cert. ef. 9-8-03 thru 3-6-04; DOF 2-2004, f. & cert. ef. 2-10-04

Adm. Order No.: DOF 3-2004

Filed with Sec. of State: 2-10-2004

Certified to be Effective: 2-10-04

Notice Publication Date: 10-1-03

Rules Amended: 629-670-0300, 629-670-0310, 629-670-0315, 629-672-0210, 629-672-0220, 629-672-0310

Subject: Amend OAR 629-670-0300 to include the new rule, OAR 629-001-0055, in the range of rule application and to conform with HB 2526 (2003) terminology.

Amend OAR 629-670-0310 to include agency disposition of prima facie cases.

Amend OAR 629-670-0315 to conform with HB 2526.

Amend OAR 629-672-0210 to reflect that contested case hearings will be held according to Office of Administrative Hearings' rules and newer agency rules.

Amend OARs 629-672-0220 and 629-672-0310 to conform with Sections 1 to 21, Oregon Laws 1999 and HB 2526 (2003).

Rules Coordinator: Gayle Birch—(503) 945-7210

ADMINISTRATIVE RULES

629-670-0300

Civil Penalties Contested Case Hearings Procedures

A person being assessed a penalty has the right to request a hearing and resolution process that allows a fair review of the facts and circumstances of an alleged violation. The Office of Administrative Hearings Rules in OAR 137-003-0501 to 137-003-0700 and the State Forester's procedural rules in 629-001-0000 to 629-670-0055 apply to all civil penalty contested case hearings.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.685, 527.687

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88 ; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0050; DOF 7-2002, f. & cert. ef. 7-1-02; DOF 3-2004, f. & cert. ef. 2-10-04

629-670-0310

Requesting a Hearing; Stating Claims and Defenses

(1) When requesting a hearing, or within ten (10) days following a request for hearing, the person assessed a civil penalty must admit or deny, in writing, all factual matters stated in the notice of penalty. Any factual matters not denied shall be presumed admitted.

(2) When requesting a hearing, or within 10 days following a request for hearing, the person assessed a civil penalty shall affirmatively state, in writing, any and all claims or defenses the person may have and the reason that supports the claim or defense. Failure to raise a claim or defense shall be presumed to be a waiver of such claim.

(3) Evidence shall not be taken on any issue not raised in the notice and either the request for hearing or a subsequent statement within ten days following the request for hearing as required in sections (1) and (2) of this rule.

(4) When the person requests a hearing, but fails to deny any factual matters stated in the notice of penalty or to state any claims or defenses, either when requesting the hearing or within ten (10) days following a request for hearing, as required in sections (1) and (2) of this rule, a hearing will not be held. Instead, the civil penalty administrator shall submit the citation and any accompanying information used in preparing the notice of penalty to an administrative law judge, who shall prepare a proposed order for final consideration by the Board of Forestry.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.685, 527.687

Hist.: FB 5-1988, f. 7-27-88, cert. ef. 8-1-88 ; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0060; DOF 7-2002, f. & cert. ef. 7-1-02; DOF 3-2004, f. & cert. ef. 2-10-04

629-670-0315

Requesting a Reduced Civil Penalty Due to Financial Hardship

(1) A person may submit a written request to reduce a civil penalty due to financial hardship. The written request shall be made within the same timelines of the request for hearing in OAR 629-670-0310.

(2) The person asking for a reduced civil penalty due to financial hardship is responsible for submitting evidence of their economic and financial condition to the administrative law judge before the hearing. This evidence shall not prejudice any claim by the person that the violation has not occurred, or that they are not responsible for the violation.

(3) Unless the issue is raised in the person's request for hearing, no evidence may be presented during the hearing on the economic and financial condition of the person. During the hearing, the burden of proof and the burden of going forward with evidence concerning the person's economic and financial condition, shall be upon the person against whom the civil penalty is assessed.

(4) The administrative law judge shall consider the evidence of financial hardship and make separate findings and recommendation in the proposed order that support or reject reducing the amount of any civil penalty.

(5) The board delegates to the State Forester the authority to reach settlement to remit or mitigate the amount of any civil penalty at any time before the board issues a final order regarding financial hardship.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.685, 527.687

Hist.: DOF 7-2002, f. & cert. ef. 7-1-02; DOF 3-2004, f. & cert. ef. 2-10-04

629-672-0210

Hearings for Persons Adversely Affected by an Operation for Which a Written Plan is Required under ORS 527.670(3)

(1) If a written plan under ORS 527.670(3) is required for an operation, any person who submitted written comments on the operation and who is adversely affected or aggrieved by the operation may file a request to the board for a hearing on the plan. The request shall be filed and copies served on the operator, timber owner and landowner personally or by certified mail within 14 days of the date the written plan was approved. The request shall include:

(a) The person's name and address and the organization represented;
(b) If represented by an attorney, the name and address of the attorney representing the person;

(c) A detailed statement of the person's interest and of how such interest may be affected by the results of the proceeding;

(d) A detailed statement of the fact regarding how the person's interest is affected by the Forest Practices Act or rules adopted thereunder;

(e) A detailed statement of fact showing that the operation is the type described in ORS 527.670(3);

(f) A brief statement of what board action is sought by the person.

(2) Upon receipt of a request provided under section(1) of this rule, the State Forester shall determine whether the request meets the requirements of ORS 527.700(3) through (5). In making this determination, the State Forester shall consider:

(a) Whether the person has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the board's jurisdiction;

(c) The interest the petitioner represents and the qualifications the petitioner possesses in cases in which a public interest is alleged;

(d) Whether the person could reasonably be considered to be affected by the Forest Practices Act or rules adopted thereunder.

(3) If the State Forester determines that the person making the request meets the requirements of ORS 527.700(3) through (5), the State Forester shall send written notification of the date of the hearing to the person requesting the hearing and to the timber owner, landowner and operator.

(a) The hearing date shall be no later than 14 days from the receipt of the request for hearing.

(b) The notice of hearing shall contain the statements that:

(A) Failure of the person requesting a hearing to appear at the hearing shall be deemed a default and a record of the proceedings to date, including the agency file or files on the subject of the written plan, automatically becomes a part of the record for the purpose of providing a prima facie case upon which default may be granted; and

(B) The hearing shall be conducted by an administrative law judge, according to the Office of Administrative Hearings Rules in OAR 137-003-0501 to 137-003-0700 and the State Forester's Procedural rules in OAR 629-001-0000 to 629-001-0055.

(4) If the State Forester determines that the person making the request does not meet the requirements of ORS 527.700(3) through (5) the State Forester shall recommend to the chairperson of the Board of Forestry that a hearing be denied for cause. The chairperson, upon review of the request for hearing and the State Forester's recommendation, shall either:

(a) Issue a final order on behalf of the board, denying a hearing for cause; or

(b) Direct the State Forester to schedule a hearing and send notices as required in section (3) of this rule.

(5) Failure of the person requesting the hearing to appear at the hearing shall be deemed a default. A final order upon a prima facie record shall be entered approving the written plan.

(6) The landowner, timber owner or operator shall be made a party to the proceeding.

(7) The person requesting the hearing under these provisions may only present evidence on those issues raised in the person's written comments to the written plan filed under ORS 527.670(9).

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0120; DOF 3-2004, f. & cert. ef. 2-10-04

629-672-0220

Hearings Generally; Final Orders

(1) An administrative law judge from the Office of Administrative Hearings shall conduct hearings under ORS 527.700. The administrative law judge shall conduct the hearing and prepare the record for filing with the board within five working days of the close of the hearing. Except as provided in section (2) of this rule, no less than a majority of the board shall then review and consider the record, hold a meeting or telephone conference, and issue a final order.

(2) If upon a determination by the chairperson of the Board of Forestry, the board cannot complete a final order in the matter within 28 days of the request for a hearing, the chairperson may delegate the authority to issue a final order to the administrative law judge as provided in ORS 527.700(2).

(3) Unless consent to an extension is granted by all parties, a final order shall be issued no later than 28 days after the request for hearing was

ADMINISTRATIVE RULES

filed. The order may affirm, rescind or modify the written plan. Appeals from the final order shall be filed as provided in ORS 183.482.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0130; DOF 3-2004, f. & cert. ef. 2-10-04

629-672-0310

Actual Damages Resulting from a Stay; Attorney's Fees

(1) If the board or administrative law judge affirms the written plan of an operation for which a stay was granted, the board shall award actual damages in favor of each prevailing party against the person requesting the stay. A landowner, timber owner, or operator against whom a stay was entered may petition for actual damages for the portion of the case upon which it prevailed.

(2) The board may award reasonable attorney's fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well founded, or made a request primarily for a purpose other than to secure appropriate action by the board. If a written plan pertaining to an operation for which a stay was granted is affirmed, the board shall award reasonable attorney's fees in favor of each of the prevailing parties against the person requesting the stay. If a written plan submitted to and approved by the State Forester is disapproved or modified, the board shall award reasonable attorney's fees and costs against the state in favor of each of the prevailing parties. Any prevailing party, as described above, may file a petition for attorney's fees, expenses and costs for the portion of the case upon which it prevailed.

(3) An award of attorney's fees shall not exceed \$5,000.

(4) As used in this section, a "prevailing party" is one in whose favor an order pertaining to a written plan is issued, and may include the Department of Forestry where a written plan is affirmed. Where a written plan is affirmed in part and modified in part, each party may be regarded as a prevailing party.

(5) "Actual damages" include but are not limited to costs such as:

- (a) Penalties for non-performance of contracts;
 - (b) Losses due to market fluctuations;
 - (c) Payments for crew stand-by;
 - (d) Equipment down-time;
 - (e) Move-in and move-out costs; and
 - (f) Loss in value of logs left sitting on the site for long periods.
- (6) Attorney's fees, expenses and costs shall include only the following:

(a) The actual amount of fees charged by the attorney for services directly connected with prosecuting or defending against the challenge to the written plan; or

(b) Where the prevailing party is not charged a specific fee for the case (e.g., because the attorney is paid on a retainer basis or is an employee of the party), the fee shall be the reasonable value of the attorney's services directly connected with prosecuting or defending against the challenge to the written plan. "Reasonable value" means the equivalent of the fees charged by practitioners of similar skill and experience under section (6)(a) of this section, and includes such secretarial and other overhead costs as are customarily included in those fees.

(7) A prevailing party must file a petition and supportive affidavit for award of actual damages from a stay or attorney fees within 30 days of the date of the issuance of the board's order in the case for which awards are requested. A copy of the petition, together with a supporting affidavit, shall be served upon the opposing party or parties at the time the petition is filed and proof of service shall be provided to the board. The board shall dismiss petitions which do not comply with this rule. The petition shall include:

(a) A statement of the facts upon which petitioner relies in claiming that it is a prevailing party;

(b) A statement of the amount of award requested, supported by an affidavit that describes in detail the actual damages incurred and the basis for the amount of damages requested; or amount of the fees incurred by petitioner, or where the petitioner was not charged fees, the basis for the amount of the costs requested; and

(c) A statement describing how the amount of the award requested would be consistent with the policies and the purposes of the Oregon Forest Practices Act.

(8) An opposing party shall have 14 days from the date of service of the petition to file written objections. Such objections shall be served on the petitioner at the time the objections are filed and proof of service shall be provided to the board.

(9) In designating the amount of fees and costs to be awarded, the board shall consider, but is not limited to, the following factors:

(a) Consistency with the policies and purposes of the Oregon Forest Practices Act including but not limited to the following considerations:

(A) The issue in the case was one of first impression; or

(B) A complaint or defense was frivolous or otherwise without merit;

or

(C) A party was an individual who, due to the circumstances of the case, had to rely upon his or her personal financial resources.

(b) In the case of attorney's fees, the appropriate charges for the services rendered, based on:

(A) The time and labor customarily required in the same or similar cases;

(B) Hourly charges customarily made by attorneys for rendering similar services;

(C) The novelty and difficulty of the issues and the amount of preparation, research or briefing reasonably required; and

(D) The skill requisite to perform the services properly.

(c) Awards in similar cases.

(10) The administrative law judge who presided over the hearing on the written plan shall examine the petition for award of actual damages or attorney's fees and any associated arguments. The administrative law judge may require the parties to provide additional information or conduct hearings as the judge deems necessary. The administrative law judge shall prepare a proposed order for the board.

(11) The board shall review the administrative law judge's proposed order and issue a final order awarding actual damages or attorney's fees pursuant to this section, based upon the record. The board may award all or a portion of the actual damages or fees requested. The board will not act on a petition until the appeal period has run or, where an appeal has been filed, during the pendency of the appeal.

Stat. Auth.: ORS 527

Stats. Implemented: ORS 527.700

Hist.: FB 2-1989, f. & cert. ef. 9-20-89; FB 2-1995, f. 6-19-95, cert. ef. 7-1-95, Renumbered from 629-055-0150; DOF 3-2004, f. & cert. ef. 2-10-04

Department of Human Services, Child Welfare Programs Chapter 413

Adm. Order No.: CWP 2-2004

Filed with Sec. of State: 2-10-2004

Certified to be Effective: 2-10-04

Notice Publication Date: 1-1-04

Rules Amended: 413-100-0020, 413-100-0030, 413-100-0040, 413-100-0050, 413-100-0070, 413-100-0080, 413-100-0110, 413-100-0130, 413-100-0135, 413-100-0150, 413-100-0160, 413-100-0240, 413-100-0276, 413-100-0290

Rules Repealed: 413-100-0030(T), 413-100-0040(T), 413-100-0050(T), 413-100-0070(T), 413-100-0080(T), 413-100-0110(T), 413-100-0130(T), 413-100-0135(T), 413-100-0150(T), 413-100-0160(T), 413-100-0240(T), 413-100-0276(T), 413-100-0290(T)

Subject: These Title IV-E eligibility rules were changed due to a recent opinion of the Ninth Circuit Court. This opinion enables states under the Ninth Circuit Court to base financial eligibility for a child living with a relative, at the time court action was initiated that resulted in the removal of the child from the home, by linking the child's Aid to Families and Dependent Children (AFDC) eligibility to the home of the relative.

States under the Ninth Circuit Court have determined that this ruling also allows a child to be AFDC linked to any relative home in which the child resided within 6 months of the eligibility month (month that court action was initiated that results in the removal of the child from the home or the month in which the voluntary custody or placement agreement is signed) if the child cannot be AFDC linked to the parent or relative home they are currently residing with or removed from. If a child is AFDC linked to a relative home it will allow us to look at the child as a household of one and will almost assure that the child will meet the AFDC linkage requirement of the Title IV-E program.

This interpretation allows us to re-examine and determine the eligibility of children in Oregon for Title IV-E eligibility when the child

ADMINISTRATIVE RULES

was denied Title IV-E due to no AFDC linkage in the eligibility month.

These Title IV-E and General Assistance rules will also be changed to reflect new Department terminology and to correct formatting and punctuation.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-100-0020

Definitions

(1) "AFDC No-Adult Standard": The standard applicable to AFDC households that do not have an adult in the grant.

(2) "AFDC": Aid to Families with Dependent Children Program as of 7/16/1996 and excluding changes implemented by the Oregon Options Waiver.

(3) "DHS": Adult and Family Services.

(4) "Amnesty Alien": Any person with proper INS documentation who, because of a well-founded fear of persecution due to race, religion, or political opinion, fled his or her homeland. The term "refugee" is applied to all refugees and asylees with proper INS documentation served by DHS under the Refugee Resettlement Program.

(5) "Assistance Unit": Unit of individuals whose needs, income, and resources are considered in determining eligibility and the grant amount.

(6) "Certified Foster Home": For Title IV-E eligibility purposes under these rules, certified refers to a foster home that is not provisionally certified.

(7) "Child Support": Any voluntary or court-ordered contribution by an absent parent. Support includes, but is not limited to, money payments, necessary and proper shelter, food, clothing, medical attention and education.

(8) "Citizen/Alien Status": A U.S. citizen or alien lawfully admitted under provisions of the Immigration and Nationality Act as a paroled or conditional entrant; or an alien lawfully admitted for permanent residence or who is otherwise permanently and lawfully residing in the United States. A qualified alien or unqualified as defined by The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

(9) "Constructive Removal": The removal that occurs when the child is not living with the "Specified Relative" at the time of the voluntary placement/custody agreement or initiation of court proceedings.

(10) "Countable Income": The amount of available income, including earned and unearned not specifically excluded by DHS rule 461-140-0040 to be used to determine eligibility for public assistance.

(11) "Court Order Date": Date of court order or temporary court order giving Department of Human Services responsibility for placement and care, including orders of detention.

(12) "Date a Child is Considered to have Entered Foster Care": The earlier of the following: (1) The date court found the child within the jurisdiction of the court under ORS 419B.100 or (2) 60 days from the date of removal.

(13) "Earned Income": Income produced as a result of services which the client performed.

(14) "Eligibility Month":

(a) The month court action for placement was initiated resulting in the removal of the child from the home (either "Constructive removal" or "physical removal") of his/her specified relative;

(b) The month a documented request for a judicial review of a child in DHS's continuous custody is made;

(c) The month the judicial finding resulting in a court order for DHS custody was made when no documentation of a request for a judicial review is evident; or

(d) The month a voluntary custody/placement agreement is signed.

(15) "Entitlement": Any benefit to which an individual has a valid claim, or would have a valid claim upon application, including one related to past employment or service, pension, compensation payment, allotment allowance insurance payment, interest in an estate or fund, or of a similar nature.

(16) "Family": For purposes of determining Title IV-E-FC eligibility under these rules, family means the parent(s), stepparent(s), or relative(s) from whom the child is removed.

(17) "Foster Home": As defined in ORS 418.625(2), a home is one maintained by a person who has under his/her care a child unattended by the child's parent and not related by blood or marriage.

(18) "Foster Care": 24 hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes but is not limited to placements in foster family homes, foster homes of relatives, group homes, emergency

shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

(19) "Grant": The actual assistance payment for the payment month.

(20) "Incapacity": A condition that causes unemployability or impairs the individual's ability to perform normal functions either on a medical or psychiatric basis.

(21) "Initiation of Court Action": Date court was petitioned or legal action was taken which resulted in the removal of the child from the specified relative.

(22) "Minor Child": A minor child is considered to be any person under the age of 18 who has not been emancipated by a court of law, married, or a member of the Armed Forces of the United States.

(23) "Need": The monetary amount by which the requirements of DHS standards of an individual or family exceed all income and resources available to them.

(24) "Nunc Pro Tunc Orders": Under Oregon law, the role of a nunc pro tunc order is to supply an omission in the record of action actually taken, but omitted through inadvertence or mistake.

(25) "Parent": For IV-E eligibility purposes under these rules "parent" means the birth or legal (step or adoptive) mother or father of a person, and includes:

(a) If the mother lives with a male and either she or the male claims that he is the father of the child/unborn, and no one else claims to be the father, he shall be treated as the father even if paternity has not been legally established for purposes of determining IV-E-FC eligibility under these rules.

(b) A stepparent relationship exists if:

(A) The person is legally married to the child's birth or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(c) An adoptive parent; and

(d) The birth parent of an adopted child if:

(A) The child lives with the birth parent; and

(B) The legal parent (the adoptive parent) has given up care, control and supervision of the child.

(26) "Payment Standard/Needs Standard": The amount set by DHS as the AFDC net income limit. It is used to determine the actual grant amount. This amount refers to the "Payment/Need Standard" in effect 7/16/1996.

(27) "Personal Property": Everything owned which is not real property including liquid asset.

(28) "Physical Removal": The removal that occurs when a child is placed in substitute care and was living with the "specified relative" at time of the voluntary placement/custody agreement or initiation of court proceedings.

(29) "Real Property": Land, buildings, and whatever is erected on or affixed to the land or buildings and taxed as real property.

(30) "Reasonable Efforts to Finalize a Permanency Plan":

(a) DHS has made reasonable efforts to make it possible for the child to safely return home or

(b) DHS has made reasonable efforts to place the child in a timely manner in accordance with the plan and to complete steps necessary to finalize the permanent plan.

(31) "Release of Temporary Commitment": The Department of Human Services is relieved of responsibility by the court for placement and care of the child.

(32) "Removal Home": The home of the parent or legal guardian that the child was removed from as a result of a judicial finding or voluntary custody/placement agreement.

(33) "Resource": Any personal or real property which is or can be made available to meet the need of the assistance unit and is not specifically excluded from consideration by DHS.

(34) "Shelter In-Kind": Shelter paid for by an agency, other than DHS, or someone other than the client, for the client's rent and utility bills at no cost to the client and the client provides no service in exchange for the payment.

(35) "Specified Relative:

(a) Birth, adoptive, or stepparent, as defined in 413-100-0020 (25);

(b) Any blood relative or half-blood relative, including persons of preceding generations denoted by the prefixes of grand, great, or great-great (Children with one common birth parent are half-blood relatives);

ADMINISTRATIVE RULES

(c) Aunts, uncles, first cousins, and first cousins once removed;
(d) Persons who legally adopt a child and any people related to the child through the adoption who meet the degree of relationship specified in (b) of this section.

(e) Stepmother, stepfather, stepbrother, or stepsister, even after marriage is terminated by death or divorce; or

(f) Spouse of anyone listed above, even if the marriage has been terminated by death or divorce.

(36) "Standards of Assistance": The consolidated standards for payment specified in Adult and Family Service's OAR 461-155-0030. These standards are used to determine income eligibility for AFDC.

(37) "Title IV-E Program": The Title IV-E program of the Social Security Act provides federal payments for foster care and adoption assistance. The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) was enacted on June 27, 1980, and established the new Title IV-E program, replacing Oregon's Title IV-A foster care program on June 1, 1981. The Adoption and Safe Families Act enacted on November 17, 1997 further defined the federal regulations for use of these funds.

(38) "Unearned Income": All income which does not directly result from an individual's employment or self-employment.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E of the Social Security Act

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0030

Certification Documentation Requirements for Title IV-E

(1) Children found eligible for Title IV-E-FC must be placed in a certified foster home. Documentation in the case file or certification file of certification is required. Title IV-E may be claimed for the period of time between the date a prospective foster family home satisfies all certification requirements and the date the actual certificate is issued, which shall not exceed 60 days. The following documentation is required for children in out-of-state placements:

(a) Verification that the out-of-state foster home or child caring agency is certified, licensed or approved by the agency in that state which is responsible for licensing or approval of such facilities; or

(b) In states where relative homes are not certified, a statement in writing that the home would meet the state's licensing standards for certification or licensure, including a statement of the period of time for which a formal license or certificate would be issued for that home and a copy of the verification that a Criminal History check was completed and approved.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E of the Social Security Act

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0040

Placement in Relative Homes

(1) Relative Payments for Non-Indian Children. Foster care maintenance payments to relatives are restricted by ORS 418.625. Children in relative foster care must be Title IV-E eligible to receive a foster care maintenance payment with the exception of an Indian child.

(2) Relative Payments for Indian Children. A Tribal enrollment committee must verify that the child is enrolled as a member of a federally recognized tribe or eligible for enrollment. State general fund foster care payments may be authorized for these Indian children in relative foster care but found ineligible for Title IV-E.

(3) Relative Placements. With the exception of Indian children, children in the following homes must be found Title IV-E eligible for the relative to receive foster care maintenance payments:

(a) The home of any blood or half blood relative or adoptive relative, including persons of preceding generations denoted by the prefixes of grand, great, or great-great. Children with one common birth parent are half-blood relatives;

(b) The home of siblings, aunts, uncles, first cousins, first cousins once removed, nephew, or niece, and grandparents;

(c) The home of a relative, as defined in (a) of this rule, of adoptive parents.

(4) Relative Foster Care Provider Rights. The relative foster care provider has a right to:

(a) Information about the Title IV-E foster care maintenance program administered by the agency, including the eligibility requirements of the program and the required verification methods;

(b) Apply for Title IV-E foster care maintenance payments for the financial support of the related child in their care;

(c) Receive these benefits without discrimination when the related child in their care meets the eligibility requirement of the Title IV-E foster care program and the home meets foster care certification requirements.

(5) Request for Foster Care Maintenance Payment. The relative foster care provider may contact the agency with a request for Title IV-E payments. Their request for Title IV-E foster care maintenance payments may be in the form of a phone call, visit or written request by the relative provider or another person acting on the relative provider's behalf. This request starts the application process. The "date of relative provider's request" is the date the verbal request is made to or the written request is received by the agency. The date of request will be recorded by the Eligibility Specialist on the narrative and used to establish:

(a) The date for starting the application processing time frame; and

(b) The earliest date for which Title IV-E eligibility may be established.

(6) Eligibility Determination Time Lines. Eligibility for Title IV-E-FC will be determined within 45 days from the date of request for benefits. The limit may be extended for any of the following reasons:

(a) Information needed to determine eligibility is expected to be received after the 45 day limit; or

(b) Other circumstances exist that are not within the control of the client or the local DHS office, and this delays the eligibility decision past the 45 day limit.

(7) Notice of Closing of Relative Payment. The eligibility worker will send written notification to the relative provider at least ten days prior to the effective date of termination of payments when a child is no longer Title IV-E-FC eligible.

(8) Notice of Denial of Relative Payment. The eligibility worker will send written notification of denial of benefits to the relative(s) requesting foster care maintenance payments when a child placed in their home does not meet the requirements of the Title IV-E-FC program.

(9) If relatives do not agree with the closure or denial of Title IV-E foster care maintenance payments and medical coverage, the relative may request a conference with local DHS staff. At the conference, branch staff will:

(a) Discuss the decision;

(b) Explain the specific reasons for the action; and

(c) Allow the relatives to explain why they feel the action should not be taken.

(10) Relatives also have the right to ask for an Administrative Hearing before an impartial person designated as an authority on the federal eligibility requirements of the Title IV-E Foster Care and medical programs. The purpose of such a hearing is to determine if the local DHS office's Title IV-E foster care eligibility determination decision is in compliance with the guidelines established by state and/or federal legislation for the program. If the hearing decision is that Title IV-E foster care maintenance payments and medical coverage have been wrongfully denied or terminated, corrective payment action will be taken.

(11) Whether relatives request a conference with local DHS staff, or an Administrative Hearing, witnesses may testify on their behalf and legal counsel or other representatives may be present. The Department of Human Services will not pay the expenses of witnesses attending or of an attorney.

(12) Whenever a client or the client's authorized representative clearly expresses a desire to have a hearing, orally or in writing, the client has requested a hearing. The Eligibility Specialist will document the hearing request date on the narrative.

(13) Relatives may make a written or oral request for an Administrative Hearing to either their local DHS office or the Central Office. Requests for an Administrative Hearing must be made within 45 days of the date of notice of closure or denial of Title IV-E foster care payments and medical coverage.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.625

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0050

Placement in Unrelated Homes

(1) Unrelated Home. Certification of the home is required when children are placed in the home of a person formerly related by blood or marriage. The following homes meet DHS's definition of an unrelated home. General fund foster care payments may be made to the following certified homes:

ADMINISTRATIVE RULES

(a) The home of a person formerly related to the child by marriage when:

(A) The relationship by marriage was terminated by death or divorce;

(B) The child was not adopted by a step-parent prior to the dissolution of the marriage or death of the natural or adoptive parent. A child's relationship to his/her step-parent ends 30 days after the entry of a divorce decree.

(b) The home of a person no longer related to the child by blood, with the exception of the birth parent. Blood relationships end when the child is legally adopted by another family. A valid decree of adoption establishes the adoptive parent(s) as the legal parent(s) and erases all the prior blood relationships of siblings, unless also adopted by the same adoptive parents, and extended family members.

(c) The home of a putative paternal relative. A paternal relationship by blood does not exist when:

(A) There is no court order establishing paternity or no evidence of such an order having been submitted to Vital Statistics; or,

(B) The father's name is not on the birth certificate. (Only the birth certificate issued by Vital Statistics will provide proof of paternity having been established by the court. The hospital certificate giving the father's name is not sufficient evidence of paternity.); or

(C) The putative father signed relinquishment papers without ever having signed a stipulation of paternity. (The Division of Child Support does not recognize the signing of a stipulation of paternity without the mother agreeing that the man is indeed the father. The HS 21 form jointly signed by the mother and putative father is a legal document which establishes paternity and allows the father's name to be added to the birth certificate.)

(2) Non IV-E Reimbursable Placements. Children in the following relative homes are ineligible for IV-E foster care maintenance payments:

(a) The home of a birth parent even after adoption or termination of parental rights;

(b) The home of the specified relative from whose legal custody the child was removed;

(c) The home of a relative when the child's parent resides under the same roof and the parent is providing caretaking responsibilities for the child;

(d) The home of a step-parent when the birth parent and step-parent are separated, but not divorced;

(e) The home of a relative when the relative has legal custody;

(f) The home of a relative that is not fully certified.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E of the Social Security Act

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0070

Application for Title IV-E-FC

(1) Children in the care and custody of DHS and in substitute care will be referred for a Title IV-E-FC eligibility determination.

(2) Under no circumstances is Title IV-E-FC to be authorized on behalf of any child prior to the establishment of eligibility by DHS's eligibility worker. A child cannot be eligible for Title IV-E-FC on the basis of presumed eligibility.

(3) Applications will be submitted to eligibility workers under the following timelines:

(a) No later than three working days after a child's placement with a relative provider, unless the relative declines foster care payments;

(b) No later than 14 working days after a child's placement in regular paid care. (No application is required when children leave care on or before the seventh working day.)

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E of the Social Security Act

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0080

Effective Eligibility Date

Eligibility for Title IV-E can be established if all other eligibility criteria, as outlined in OAR 413-100-0020 through 413-100-0360, including the following, is met:

(1) No earlier than the date of placement when the child is in the agency's legal care and custody;

(2) The date of placement in a Relative certified home when the Relative has received a TANF non-needy grant and repayment is authorized to the TANF agency;

(3) The first of the month in which the "Reasonable Efforts" ruling is made when the court delays making the finding, as long as Reasonable Efforts to Prevent the Placement was obtained within 60 days of placement;

(4) The effective certification date of the relative provider's home when a TANF (NNR) grant has not been received;

(5) The effective certification date when DHS Financial Services has reimbursed DHS the relative provider's TANF (NNR) grant retroactive to the certification date;

(6) Effective the date the child is no longer in receipt of SSI (if applicable);

(7) The first of the month in which the court makes a judicial finding of "best interests" and "reasonable efforts" when a child in their parental home under DHS custody is returned to care;

(8) The first of the month in which DHS obtains custody when a child is placed in a substitute care placement prior to DHS obtaining custody.

(9) The first of the month in which the voluntary placement/custody agreement is signed, when placement occurs prior to the signing of the agreement; or

(10) The first of the month in which a non-certified home becomes certified as long as the child was placed in the home at that time.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E of the Social Security Act

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0110

Effective Closure Date

The effective date of termination for cases no longer meeting Title IV-E-FC eligibility criteria will be the earlier of the following:

(1) The end of the month in which eligibility ceased to exist;

(2) Retroactive to the end of the month in which eligibility ceased to exist even though information causing the child's ineligibility became known to the agency after the fact;

(3) The day the parent(s), custodial or non-custodial, establishes residency in the home where their child resides if they are providing caretaking responsibility for the child;

(4) The day the foster home license certification is terminated;

(5) On the 181st day of placement for a voluntary placement not approved for continuation by the court within 180 days. The date the child is placed, not the signature date on the agreement, will begin the count;

(6) The day DHS ceases having legal care and custody of the child;

or,

(7) The end of the month in which an 18-year-old youth graduates or obtains a GED; or the end of the last month they are 17 years of age if they did not or will not graduate by age 19.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E of the Social Security Act

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0130

Eligibility Determinations-AFDC Linkage

(1) Title IV-E eligibility is determined on a one-time basis when the child enters substitute care. Children removed from the home of a parent or other specified relative must meet specific eligibility requirements.

(2) The agency will reconstruct the case facts on the home used for the AFDC linkage in the eligibility month to determine if the child was receiving AFDC, or might have been eligible for AFDC under rules in effect 7/16/1996, had an application been made.

(a) AFDC Relatedness. The child meets the AFDC relatedness test if one of the following three criteria is met:

(A) The child received AFDC under rules in effect 7/16/1996, in the eligibility month, and the child remains within the resource limits that were in effect prior to the implementation of the Oregon Options Waiver under Section 1115 of the Soc. Sec. Act effective (7-1-96);

(B) The child would have been eligible to receive AFDC under rules in effect 7/16/1996, in the eligibility month, if an application had been made.

(b) Circumstances defining AFDC eligibility or hypothetical AFDC rules in effect 7/16/1996, for Title IV-E purposes are:

(A) Living with a parent/relative;

ADMINISTRATIVE RULES

- (B) Deprived of the support of one or both parents;
- (C) Financial need;
- (D) U.S. citizen or qualified alien; and
- (E) Age.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.163 & Title IV-E of the Social Security Act

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0135

Living with a Specified Relative

(1) To meet the Title IV-E requirements for living with a specified relative prior to removal from the home, one of the following situations must apply:

(a) The child was living with a parent/relative and was, under rules in effect on 7/16/1996, AFDC eligible in that home in the eligibility month;

(b) The child had been living with a parent/relative within six months of the eligibility, and the child would have been, under rules in effect on 7/16/1996, AFDC eligible in that month; or

(c) The child was hospitalized under parental custody and released into DHS custody for placement purposes. Such children will be considered to have lived with the parent regardless of the length of the child's hospitalization.

(2) Removal Requirements. The Title IV-E eligibility rules require that the child be removed from the home of a specified relative as defined in OAR 413-100-0020. For the purposes of meeting Title IV-E requirements, a removal from the home must occur pursuant to:

(a) A voluntary custody/placement agreement entered into by a parent/specified relative which leads to a "physical" or "constructive" removal of the child from the home; or

(b) A judicial order for a physical or constructive removal of the child from a parent/specified relative.

(3) For Title IV-E purposes, the following will be designated as "removal homes":

(a) Physical Removal:

(A) The home of a parent/specified relative when the court action or voluntary custody/placement agreement results in the removal of the child from the custody of the parent/specified relative.

(b) Constructive Removal:

(A) The home of a parent when the child was left in the home of a relative and the court action or voluntary custody/placement agreement results in the removal of the child from the custody of the parent.

(B) The home of a parent when the parent and the child reside in a relative home and the parent leaves the home leaving the child in the home of the relative.

(C) The specified relative home where the child last resided when the child is living with a non-related caretaker or was homeless. The child must have lived with a specified relative within six months of initiation of court action or signing of a voluntary custody/placement agreement pertaining to the removal from the specified relative. If not, eligibility for Title IV-E is denied based on not meeting the specified relative requirement.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E of the Social Security Act

Hist.: SOSCF 20-2000(Temp), f. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0150

Parental Deprivation

A continued absence of one or both birth, or adoptive, or stepparent(s) from the home constitutes the basis for deprivation of parental support or care. Deprivation of parental support exists when:

(1) Either parent is deceased.

(2) There is a Continued Absence of one or both parents as follows:

(a) The parent(s) is out of the home and the nature of this absence is such as to either interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; or

(b) There is evidence of continued absence of over 30 days duration; or

(c) Predictable absence due to divorce, legal separation, incarceration, and other verified and documented circumstances.

(3) Unemployment or Incapacity. For two-parent families with no absent parent, deprivation of parental support must be based on one of the following:

(a) Incapacity. One parent must meet one of the following criteria:

(A) Receives Supplemental Security Income (SSI);

(B) Receives Social Security Benefits (SSB) based on disability or blindness; or

(C) Is unable to work or has a physical or mental condition that is expected to last at least 30 days and substantially reduces the parent's ability to support or care for the child.

(b) Unemployment or underemployment. Consider a two-parent household unemployed or under employed if they meet one of the following criteria:

(A) Is working less than 100 hours per month; or

(B) Has a temporary one-month increase to over 100 hours, but:

(i) Worked less than 100 hours in each of the two previous months;

AND

(ii) Is expected to work less than 100 hours in the following month. (IV-A).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.163 & Title IV-E of the Social Security Act

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0160

Financial Need

A child removed from the home of a specified relative who was not receiving AFDC requires reconstruction of the child's situation to determine whether under rules in effect on 7/16/1996 the child was AFDC eligible. A step-by-step process must be followed.

(1) In cases where a child is physically removed from a parent's home and has not resided with another specified relative within six months of the eligibility month:

(a) First consider the income and resources of the parent(s) or stepparent from whom the child was removed; and

(A) Determine the countable gross earned and unearned income of all the family members in the assistance unit in the eligibility month; and

(B) Include the child placed in substitute care in the assistance unit. Exclude the parent or child receiving SSI or a combination of SSI and other Social Security benefits and exclude them from the number in the household for AFDC calculations.

(b) The next consideration in the income eligibility determination process is to:

(A) Determine the countable gross earned income with disregards and countable unearned income of all the family members in the assistance unit, including the child(ren) who has/have been removed;

(B) An assistance unit is not eligible when all available countable income in the eligibility month, both earned and unearned, exceeds the Adjusted Income Payment/Need Standard under rules in effect 7/16/1996. SSI or a combination of SSI and SSA benefits are excluded as countable income. The first \$50 of child support are excluded. The Adjusted Income Payment/Need Standard is used to determine the actual AFDC grant amount;

(C) An assistance unit is not eligible if in the eligibility month all available resources not excluded by DHS Rules in effect 7/16/1996, are over the Resource Limit.

(2) In cases where a child is living with, or was living within six months of the eligibility month, a specified relative which is not a parent:

(a) Consider child as a household of one.

(b) Disregard the income and resources of the caretaker relative(s);

(c) Determine the countable earned and unearned income and resources available to the child;

(d) Include the child placed in substitute care in the Assistance Unit (Household of one);

(e) Deny Title IV-E eligibility if the child's income is above the No Adult Standards for the ADC Non-Needy Relative Assistance Unit in effect 7/16/1996.

(3) In cases where a child is removed from a minor mother residing in her parent(s)' home.

(a) When a child is removed from a minor mother residing in her parent(s) home, the first step of the eligibility determination process is to:

(A) Exclude the resources of the parent(s) of the minor mother;

(B) Determine the amount of countable income of the parent(s);

(C) Deduct the needs of the parent(s) and their dependents living in the same household at the ADC Adjusted Income Payment/Need Standard in effect 7/16/1996. Do not include the minor mother and her child in the assistance unit;

(D) Allow the standard earned income deduction;

(E) Deduct payments of alimony or child support;

ADMINISTRATIVE RULES

(F) Any remaining income is considered available to the minor parent and their dependent child even if it is not received.

(b) The second step of the eligibility determination process is to:

(A) Determine the minor mother and her child's needs at ADC Adjusted Income Need Standards in effect 7/16/1996;

(B) Deduct the grandparent's income available to the minor parent from the ADC Adjusted Income Need Standard in effect 7/16/1996;

(C) Deny Title IV-E eligibility if the grandparent's income exceeds the Need Standard for the minor parent.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E of the Social Security Act

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0240

Judicial Finding Requirements

(1) Contrary to the Welfare or Best Interest Findings Requirement. To establish IV-E eligibility, a child's removal from the home must have been the result of a judicial finding, unless the child was removed pursuant to a voluntary/custody placement agreement, that continuation of residence in the home would be contrary to the welfare of the child, or that placement would be in the best interests of the child. The Contrary to the Welfare or Best Interest ruling must be made in the first court order that sanctions, even temporarily, the removal of a child from home including pickup orders and detention orders.

(a) Should the court fail to make a "Best Interest" or "Contrary to the Welfare" ruling in the first order issued at the time of the removal, the case will be denied IV-E eligibility for the entire duration of the child's substitute care placement.

(2) Reasonable Efforts Requirement: Effective March 27, 2000 in order to satisfy IV-E eligibility requirements there must be a judicial determination that:

(a) Reasonable efforts were made to prevent a child from being removed from the home; OR

(b) Reasonable efforts are/were not required due to aggravated circumstances to prevent the child's removal from home; AND

(c) Reasonable efforts were made to finalize a permanency plan. The permanency plan may be further identified as:

(A) DHS has made reasonable efforts to make it possible for the child to safely return home; or

(B) DHS has made reasonable efforts to place the child in a timely manner in accordance with the plan and to complete steps necessary to finalize the permanent plan.

(3) Timelines for Reasonable Efforts Judicial findings:

(a) Timeline for Judicial Finding of Reasonable Efforts to Prevent Removal from the Home. The judicial finding as to whether reasonable efforts to prevent the child's removal were made, or were not required due to aggravated circumstances, must be made no later than 60 days from the date the child is removed from the home:

(A) If a judicial finding regarding reasonable efforts to prevent removal from the home is not made within the time frame outlines in (a) above the child is not eligible under the Title IV-E foster care maintenance payments program for the duration of that stay in foster care.

(b) Timeline for Judicial Finding of Reasonable Efforts to Finalize a Permanency Plan. Within twelve months of the date the child is considered to have entered foster care and not less frequently than every twelve months thereafter a judicial finding is required that reasonable efforts have been made to finalize the permanency plan whether the plan is to return safely to the family or another permanency plan as outlined in 2(c) above:

(A) If a judicial finding regarding reasonable efforts to finalize a permanency plan is not made within the time frames outlined in (3)(b) above, the child becomes temporarily ineligible under Title IV-E from the end of the twelfth month following the date the child entered foster care. The child's Title IV-E eligibility remains temporarily unreimbursable until the first of the month in which such a finding is made.

(B) For subsequent hearings the child becomes ineligible the end of the month in which the twelve month hearing was due when the hearing is not held on time. The child's Title IV-E eligibility remains temporarily unreimbursable until the first of the month in which such a finding is made.

(4) Orders Reflecting Recommended Placements. The court order must also:

(a) Allow the agency to make decisions about a change in the child's placement without further court approval; or

(b) Reflect that the court was advised of, and approved, placement or the agency's intent and case plan to place the child at a future date.

(5) Nunc Pro Tunc Orders. Nunc pro tunc are acceptable to correct the omission of a "best interest" or "reasonable efforts" ruling in the original removal order only when court transcripts are available to verify that the judicial determination was made at the original removal hearing.

(6) Replacement Orders. Each time a child is removed from the home in the following instances, a new eligibility determination and a judicial review addressing the circumstances of the child's removal is required regardless of whether the child is already committed to DHS's custody:

(a) The case plan was for the child to remain in the parental home; or

(b) New circumstances or issues arose in the parental home causing the child's replacement; or

(c) The child was under agency supervision and removed from the legal care, custody, and placement of a relative; or

(d) A child in a legally finalized adoptive placement is returned to care; or

(e) When a trial home visit extends beyond 6 months unless the court orders a longer trial home visit.

(7) Exceptions to Replacement Orders. Some Title IV-E-FC eligible children, moved while in care or with interruptions or delays in placement, require no new application or new judicial findings for Title IV-E-FC. The eligibility factors of deprivation, limited income and resources available to the child, and school registration for the 18 year old must still exist, to reopen or continue Title IV-E eligibility. Eligibility may be reopened or established effective the day the child enters paid care for the following otherwise eligible children:

(a) Children moved from a paid or non-paid relative placement into family foster care;

(b) Children at home awaiting a residential opening and the court has approved placement in a residential facility;

(c) Children on the run or taken by the parent without DHS's permission are located in the home of the parent and immediately returned to care;

(d) Children on the run are located in the home of the parent and are allowed to remain there for a reasonable time, with the worker's consent, until a placement becomes available;

(e) Children with interrupted placement resulting from:

(A) A runaway; or

(B) Placement in a detention facility or a juvenile training school; or

(C) Hospitalization.

(f) Children returned to care from the parental home when a trial visit fails. A judicial review is not required for a failed trial visit under the following situations:

(A) DHS custody, Administrative Reviews and Permanency Hearings were continued during the trial visit period; and

(B) At the time the child was sent home, the case record narration or documentation designated that the child's return home was on a trial visit basis; and

(C) The duration of the trial visit was no longer than six months unless the court orders a longer trial home visit.

(g) Children in continuous placement and returned by court order to the care and custody of DHS from the custody of a private agency or substitute care provider.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E of the Social Security Act & PL 105-89 (ASFA)

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0276

Judicial Finding of Reasonable Efforts at Review

(1) Timeline for Judicial Finding of Reasonable Efforts to Finalize a Permanency Plan. Within twelve months of the date the child is considered to have entered foster care and every twelve months thereafter a judicial finding is required that reasonable efforts have been made to finalize the permanency plan whether the plan is to return safely to the family or another permanency plan as outlined in 413-100-0240(2)(c).

(a) If a judicial finding regarding reasonable efforts to finalize a permanency plan is not made within the time frames outlines in (1) above, the child becomes temporarily ineligible under Title IV-E from the end of the twelfth month following the date the child entered foster care. The child's Title IV-E eligibility remains temporarily unreimbursable until the first of the month in which such a finding is made.

(b) For subsequent hearings the child becomes ineligible the end of the month in which the twelve month hearing was due when the hearing is not held on time. The child's Title IV-E eligibility remains temporarily unreimbursable until the first of the month in which such a finding is made.

Stat. Auth.: ORS 418.005

ADMINISTRATIVE RULES

Stats. Implemented: Title IV-E of the Social Security Act, ORS 419B.175, 419B.180, 419B.185
Hist.: SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

413-100-0290

Parental Deprivation at Review

(1) Existing Deprivation. To maintain Title IV-E reimbursability the child must be considered to be continually deprived of the parental support and care of one or both parents. However the deprivation need not be the same as at the time of the original application. The following constitutes parental deprivation:

(a) Divorce, marital separation, parental incarceration, parents were never married, death of a parent in single parent households, or absent parents for children removed from a relative home;

(b) Unemployment or incapacity in two-parent households. Because the parents' wages and/or benefits are disregarded at review, reimbursability may continue when:

(A) Both parents are unemployed or incapacitated; or

(B) Both parents are unemployed or each parent is working less than 100 hours per month, or either parent has a temporary one-month increase to over 100 hours, but:

(i) Worked less than 100 hours in each of the two previous months; and

(ii) Is expected to work less than 100 hours in the upcoming month.

(C) One parent is incapacitated and the other is employed.

(c) Continued absence of a parent when:

(A) A child is removed from the home of a relative other than the parent; or

(B) Parental rights of the parent(s) from whom removal was based are terminated or relinquished. The status of the parents does not have to be verified after termination or relinquishment. (See OAR 413-100-0280.)

(2) Deprivation Not Existing: Children are not deprived of parental support and care and are not eligible for IV-E reimbursement at review when:

(a) The parent remarries, if removal was based on that parent, and parental deprivation based on incapacity or unemployment does not exist in the two parent household; or

(b) The parent reconciles with the parent of the child in care and parental deprivation based on incapacity or unemployment does not exist in the two parent household; or

(c) Both parents return to reside in the home of the specified relative from whom the child was legally removed, or on whom AFDC linkage was based; or

(d) The child returns to the home of a specified relative from whom the child was legally removed, and on whom eligibility was based; or

(e) A parent visits extensively in the relative foster home. Parental visits in the child's home and that of the relative may not exceed four times per week, or a total of 12 hours per week without a visitation plan outlined or reasonable explanation documented in the case and eligibility file.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.163 & Title IV-E of the Social Security Act
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04

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

Adm. Order No.: OMAP 1-2004

Filed with Sec. of State: 1-23-2004

Certified to be Effective: 2-1-04

Notice Publication Date: 1-1-04

Rules Adopted: 410-121-0033

Subject: The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. Rule 410-121-0033 is adopted to establish polypharmacy profiling to allow for the limitation of prescription drugs for specific clients receiving over 15 unique drugs in a six-month period.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0033

Polypharmacy Profiling

(1) The Office of Medical Assistance Programs (OMAP) may impose prescription drug payment limitations on clients with more than 15 unique fee-for-service drug prescriptions in a six-month period.

(2) OMAP will review the client's drug therapy in coordination with the client's prescribing practitioner to evaluate for appropriate drug therapy.

(3) Appropriate drug therapy criteria will include, but is not limited to, the following:

(a) Overuse of selected drug classes;

(b) Under-use of generic drugs;

(c) Therapeutic drug duplication;

(d) Drug to disease interactions;

(e) Drug to drug interactions;

(f) Inappropriate drug dosage;

(g) Drug selection for age;

(h) Duration of treatment;

(i) Clinical abuse or misuse.

(4) The OMAP Medical Director in conjunction with the Drug Utilization Review (DUR) Board will make final determinations on imposed drug prescription payment limitations relating to this policy.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 1-2004, f. 1-23-04, cert. ef. 2-1-04

.....

Adm. Order No.: OMAP 2-2004

Filed with Sec. of State: 1-23-2004

Certified to be Effective: 2-1-04

Notice Publication Date: 1-1-04

Rules Amended: 410-121-0300

Subject: The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. Rule 410-121-0300 is being amended to update the CMS Federal Upper Limits for Drug Payments listing.

This filing is to update Transmittal #37, with Title XIX State Agency Letter Number 03-06, changes to the list are effective for services rendered on or after November 2, 2003, to revise drug products information in compliance with federal regulations from 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/drug10.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, Title XIX State Agency Letter Number 03-06, with changes to be effective November 2, 2003, and is available for downloading on OMAP's Website, (<http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/>). To request a hard copy, call OMAP.

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

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;

ADMINISTRATIVE RULES

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 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(Temp), 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; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04

Adm. Order No.: OMAP 3-2004
Filed with Sec. of State: 1-23-2004
Certified to be Effective: 2-1-04
Notice Publication Date: 1-1-04
Rules Amended: 410-121-0320

Subject: The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. Rule 410-121-0320, Oregon Maximum Allowable Cost (OMAC) lists generated monthly and each list indicates the amount, per product, that OMAP will reimburse to providers for products provided to OMAP clients during that particular month. Rule 410-121-0320 is revised to include, by reference, all monthly First Health Service's OMAC listings received by OMAP for the time period of January 1, 2004 through and including December 1, 2004. Current OMAC lists are available on OMAP's website.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0320

Oregon Maximum Allowable Cost (OMAC)

(1) The Oregon maximum allowable cost, or the maximum amount that the Office of Medical Assistance Programs (OMAP) will reimburse for prescribed drugs, is determined by OMAP's claims processing company, First Health Services. First Health Services determines the maximum allowable cost on selected multiple-source drug designation when a bioequivalent drug product is available from at least two wholesalers serving the State of Oregon.

(2) First Health Services generates and maintains all official OMAC lists and provides a copy of each list to OMAP. OMAC lists are generated monthly and each list indicates the amount, per product, that OMAP will reimburse to providers for products provided to OMAP clients during that particular month. For example: The OMAC list, January 1, 2003, includes the amounts OMAP will reimburse for products provided during the month of January 2003; the list, February 1, 2003, covers the month of February 2003, etc.

(3) OMAP includes in rule by reference the OMAC lists for February 1, 2002, March 1, 2002, April 1, 2002, July 1, 2002, August 1, 2002, September 1, 2002, October 1, 2002, November 1, 2002, December 1, 2002, January 1, 2003, February 1, 2003, March 1, 2003, April 1, 2003, May 1, 2003, June 1, 2003, July 1, 2003, August 1, 2003, September 1, 2003, October 1, 2003, November 1, 2003, and December 1, 2003.

(4) OMAP includes in rule by reference the OMAC lists for January 1, 2004, February 1, 2004, March 1, 2004, April 1, 2004, May 1, 2004, June 1, 2004, July 1, 2004, August 1, 2004, September 1, 2004, October 1, 2004, November 1, 2004 and December 1, 2004.

(5) Current OMAC lists are available for review and/or downloading on OMAP's website: <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/>. Future lists, referenced in this rule, will be available and posted to OMAP's website upon receipt from First Health Services.

(6) The OMAC list does not apply if a prescriber certifies that a single-source (brand) drug is medically necessary.

Stat. Auth.: ORS 184.750, 184.770, 411 & 414
Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-29-89, cert. ef. 10-1-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90; Renumbered from 461-016-0340; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 6-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 17-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 28-2002(Temp), f. 6-28-02, cert. ef. 7-1-02 thru 12-1-02; OMAP 35-2002(Temp), f. & cert. ef.

8-14-02 thru 1-1-03; OMAP 38-2002(Temp), f. & cert. ef. 8-30-02 thru 1-15-03; OMAP 40-2002(Temp), f. & cert. ef. 10-1-02 thru 2-15-03; OMAP 68-2002(Temp), f. & cert. ef. 11-15-02 thru 4-1-03; OMAP 7-2003, f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 52-2003, f. & cert. ef. 8-5-03; OMAP 3-2004, f. 1-23-04, cert. ef. 2-1-04

Adm. Order No.: OMAP 4-2004
Filed with Sec. of State: 1-23-2004
Certified to be Effective: 2-1-04
Notice Publication Date: 1-1-04
Rules Amended: 410-133-0090

Subject: The School-Based Health Services (SBHS) program administrative rules govern the Office of Medical Assistance Program (OMAP) payment for products and services provided to clients. Rule 410-133-0090 was temporarily amended, effective December 15, 2003, to describe billing and payment for the SBHS cost-sharing program. This rule requires the state share from the public school medical providers to be public funds based on the Federal Medical Assistance Percentage (FMAP). 410-133-0090 is permanently amended effective February 1, 2004.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-133-0090

Provider Payment

(1) Payment will be made to the enrolled public education entity as the performing provider for those services provided by the employed staff person. While the education entity shall hold primary responsibility for providing these services with its own qualified staff, it may also contract, on a supplemental basis only, for covered services with individuals or organizations that meet qualifications for medical staff as outlined in OAR 410-133-0120.

(2) Signing the Provider Enrollment Agreement sets forth the relationship between the State of Oregon, Department of Human Services and the public school medical provider and constitutes agreement by the provider to comply with all applicable rules of the Medical Assistance Program, federal and state laws or regulations.

(3) The public school medical provider will bill according to OAR 410 division 133 rules. Payments will be made through the Medical Management Information System (MMIS).

(4) SBHS for public school medical providers is a cost-sharing (Federal Financial Participation matching) program. In addition to the requirements set forth in subsections (1)-(3) of this rule, and pursuant to 42CFR433.10, DHS may monthly, but will no less than quarterly, invoice the public school medical provider for their non-federal matching share based on the current Federal Medical Assistance Percentage (FMAP) rate. The public school medical provider shall pay the amount stated in the invoice within 30 days of the date of the invoice.

(a) The public school medical provider's share means the public funds share of the Medicaid payment amount. Pursuant to 42CFR433.51, public funds may be considered as the State's share in claiming federal financial participation if the public funds meet the following conditions: The public funds are transferred to DHS from public agencies; and, the public funds are not federal funds or are federal funds authorized by federal law to be used to match other federal funds.

(b) The public school medical provider's non-federal matching share shall be based on the current Federal Medical Assistance Percentage (FMAP) rate for Oregon provided annually by the Centers for Medicare and Medicaid Services. This percentage can vary each federal fiscal year. The DHS invoice shall be based on the FMAP in effect at the time of the State's expenditure to the public school medical provider.

(c) The public school medical provider shall submit to OMAP an original signed document certifying that the public funds transferred to OMAP (for the non-federal matching share) by the public school medical provider under this rule are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

(5) Failure to timely remit the non-federal share described in subsections (4) will constitute an overpayment, and will make the provider subject to overpayment recoupment or other remedy pursuant to OMAP General Rules, OAR 410-120-1400 through 410-120-1685.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 41-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 88-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 4-2004, f. 1-23-04, cert. ef. 2-1-04

ADMINISTRATIVE RULES

Adm. Order No.: OMAP 5-2004(Temp)

Filed with Sec. of State: 2-4-2004

Certified to be Effective: 2-4-04 thru 6-15-04

Notice Publication Date:

Rules Amended: 410-121-0157

Subject: Subject Matter: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. Rule 410-121-0157 is amended to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Updates include information from CMS Release #127, dated November 4, 2003 and #128, dated January 21, 2004.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0157

Participation in the Medicaid Drug Rebate Program

(1) The Oregon Medicaid Pharmaceutical Services Program is a participant in the Centers for Medicare and Medicaid Services (CMS) formerly Health Care Financing Administration (HCFA) Medicaid Drug Rebate Program, created by the Omnibus Budget Reconciliation Act (OBRA) of 1990. The Medicaid Drug Rebate Program requires a drug manufacturer to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. The drug rebate program is administered by CMS's Center for Medicaid and State Operations (CMSO). Pharmaceutical companies participating in this program have signed agreements with CMS to provide rebates to OMAP on all their drug products. OMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Names and Label Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. OMAP receives this information from CMS in the form of numbered and dated Releases. OMAP includes in rule by reference, Release #127, dated November 4, 2003 and #128, dated January 21, 2004. This information is available on OMAP's website: <http://www.dhs.state.or.us/policy/health-plan/rules/>, and on the CMS website: www.cms.hhs.gov/medicaid/drugs/drughmpg.asp, or by contacting CMS.

(3) OMAP contracts with First Health Services to manage the Medicaid Rebate Dispute Resolution program. Pharmacy providers must verify the accuracy of their Medicaid pharmacy claims with First Health Services within 30 days of request in instances where drug manufacturers dispute their claim information. Verification can be photocopies of drug invoices showing that the billed products were in stock during the time of the date of service.

(4) The actual NDC dispensed and the actual Metric decimal quantity dispensed, must be billed.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 16-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 22-1991, f. & cert. ef. 5-16-91; HR 23-1991(Temp), f. 6-14-91, cert. ef. 6-17-91; HR 31-1991, f. & cert. ef. 7-16-91; HR 36-1991(Temp), f. 9-16-91, cert. ef. 10-1-91; HR 45-1992, f. & cert. ef. 10-16-91; HR 50-1991(Temp), f. & cert. ef. 10-29-91; HR 1-1992, f. & cert. ef. 1-2-92; HR 13-1992, f. & cert. ef. 6-1-92; HR 21-1992, f. 7-31-92, cert. ef. 8-1-92; HR 31-1992, f. & cert. ef. 10-1-92; HR 34-1992, f. & cert. ef. 12-1-92; HR 4-1993, f. 3-10-93, cert. ef. 3-11-93; HR 7-1993 (Temp), f. & cert. ef. 4-1-93; HR 14-1993, f. & cert. ef. 7-2-93; HR 24-1993, f. & cert. ef. 10-1-93; HR 17-1994, f. & cert. ef. 4-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 43-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 5-1-01; OMAP 3-2001, f. & cert. ef. 3-16-01; OMAP 24-2001(Temp), f. 5-9-01, cert. ef. 5-10-01 thru 11-1-01; OMAP 25-2001(Temp), f. 6-28-01, cert. ef. 7-1-01 thru 12-1-01; OMAP 27-2001(Temp), f. 7-30-01, cert. ef. 8-1-01 thru 1-26-02; OMAP 48-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 56-2001(Temp), f. & cert. ef. 11-1-01 thru 4-15-02; OMAP 57-2001(Temp), f. 11-28-01, cert. ef. 12-1-01 thru 4-15-02; OMAP 66-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 4-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; OMAP 16-2002(Temp), f. & cert. ef. 4-12-02 thru 9-1-02; OMAP 20-2002(Temp), f. & cert. ef. 5-15-02 thru 10-1-02; OMAP 34-2002(Temp), f. & cert. ef. 8-14-02 thru 1-15-03; OMAP 67-2002(Temp), f. & cert. ef. 11-1-02 thru 3-15-03; OMAP 6-2003(Temp), f. & cert. ef. 2-14-03 thru 7-1-03; OMAP 38-2003, f. & cert. ef. 5-9-03; OMAP 39-2003(Temp), f. & cert. ef. 5-15-03; OMAP 48-2003, f. & cert. ef. 7-7-03; OMAP 74-2003, f. & cert. ef. 10-1-03; OMAP 5-2004(Temp), f. & cert. ef. 2-4-04 thru 6-15-04

Adm. Order No.: OMAP 6-2004

Filed with Sec. of State: 2-10-2004

Certified to be Effective: 3-15-04

Notice Publication Date: 1-1-04

Rules Amended: 410-122-0040

Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DME) program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. 410-122-0040 is amended to centralize prior/payment authorizations of durable medical equipment, prosthetics, orthotics and supplies. Miscellaneous medical services that are currently authorized by branch offices are authorized by OMAP's Medical Unit. Services currently authorized by the Medically Fragile Children's Unit continue to be authorized by that unit. Prior/payment authorization for clients in the FFS (fee-for-service) Medical Case Management Program continue to be authorized by OMAP's Medical Case Management contractor.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0040

Prior Authorization of Payment

(1) Procedure codes in the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) rules that indicate prior authorization (PA) is required are intended for fee-for-service clients only. To determine PA requirements for clients enrolled in Managed Care Plans, contact the Plan for their policy governing PA.

(2) PA of payment is required for non-Medicare clients for DMEPOS. This is indicated by the notation, "PA required...", immediately following the description of the procedure code, even if private insurance is billed first. PA is not required for Medicare clients except for Medicare non-covered services. When a client is in a skilled nursing facility (SNF) under a covered, Medicare part A stay, all services must be billed to Medicare by the SNF, except for customized prosthetic devices, therefore no prior authorization from OMAP is required for DMEPOS. Obtaining PA is the responsibility of the DME provider.

(3) Prior authorization authorities for PA requests (or for changes to existing authorizations) are as follows:

(a) Services for clients identified as Medically Fragile Children's Unit clients are prior authorized by the Department of Human Services (DHS) Medically Fragile Children's Unit;

(b) Services for clients identified on the Office of Medical Assistance Programs (OMAP) Medical Care ID as Children, Adults and Families (CAF) (formerly Adult and Family Services (AFS) or State Office of Services for Children and Families (SOSCF formerly CSD) or Seniors and People with Disabilities (SPD) (formerly Senior and Disabled Services Division (SSD) clients (except for Medically Fragile Children (MFC)) are prior authorized by OMAP. All required documentation for OMAP requests should be mailed or faxed to OMAP;

(c) Services for clients enrolled in the fee-for-service (FFS) Medical Case Management (MCM) program are prior authorized by the MCM contractor. Failure to obtain prior authorization for a service as indicated in rule, is not reimbursable by OMAP.

(4) DMEPOS providers must submit the PA request to the authorizing authority in writing via mail or fax. Postmark or fax dates will be used as the date of contact. Providers may use the OMAP 3122, or a reasonable facsimile which contains the same information, for the request.

(5) A request for a service provided after the authorizing authority's normal working hours, must be received by the authorizing authority in writing within five working days from the initiation of service.

(6) PA does not guarantee eligibility or payment — always check for the client's eligibility on the date of service.

(7) For clients determined eligible after services are provided, authorization may still be obtained if the PA would have been granted had eligibility been determined prior to service.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 3-1982, f. 1-20-82, ef. 2-1-82; AFS 14-1984 (Temp), f. & ef. 4-2-84; AFS 22-1984(Temp), f. & ef. 5-1-84; AFS 40-1984, f. 9-18-84, ef. 10-1-84; AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 13-1991, f. & cert. ef. 3-1-91; Renumbered from 461-024-0010; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 6-2004, f. 2-10-04 cert. ef. 3-15-04

Adm. Order No.: OMAP 7-2004

Filed with Sec. of State: 2-13-2004

Certified to be Effective: 3-15-04

ADMINISTRATIVE RULES

Notice Publication Date: 9-1-03

Rules Amended: 410-121-0146, 410-121-0160

Subject: The Pharmaceutical Services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for pharmaceutical products and services provided to clients. Having received required approval from Centers for Medicare and Medicaid Services (CMS), rules 410-121-0146 and 410-121-0160 are permanently revised to change the compound dispensing fee from one dispensing fee per prescription ingredient to \$7.50 per compound prescription, effective March 1, 2004. Other revisions are made to take care of necessary housekeeping corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0146

Dispensing Limitations

(1) The quantity indicated by the prescriber on the prescription may not be reduced except when in conflict with the limitations below. The Office of Medical Assistance Program (OMAP) will consider any form of prescription splitting, except as required below in this rule, as a billing offense and will take appropriate action as described in the General Rules (OAR 410 division 120).

(2) The following dispensing limitations apply to OMAP reimbursement:

(a) Dispensing, except as otherwise noted in this rule, is limited to the amount prescribed but not to exceed a 34-day supply of the drug;

(b) Exceptions to the 34-day supply limitation includes mail order pharmacy dispensed through OMAP contracted Mail Order Pharmacy and prescription in the drug classes listed below. These drug classes are limited to the amount prescribed by the physician, but not to exceed a 100-day supply of the drug. Exceptions (codes are from First Data Bank's Standard Therapeutic Classification Codes):

- (A) Anticonvulsants, Code 48;
- (B) Thyroid Preparation, Code 55;
- (C) Rauwolfias, Code 70;
- (D) Vasodilators, Coronary, Code 72;
- (E) Vasodilators, Peripheral, Code 73;
- (F) Digitalis preparations, Code 74;
- (G) Xanthine derivatives, Code 75;
- (H) Contraceptives, Topical, Code 36;
- (I) Contraceptives, Oral, Code 63.

(c) After stabilization of a diabetic, a minimum of a one-month supply of Insulin should be provided per dispensing;

(d) For vaccines available in multiple dose packaging, a dispensing fee will be allowed for each multiple dose. When vaccines are administered at the pharmacy, refer to OAR 410-121-0185;

(e) For compounded prescriptions, components of the prescription shall be billed separately. Any reimbursement received from a third party for compounded prescriptions must be split and applied equally to each component.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 26-1984, f. & ef. 6-19-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 52-1986, f. & ef. 7-2-86; AFS 15-1987, f. 3-31-87, ef. 4-1-87; AFS 4-1989, f. 1-31-89, cert. ef. 2-1-89; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; Renumbered from 461-016-0090; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; Renumbered from 461-016-0210; HR 16-1992, f. & cert. ef. 7-1-92; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1996(Temp), f. & cert. ef. 8-1-96; HR 27-1996, f. 12-11-96, cert. ef. 12-15-96; HR 20-1997, f. & cert. ef. 9-12-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 74-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04

410-121-0160

Dispensing Fees

(1) Pharmacy providers must apply for an Office of Medical Assistance Program (OMAP) review of their pharmacy dispensing fee level by completing a Pharmacy Prescription Survey (OMAP 3062) when one of the following situations occurs:

(a) The pharmacy initiates dispensing medications to clients in facilities and the most recent two months' worth of dispensing data is available. OMAP will only accept the most recent two months' worth of data; or

(b) The pharmacy discontinues dispensing medications to clients in facilities. The pharmacy provider is required to notify OMAP within 60 days and complete a new Pharmacy Prescription Survey with the most

recent two-months worth of dispensing data available. OMAP will only accept the most recent two months worth of data; or

(c) A completed Pharmacy Prescription Survey signed by the pharmacist in charge must be submitted to OMAP to initiate a review of dispensing fees.

(2) Unless otherwise provided, the professional dispensing fee allowable for services is as follows:

(a) \$3.50 — Retail Pharmacies;

(b) \$3.91 — Institutional Pharmacies operating with a True or Modified Unit Dose Delivery System as defined by OMAP;

(c) \$7.50 — Compound prescriptions with two or more ingredients.

(A) This dispensing fee applies to clients identified on DHS case files as residing in a Long Term Care Facility;

(B) All other dispensing fees for institutional pharmacies will be at the retail rate.

(3) The True or Modified Unit Dose Delivery System applies to those providers who give this service to over fifty percent of their patient population base associated with a particular Medicaid provider number.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 41-1984(Temp), f. 9-24-84, ef. 10-1-84; AFS 1-1985, f. & ef. 1-3-85; AFS 54-1985(Temp), f. 9-23-85, ef. 10-1-85; AFS 66-1985, f. 11-5-85, ef. 12-1-85; AFS 13-1986(Temp), f. 2-5-86, ef. 3-1-86; AFS 36-1986, f. 4-15-86, ef. 6-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 28-1987(Temp), f. & ef. 7-14-87; AFS 50-1987, f. 10-20-87, ef. 11-1-87; AFS 41-1988(Temp), f. 6-13-88, cert. ef. 7-1-88; AFS 64-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; Renumbered from 461-016-0101; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 20-1990, f. & cert. ef. 7-9-90; Renumbered from 461-016-0260; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 21-1993(Temp), f. & cert. ef. 9-1-93; HR 12-1994, f. 2-25-94, cert. ef. 2-27-94; OMAP 5-1998(Temp), f. & cert. ef. 2-11-98 thru 7-15-98; OMAP 22-1998, f. & cert. ef. 7-15-98; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 50-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 60-2001, f. & cert. ef. 12-11-01; OMAP 32-2003(Temp), f. & cert. ef. 4-15-03 thru 9-15-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04

Department of Human Services, Public Health Chapter 333

Adm. Order No.: PH 2-2004

Filed with Sec. of State: 1-16-2004

Certified to be Effective: 1-16-04

Notice Publication Date: 12-1-03

Rules Amended: 333-560-0010

Rules Repealed: 333-635-0000, 333-635-0010, 333-635-0020, 333-635-0030

Subject: OAR 333-560-0010 is amended to allow for a limited number of freestanding hospice facilities to receive a certificate of need under the abbreviated review process. OAR 333-635-0000, 333-635-0010, 333-635-0020 and 333-635-0030 constitute division 635, Demonstration of Need for Hospice Beds. These rules are repealed.

The aforementioned rule changes replace temporary rules that expire on January 15, 2004

Rules Coordinator: Christina Hartman—(503) 731-4405

333-560-0010

Abbreviated Certificate of Need Review for Specific Projects

The following types of projects are eligible for abbreviated review:

(1) The establishment of new health services or new facilities which, based on

documentation submitted by the applicant and found acceptable by the division, will predominantly or exclusively service medically indigent patients;

(a) Such documentation should include any admissions policies or needs tests to be used by the applicant in determining the appropriateness of admissions. Documentation should also include information on projected revenues for the facility or service, including the sources of such revenues;

(b) If the facility or service, in the future, wishes to provide services to persons who are not medically indigent, either because of a change of ownership or for other reasons, the applicant must submit a new letter of intent detailing the proposed changes in the population to be served. The division may consider such a change to constitute the establishment of a new health service subject to review, if it concludes that the patients to be served will no longer be predominantly medically indigent, and if it concludes that there will be a substantial impact on the cost of patient care;

ADMINISTRATIVE RULES

(c) For the purposes of this section, persons will be considered to be medically indigent if they are uninsured by either public or private insurers or payers for the types of services being proposed and if their household or family income is equal to or less than 200 percent of the poverty income established in federal regulations. Except for projects involving long-term care facilities or services, persons will also be considered to be medically indigent if they are eligible for Medicaid services.

(2) Partnerships or joint ventures between hospitals/health systems and existing non-hospital-based, long-term care facilities neither of which is owned or controlled by the same entity, when all of the following criteria are met:

(a) The project does not result in a net increase in licensed long-term care beds in the service area. In this context "service area" has the same meaning as it is given in OAR 333-610-0030(1);

(b) The partnership or joint venture is for a minimum of two years and is terminable only for cause. As used in this rule, the term "partnership" is intended to be defined broadly, so that it covers collaboration beyond just a legal partnership, including but not limited to a jointly owned corporation or a limited liability corporation. Notwithstanding OAR 333-550-0010(3)(a), if the beds operated under the partnership or joint venture are proposed to be sold or otherwise transferred, the transfer shall be subject to the full review process detailed in Division 570 of this chapter and to the application and review criteria established in Division 580, or if applicable, an expedited review under this chapter. If as part of the partnership or joint venture, conversion of existing space within a hospital building occurred, expedited review cannot later be sought under OAR 333-560-0110. If the beds operated under the partnership or joint venture are to be relocated back to the non-hospital-based, long-term care facility the bed relocation is eligible for an abbreviated review;

(c) The hospital/health system and the long-term care facility can demonstrate to the satisfaction of the division that projected per diem inpatient routine service costs in the partnership or joint venture setting (calculated in conformance with Medicare cost report parameters) will not exceed 125% of the per diem routine service cost limitation computed by the fiscal intermediary for freestanding skilled nursing facilities in its urban or rural location during the first two years of operation. The routine cost limitation may be adjusted, as appropriate, to allow for reasonable inflation as measured by the DRI (HCFA) McGraw Hill Nursing Facility Market Basket Index;

(d) The applicant shall submit a completed copy of Forms CN-3 and CN-11. The applicant shall also submit a summary for the first two years of operation of projected revenue, expenses, operating income, non-operating revenue and net income with and without the project;

(e) Projects approved under OAR 333-560-0010(2) are subject to the full review process detailed in Division 570 of this chapter and to the application and review criteria established in Division 580, or, if applicable, and expedited review under this chapter, if the cost limitation required under subsection (2)(c) of this rule is not maintained for the first two years of operation.

(3) A project involving the relicensing of long-term care beds by a facility participating in a Senior and Disabled Services Division approved Nursing Home Vision 2000 Project ("Vision 2000 Project"), if all of the following conditions are met:

(a) The number of long-term care beds to be added by the facility does not exceed the number of long-term care beds delicensed by the facility because of participation in the Vision 2000 project; and

(b) Relicensure of beds to be added will occur within five years of the date that the first beds or beds were delicensed at the facility because of participation in the Vision 2000 Project; and

(c) Notwithstanding OAR 333-565-0000(4), an application fee of \$1,500 is paid;

(d) The following applies to Senior and Disabled Services Division approved Vision 2000 Projects:

(A) Notwithstanding any contrary provision in OAR Chapter 333, during the five-year period referred to in subsection (3)(b) of this rule, the delicensed beds will be counted as existing long-term care beds for determining the need for additional long-term care beds in the geographical service area under Division 610 of this chapter. The delicensed beds will not be considered existing long-term care beds for the purpose of OAR 333-560-0110 and 333-560-0120;

(B) Notwithstanding paragraph (3)(d)(A) of this rule, if a Vision 2000 Project participating facility notifies the division in writing of its intention not to seek relicensure of some or all the beds within the five-year period, these beds will not be counted as existing long-term care beds for determining the need for additional long-term care beds in the geographical

service area under Division 610 of this chapter, and the facility will be foreclosed from seeking the addition of these beds under section (3) of this rule;

(C) The sale of a Vision 2000 Project participating facility does not affect the ability of the facility to seek the addition of beds under section (3) of this rule as long as the other as the other requirements of the rule are met.

(4) Development of a Freestanding Hospice Facility, as that term is used in OAR 333-500-0010(1)(a), if all the following conditions are met:

(a) The number of Freestanding Hospice Facilities that can be approved under this section is limited to a total of six. Facilities approved under this section will be required to report the information specified in subsection 4(e) of this rule to the Certificate of Need Program which will allow it to monitor the effect of these facilities and to develop appropriate rules by which to judge the need for any future facilities;

(b) Projects will be considered for abbreviated review in the order in which a completed letter of intent is received for the project. The provisions of OAR 333-560-0030 shall not apply;

(c) The applicant shall submit a completed copy of Forms CN-1 and CN-3;

(d) The applicant shall submit a population-based needs assessment for the proposed facility. The needs assessment shall include, but not be limited to, the following elements:

(A) A discussion of why this facility is needed in the geographic area served by the applicant. This discussion shall take into account the actual and projected death rates by age and sex; an estimate of how many of those individuals would have been eligible for hospice services and the historical utilization of hospice services; an estimate of how many of those individuals would have benefited from inpatient hospice care and the historical utilization of inpatient care for hospice patients; the applicant's market share of hospice services and any anticipated changes in that market share; the effect of the proposed facility on the utilization of inpatient care in all settings both by the patients served by the applicant and by other hospice providers in the geographic area (if any); projected population growth by age and sex for the area; and household composition, particularly the number of people living alone by age and sex. The discussion shall also include information about the availability of inpatient care in the geographic area, an explanation of why it is preferable for patients to receive care in the proposed facility as opposed to other possible settings and an explanation of how the availability of the proposed facility will impact the continuum of care available in geographic area; and

(B) A projected income statement for the first five years of operation of the facility accompanied by a narrative explaining the assumptions underlying the projections. Information concerning payer source, number of admissions, numbers of deaths and discharges, and length of stay shall be provided. If the facility is to provide residential care beds, such information shall also be provided for those beds. The income statement shall follow the format used by Form CN-5.

(e) The applicant agrees to provide the following information to the Certificate of Need program on an annual basis for a period of five years after the facility begins operation:

(A) An income statement accompanied by a narrative discussion of the information provided. Information concerning payer source, number of admissions, numbers of deaths and discharges, and length of stay shall be provided. If the facility provides residential care beds, such information shall also be provided for those beds. The income statement shall follow the format used by Form CN-5;

(B) A statement with supporting data discussing the impact on the age adjusted rates of nursing home and hospital deaths in the geographic area served by the applicant; the impact on the rate of hospice admissions to nursing homes and hospitals in the area; and the impact on the rate of deaths of hospice patients in nursing homes and hospitals; and

(C) A statement discussing data collected from a satisfaction survey tool which measures whether families and other persons closely associated with the patient were satisfied with the different aspects of their loved one's end-of-life care and the environment provided by the facility.

[ED. NOTE: Forms referenced are available from the agency.]

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

Stat. Auth.: ORS 431.120(6) & ORS 442.315

Stats. Implemented: ORS 431.120(6) & ORS 442.315

Hist.: HD 13-1994, f. & cert. ef. 4-22-94; HD 14-1994(Temp), f. & cert. ef. 4-28-94; HD 9-1995(Temp), f. & cert. ef. 11-14-95; HD 3-1997, f. & cert. ef. 2-3-97; OHD 5-1998, f. & cert. ef. 6-16-98; OHD 11-1998, f. & cert. ef. 10-22-98; OHD 10-2002, f. 7-3-02 cert. ef. 7-5-02; PH 10-2003(Temp), f. & cert. ef. 7-31-03 thru 1-15-04; PH 2-2004, f. & cert. ef. 1-16-04

Adm. Order No.: PH 3-2004(Temp)

Filed with Sec. of State: 2-6-2004

Certified to be Effective: 2-6-04 thru 7-30-04

ADMINISTRATIVE RULES

Notice Publication Date:

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, 333-536-0100

Subject: Retroactively adopts rules that were previously submitted to the Secretary of State's office on December 4, 2002. The previously submitted rules established standards for licensure of In-Home Care Agencies as required by statute. 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.

Excepting one new rule regarding the effective date, these rules are identical to the rules previously filed with the Secretary of State that became effective February 1, 2003. Revision of these rules will follow.

Rules Coordinator: Christina Hartman—(503) 731-4405

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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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) "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 contract 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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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.

ADMINISTRATIVE RULES

(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 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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 licensing program:

(a) An established in-home 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 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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 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 183.550.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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.

ADMINISTRATIVE RULES

(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.

Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 - 443.350
Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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;

(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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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:

ADMINISTRATIVE RULES

(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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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.

(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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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

ADMINISTRATIVE RULES

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

(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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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.

ADMINISTRATIVE RULES

(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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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.

(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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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;

ADMINISTRATIVE 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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

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 - 443.350

Hist.: OHD 19-2002, f. 12-4-02, cert. ef. 2-1-03; PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

333-536-0100

Effective Date

The effective date of rules 333-536-0000, 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, and 333-536-0095 shall be February 1, 2003.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 - 443.350

Hist.: PH 3-2004(Temp), f. & cert. ef. 2-6-04 thru 7-30-04

Adm. Order No.: PH 4-2004

Filed with Sec. of State: 2-6-2004

Certified to be Effective: 2-6-04

Notice Publication Date: 1-1-04

Rules Amended: 333-505-0007

Subject: Amends OAR 333-505-0007 that adopts the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application in order to incorporate changes recommended by the Advisory Committee on Physician Credentialing Information (ACPCI) in the Office for Oregon Health Policy and Research. The ACPCI met according to enrolled HB 2144 and statute to review and update the Oregon Practitioner Credentialing and Recredentialing Application forms, which were originally approved by the Advisory Committee on November 14, 2000. The applications are adopted pursuant to the authority of ORS 442.807 for the purpose of enabling the collection of uniform information necessary for health care service contractors to credential physicians seeking designation as a participating provider for a health plan, thereby implementing ORS 442.800 to 442.807. The Director of the Department of Consumer and Business Services and the Director of the Department of Human Services are required to adopt identical rules in a timely manner to carry out the recommendations of the ACPCI.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-505-0007

Physician Credentialing, Health Care Service Contractors

(1) The Oregon Practitioner Credentialing application and the Oregon Practitioner Recredentialing Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPCI) on October 21, 2003, are adopted with respect to health care service contractors.

(2) Each health care service contractor shall use the application forms adopted in section (1) of this rule.

(3) This rule is adopted pursuant to the authority of ORS 442.807 for the purpose of enabling the collection of uniform information necessary for health care service contractors to credential physicians seeking designation as a participating provider for a health plan, thereby implementing ORS 442.800 through 442.807 with respect to health care service contractors.

Stat. Auth.: ORS 442.807

Stats. Implemented: ORS 442.800-ORS 442.807

Hist.: OHD 5-2002, f. & cert. ef. 3-4-02; PH 4-2004, f. & cert. ef. 2-6-04

Adm. Order No.: PH 5-2004(Temp)

Filed with Sec. of State: 2-13-2004

Certified to be Effective: 2-13-04 thru 7-30-04

Notice Publication Date:

Rules Adopted: 333-162-1005

Rules Amended: 333-029-0105, 333-029-0110, 333-030-0095, 333-150-0000, 333-157-0045, 333-162-0300, 333-162-0930, 333-170-0010, 333-170-0020, 333-170-0030, 333-170-0040, 333-170-0050, 333-170-0060, 333-170-0070, 333-170-0080, 333-170-0090, 333-170-0100, 333-170-0120, 333-170-0130

Rules Suspended: 333-157-0050, 333-157-0060, 333-157-0090

Subject: Retroactively adopts previously submitted rules that are the result of legislation passed during the 2001 Legislative Session and the Food Protection Program's adoption of the 1999 FDA Food Code by Reference. The changes correct outdated rule references to the new Food Sanitation Rules in several programs and repeal rules that

ADMINISTRATIVE RULES

are no longer consistent with food service statutes. The changes require Organizational Camp food service operations to comply with the applicable provisions of the new Food Sanitation Rules. The use of latex gloves in food service establishments and mobile food units will be prohibited. These rules changes were previously submitted to the Secretary of State and became effective August 7, 2002. These rules are identical to the rules previously filed with the Secretary of State on August 7, 2002.

Retroactively adopts previously submitted rules that 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. These rules are the result of legislation passed during the 2001 Legislative Session. ORS 624.992 requires the Department of Human Services to establish protocols and limits for the assessment of civil penalties. These rule changes were previously submitted to the Secretary of State and became effective December 4, 2002. These rules are identical to the rules previously filed with the Secretary of State on December 4, 2002.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-029-0105

Food Services

(1) Eating and drinking facilities, commissaries, mobile units and vending machine operated in conjunction with traveler's accommodations and hostels shall be operated in compliance with the Department's Food Sanitation Rules OAR 333-150-0000.

(2) All multi-use drinking glasses and cups provided for guests shall be washed, rinsed and sanitized after being used according to OAR 333-150-0000 parts 4-6 and 4-7.

(3) Single service utensils shall be protected from contamination according to OAR 333-150-0000 section 4-904.11.

(4) Ice provided by traveler's accommodations and hostels shall comply with OAR 333-150-0000 sections 3-202.16 and 3-303.12.

Stat. Auth.: ORS 446.321

Stats. Implemented: ORS 446.330

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-8; HD 27-1994, f. 10-27-94, cert. ef. 12-31-94; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-029-0110

Lodging Unit Kitchens

(1) Lodging unit kitchens shall have:

(a) A sink suitable for dishwashing with hot and cold water. Hot water shall be at not less than one hundred forty degrees (140) F;

(b) A refrigerator capable of maintaining a temperature of forty-five degrees (45) F, or less,

(2) Utensil and equipment, if supplied, shall be easily cleanable, kept in good repair, and otherwise comply with OAR 333-150-0000 parts 4-1 and 4-2.

(3) Utensils supplied in lodging units shall be washed, rinsed, and sanitized after each occupancy according to OAR 333-150-0000 parts 4-6 and 4-7, or have a notice stating "For your convenience, dishes and utensils have been washed. If you would like to further sanitize these items, please contact the manager." The sanitizing agent shall be available in the office.

Stat. Auth.: ORS 446.321

Stats. Implemented: ORS 446.330

Hist.: HD 1-1978, f. & ef. 1-4-78; HD 19-1983(Temp), f. & ef. 10-18-83; HD 12-1984, f. & ef. 6-20-84; HD 5-1985, f. & ef. 4-25-85; HD 27-1994, f. 10-27-94, cert. ef. 12-31-94; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-030-0095

Food Service

Eating and drinking facilities, commissaries, mobile units and vending machine operated in conjunction with organizational camps shall be constructed, operated and maintained in compliance with ORS Chapter 624 and the Department's Food Sanitation Rules OAR 333-150-0000 with the following exceptions:

(1) Areas for food service, storage, preparation and serving restricted to individual or single-family use;

(2) Public toilet and handwashing facilities associated with the food service facility are not required for the participants of the camp; however, toilet and handwashing facilities shall be required for food handlers.

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446.330

Hist.: HD 25-1981, f. & ef. 11-25-81; HD 27-1994, f. 10-27-94, cert. ef. 12-31-94; HD 7-1996, f. & cert. ef. 12-10-96; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-150-0000

Food Sanitation Rule

(1) Authority and Purpose.

(a) This rule is authorized by ORS 624.100.

(b) This rule establishes definitions, sets standards for management and personnel, food protection, and equipment and facilities, water supply, sewage disposal, provides for food establishment plan review, and employee restriction to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

(2) Incorporation by Reference. The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 1999, Chapters 1 through 8 is adopted and incorporated by reference.

(3) Deletions. The following sections, paragraphs or subparagraphs of the 1999 FDA Food Code are deleted in their entirety: 1-201.10(B)(36), 2-103.11(H), 3-201.16, 3-301.11(C), 3-401.11(D)(3), 4-301.12(C)(5), (D) and (E), 4-501.115, 4-603.16(B) and (C), 8-302.11, 8-302.14(E), 8-401.10(B), 8-401.20, 8-402.20(A)(3), 8-402.40, 8-406.11, and Annex 1 through 8.

(4) Additions and Amendments.

(a) Amend subparagraph 1-201.10(B)(1)(a) to read: "Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals or approved by the Department of Human Services.

(b) Add a new subparagraph 1-201.10(B)(7.1) to read: "Catering" means the preparation of food in an approved food establishment and the transportation of such food for service and consumption at some other site.

(c) Add a new subparagraph 1-201.10(B)(9.1) to read: "Close" means to summarily stop the operation of a food establishment pursuant to ORS 624.085.

(d) Add a new subparagraph 1-201.10(B)(10.1) to read: "Code" shall have the same meaning as rule.

(e) Add a new subparagraph 1-201.10(B)(11.1) to read: "Combination Food Service Establishment" means any food establishment located within a single structure or at a single site, but which is engaged in activities which are subject to licensing or inspecting requirements of both the Department of Human Services and the Oregon Department of Agriculture, and the regulated activities are common to the same operator.

(f) Add a new subparagraph 1-201.10(B)(12.1) to read: "Commissary" means a commissary catering establishment, restaurant, or any other place in which, food, beverage, ingredients, containers, or supplies are kept, handled, packaged, prepared or stored, and from which vending machines or mobile units are serviced.

(g) Add a new subparagraph 1-201.10(B)(12.2) to read: "Complete Inspection" means any inspection conducted at the election of the licensing agency evaluating for all items on the inspection form.

(h) Add a new subparagraph 1-201.10(B)(12.3) to read: "Condiments" means garnishes, toppings, or seasonings that are added to a food to enhance or compliment the flavor, such as diced onions, dice tomatoes, hot sauce, ketchup, mayonnaise, mustard, relish, salt, shredded cheese and sugar.

(i) Add a new subparagraph 1-201.10(B)(18.1) to read: "Critical violations" means those items weighted zero (0), four (4) or (5) points on the Inspection Report or the Inspectional Guide.

(j) Add a new subparagraph 1-201.10(B)(18.2) to read:

"Critical violations creating an imminent danger to public health" means those critical violations in which at least one of the following conditions exists:

(a) Food and drink is spoiled, unwholesome, or contaminated with pathogenic or fecal organisms, toxic chemicals, insect or rodent parts or excreta, or other harmful substances or articles;

(b) Potentially hazardous foods have been kept at temperatures above 45 degrees F. and below 140 degrees F. for four (4) hours or more;

(c) Food employee has a reportable disease or medical condition under § 2-201.11.

(k) Add a new subparagraph 1-201.10(B)(18.3) to read: "Critical violations creating a potential danger to public health" means all critical violations other than those that create an imminent danger to public health.

(l) Add a new subparagraph 1-201.10(B)(18.4) to read:

"Critical violations creating a significantly increased risk for foodborne illness" include:

(a) Potentially hazardous foods at improper temperatures.

(b) Cross contamination of raw to ready to eat foods.

(c) Poor personal hygiene and handwashing.

(m) Add a new subparagraph 1-201.10(B)(18.5) to read: "Danger to public health" is a condition which is conducive to propagation or transmission of pathogenic organisms or, a chemical or physical hazard which

ADMINISTRATIVE RULES

presents a reasonably clear possibility that the public is exposed to physical suffering or illness.

(n) Amend subparagraph 1-201.10(B)(25)(a) to read: "Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, meat tenderizer, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

(o) Amend subparagraph 1-201.10(B)(31) to read:

Food Establishment

(a) "Food establishment" means an operation that prepares, packages, serves, stores, vends, or otherwise provides food for human consumption.

(b) "Food establishment" includes but is not limited to:

(i) Bars, bed and breakfast facilities, cafeterias if open to the public, catered feeding locations, caterers, coffee shops, commissaries, conveyance used to transport people, hospitals if open to the public, hotels, microbreweries, motels, private clubs if open to the public, restaurants, satellite sites, senior citizen centers, snack bars, taverns, vending locations, warehouses, or similar food facilities;

(ii) An operation that is conducted in a mobile food unit, temporary food establishments, or permanent facility or location; where consumption is on or off premises; and regardless of whether there is a charge for the food.

(iii) The premises of a fraternal, social, or religious organization where food is prepared for the public.

(iv) Except as specified in 1-201.10(B)(31)(c)(xiv), school food service that is provided by a private person, business, or organization; and that serve persons other than enrolled students, invited guests or staff.

(v) That relinquishes possession of food to a consumer directly through a restaurant takeout order.

(c) "Food establishment" does not include:

(i) An establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) A produce stand that offers only whole, uncut fresh fruits and vegetables;

(iii) A food processing plant;

(iv) A private home where food is prepared or served for family and guests, and where the public is not invited.

(v) A private home that receives catered or home-delivered food.

(vi) An establishment licensed and inspected by the Oregon Department of Agriculture.

(vii) An establishment or organization that prepares or sells the following food items shall be exempt from licensure and the provisions of ORS 624.010 to 624.120, and 624.310 to 440:

(1) Candy, candied apples, cookies and non-potentially hazardous confections;

(2) Commercially prepackaged ice cream and frozen desserts;

(3) Commercially pickled products, jerky, nuts, nutmeats, popcorn, and prepackaged foods such as potato chips, pretzels, and crackers;

(4) Unopened bottled and canned non-potentially hazardous beverages to include alcoholic beverages;

(5) Coffee and tea, with non-potentially hazardous ingredients; and

(6) Other food items as determined by the Department of Human Services.

(viii) Private vehicles used for home deliveries.

(ix) Personal chef who prepares food for an individual or private dinner party at the resident's home. The personal chef may purchase food from a grocery store, but shall not prepare food in advance at a location other than the resident's home. The personal chef may use his or her own equipment, utensils and spices.

(x) Continental breakfast served by a tourist facility licensed under ORS 446 and that is limited to the following: individual containers of commercially prepared juices; commercially prepared non-potentially hazardous pastries; whole uncut fresh fruit with peel, coffee and tea with non-potentially hazardous ingredients.

(xi) Except as specified in 1-201.10(B)(31)(b)(i), mobile food units that are operated by a market, are located on the property of the market and are under the jurisdiction of the Oregon Department of Agriculture.

(xii) Except as specified in 1-201.10(B)(31)(b)(i), outdoor barbecues operated by a market that are located on the property of the market and are under the jurisdiction of the Oregon Department of Agriculture.

(xiii) Food service that is provided by a state, county, or other governmental entity.

(xiv) Except as specified in 1-201.10(B)(31)(b)(iv), school food service that is provided by a state, county, or other governmental entity; or is providing food to students, teachers, other school staff, and invited guests.

(xv) Any person holding a "one-day, special retail beer or special retail wine license" for a private residence; or anyone who possesses a "temporary" license from the Oregon Liquor Control Commission who serves alcoholic beverages to the public, but serves only foods exempted under 1-201.10(B)(31)(c)(vii) and uses single-service articles.

(xvi) A bed and breakfast facility with two or less rooms for rent on a daily basis.

(p) Amend subparagraph 1-201.10(B)(32)(a) to read: "Food processing plant" means a commercial operation or a domestic kitchen licensed by the Oregon Department of Agriculture that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.

(q) Amend subparagraph 1-201.10(B)(41) to read: "Imminent health hazard" means the same as 1-201.10(B)(18.1).

(r) Add subparagraph 1-201.10(B)(45.1) to read: "License" means the same as permit for the purposes of this rule.

(s) Add subparagraph 1-201.10(B)(45.2) to read: "License holder" means the same as permit holder for the purposes of this rule.

(t) Add subparagraph 1-201.10(B)(49.1) to read: "Outdoor Barbecue" means an open-air preparation by a restaurant of food by cooking over an open fire utilizing either a permanent or portable grill, where the purpose of barbecuing is to impart a unique flavor to the food.

(u) Add subparagraph 1-201.10(B)(66.1) to read:

"Recheck Inspection" means

(a) An inspection to determine whether specified corrections have been made or alternative procedures maintained for violations identified in previous inspections; or

(b) An inspection to determine whether specific corrections have been maintained for critical violations creating a significantly increased risk for foodborne illness. Recheck inspections may be conducted either on pre-announced dates or unannounced.

(v) Add subparagraph 1-201.10(B)(69.1) to read: "Repeat violation" means a violation of a rule which is the same specific problem or process as indicated on the Food Service Inspection Report occurring in two consecutive semi-annual inspections.

(w) Add subparagraph 1-201.10(B)(73.1) to read: "Semi-annual inspection" means an unannounced complete inspection conducted twice during the calendar year; one in each half of the year, but not less than 90 days or more than 270 days apart.

(x) Amend subparagraph 1-201.10(B)(87) to read: "Temporary food establishment" means the same as ORS 624.010(6).

(y) Amend subparagraph 1-201.10(B)(89) to read: "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; food temperature measuring devices; trays used with highchairs; and probe-type price or identification tags used in contact with food.

(z) Add subparagraph 1-201.10(B)(92.1) to read: "Violation" means any condition which fails to meet a requirement of ORS Chapters 624 or this rule.

(aa) Add subparagraph 1-201.10(B)(92.2) to read: "Warehouse" means any place where food, utensils, single-service articles, cleaning or servicing supplies for vending machines, mobile units, or commissaries are stored.

(bb) Amend section 2-102.11 to read: Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this Code. The person in charge shall demonstrate this knowledge by compliance with this Code, by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program, a corporate training program approved by the Department of Human Services, or by responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:

(cc) Adopt paragraphs 2-102.11(A) through (O) without changes.

(dd) Amend paragraph 2-301.12(A) to read:

Except as specified in ¶(B) of this section and § 2-301.13, food employees shall clean their hands in a lavatory that is equipped as specified under § 5-202.12 by using a cleaning procedure of approximately 20 seconds that includes:

(1) Vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and arms for at least 10 to 15 seconds, followed by;

(2) Thorough rinsing under clean, running water.

(ee) Amend section 2-301.13 to read:

(A) After defecating, contacting body fluids and discharges, or handling waste containing fecal matter, body fluids, or body discharges, and before beginning or returning to work, food employees shall wash their hands twice using the cleaning procedure specified in § 2-301.12.

(B) Except when one handwashing lavatory is allowed under § 5-203.11(A), after using the toilet facility food employees shall wash their hands twice, first at a handwashing lavatory in the toilet facility and again at a handwashing lavatory in the food preparation area.

(ff) Amend section 2-301.16 to read:

(A) A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall be used according to labeled directions and be applied to hands that are cleaned as specified under § 2-301.12.

(B) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L chlorine.

(gg) Amend paragraph 2-402.11(A) to read: Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

(hh) Amend paragraph 3-201.11(B) to read: Except as specified in ¶¶(I) and (J) of this section, food prepared in a private home may not be used or offered for human consumption in a food establishment.

(ii) Add paragraph 3-201.11(G) to read: Game meat which has been donated to a charitable organization and has been inspected and processed as provided in ORS 619.095 may be served for human consumption by that charitable organization.

(jj) Add paragraph 3-201.11(H) to read:

Except as required in sections 3-201.11(A) through (G) and in accordance with ORS 624.035 any person, business or volunteer group may donate food to a benevolent organization that meets the requirements in ORS 624.015. The Internal Revenue Service (IRS) will issue a "letter of determination" that should be used as the basis for assessing compliance with benevolent status of ORS 624.015. The person, business or volunteer group making the donation shall inspect the food to ensure its fitness for human consumption and discard all food that is unwholesome. The follow-

ADMINISTRATIVE RULES

ing donated food items are approved for use by benevolent organizations:

(1) Commercially prepared foods, canned goods, and milk products, marine and freshwater fishery products or meat animals; i.e., cattle, sheep, goats, equine, swine, poultry or rabbits obtained from facilities licensed by the Oregon Department of Agriculture or the Department of Human Services according to ORS 603.616, and Chapters 621, 622, 624, 625 and 635;

(2) Home baked bread, rolls, pies, cakes, doughnuts or pastries not having perishable fillings, icings, toppings or glazes;

(3) Fresh fruit and produce from private gardens or commercial growers;

(4) Salvageable food which has lost the label or which has been subjected to possible damage due to accident, fire, flood, adverse weather or similar cause. Reconditioning of salvageable food shall be conducted according to the 1984 Model Food Salvage Code recommended by the Association of Food and Drug Officials and U.S. Department of Health and Human Services;

(5) Other food as may be approved by the Department of Human Services upon prior notification by the donor or benevolent organization;

(6) Unless alternative language has been approved by the regulatory authority, a notice shall be posted in public view that says: "NOTICE: Food served at this location may not have been inspected by the health department."

(kk) Add paragraph 3-201.11(I) to read: Privately donated breads, rolls, pies, cakes, doughnuts or other pastries not having perishable fillings, icings, toppings or glazes may be used in temporary food establishments operated by benevolent organizations for fund-raising events, provided they meet the requirements under 3-201.11(H)(6).

(ll) Add paragraph 3-201.11(J) to read: Food prepared in a private home that is licensed as a home processor by the Oregon Department of Agriculture.

(mm) Add subparagraph 3-201.17(A)(5) to read:

Except as specified in ¶ (A)(1) through (4) of this section,

(a) Game meat donated to a charitable organization shall be inspected by employees of the Oregon Department of Agriculture, Department of Fish and Wildlife, or State Police as provided for in ORS 619.095 may be served for human consumption by that charitable organization.

(b) As used in subparagraph (a) of this section:

(i) Charitable organization means the Adult and Family Services Division, State Office for Services to Children and Families, Youth Authority, Department of Corrections institutions, low-income nutritional centers, public school nutritional centers, senior nutritional centers, state hospitals and other charitable organizations or public institutions approved by the Department of Fish and Wildlife.

(ii) Game meat includes antelope, bighorn sheep, deer, elk, moose and mountain goat.

(nn) Add section 3-201.18 to read:

Outdoor Barbecuing.*

(A) Outdoor barbecuing by a food establishment shall be allowed as a part of the operation when conducted on the premise or in the immediate vicinity of the food establishment.

(B) Enclosure of an outdoor barbecue shall not be required unless necessary to protect food from contamination.

(oo) Amend section 3-301.11 to read:

(A) Food employees shall wash their hands as specified under §§ 2-301.12 and 2-301.13.

(B) Food employees shall minimize bare hand contact with food and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.^S

(pp) Amend paragraph 3-304.12(F) to read:

In a container of water if the container is cleaned at a frequency specified under subparagraph 4-602.11(D)(7); and

(1) The water is maintained at a temperature of 60°C (140°F) or above; or

(2) At 5°C (41°F) or less.

(qq) Add paragraph 3-304.15(E) to read: Effective March 1, 2003, the use of latex gloves in food service establishments is prohibited.

(rr) Add section 3-306.15 to read:

Outdoor Barbecue, Serving Consumers.

(A) Consumers may not serve themselves from an outdoor barbecue.

(B) The food employee may serve:

(1) An employee who brings a container or plate from the food establishment to the barbecue and who returns the food to the food establishment for further processing or service; or

(2) The consumer directly.

(C) Except for non-potentially hazardous condiments, such as hot sauces, ketchup, mayonnaise, mustard, pepper, relish, salt, and sugar, no other food may be served outside of the food establishment.

(ss) Add section 3-307.12 to read:

Protection from Contamination, Use of Private Vehicles for Food Deliveries.

(A) Private vehicles may be used for food deliveries if the food is packaged so that it is protected from contamination under Part 3-3, and adequate means are provided for maintaining proper food temperatures under §3-501.16.

(B) Private vehicles shall not be used in any activity that is incompatible with safe and sanitary transportation of food.

(tt) Amend subparagraph 3-401.11(D)(2) to read: The consumer requests that the food be prepared in a raw, rare, or undercooked state.

(uu) Amend subparagraph 3-501.16(C)(2) to read: No later than January 1, 2007, the equipment is upgraded or replaced to maintain food at a temperature of 5°C (41°F) or less.

(vv) Amend paragraph 3-501.17(F) to read:

Paragraphs (C) and (D) of this section do not apply to:

(1) Whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing;

(2) Hard cheeses that are manufactured with a moisture content not exceeding 39 percent as specified under 21 CFR 133.150 and meets the temperature requirements specified under § 3-501.16(B). Examples include Asiago medium, Asiago old,

Cheddar, Gruyere, Parmesan, Reggiano, Romano, and Sap sago.

(3) Semisoft cheeses containing more than 39 percent but less than 50 percent moisture as specified in 21 CFR 133.187 and meets the temperature requirements specified under § 3-501.16(B). Examples include Asiago fresh and Soft, Blue, Brick, Caciocavallo Siciliano, Colby with not more than 40% moisture, Edam, Gorgonzola, Gouda, Limburger, Monterey, Monterey Jack, Muenster, Pasteurized process cheese, Provolone, Swiss and Emmentaler.

(4) Pasteurized process cheese manufactured according to 21 CFR 133.169, labeled as containing an acidifying agent and meets the temperature requirements specified under § 3-501.16(B).

(5) Cheeses that are not exempt for date marking include soft cheeses. Examples include Brie, Camembert, Cottage, Ricotta, and Teleme.

(ww) Add section 3-502.11 to read: A food establishment shall obtain a variance from the regulatory authority as specified in § 8-103.10 and under § 8-103.11 before smoking food as a method of food preservation rather than as a method of flavor enhancement; curing food; using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food so that it is not potentially hazardous; packaging food using a reduced oxygen packaging method except as specified under § 3-502.12 where a barrier to Clostridium botulinum in addition to refrigeration exists; custom processing animals that are for personal use as food and not for sale or service in a food establishment; or preparing food by another method that is determined by the regulatory authority to require a variance.

(xx) Add section 3-502.13 to read:

Breading Requirements.

(A) When food is being breaded, the breading operations shall meet the requirements under § 3-501.16.

(B) In breading operations where the breading is done in batches:

(1) The used breading shall be sifting with a fine mesh sieve to remove meat fragments and all clumps of moist breading.

(2) The breading equipment or utensils shall be cleaned as specified under § 4-602.11.

(yy) Amend section 3-603.11 to read: Except as specified in ¶¶ 3-401.11(C) and 3-801.11(D), the food establishment may offer or a consumer may request an animal food such as beef, eggs, fish, lamb, milk, or shellfish to be served in a ready-to-eat form that is raw, undercooked, or not otherwise processed to eliminate pathogens; or as a raw ingredient in another ready-to-eat food.

(zz) Amend paragraph 4-501.16(B) to read:

(B) If a warewashing sink is used to launder wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under § 4-501.14.

(1) If wiping cloths are washed at the warewashing sink, they shall be washed in the wash compartment, and

(2) Sinks used to wash or thaw food shall be washed, rinsed, and sanitized both before and after use.

(aaa) Amend subparagraph 4-602.11(D)(7) to read:

The utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues and in-use utensils are intermittently stored in a container of water in which the water is maintained at:

(a) 60°C (140°F) or more, or

(b) 5°C (41°F) or less.

(bbb) Amend section 5-102.11 to read: Except as specified under § 5-102.12, water from a public water system shall meet 40 CFR 141-National Primary Drinking Water Regulations and OAR 333-061.

(ccc) Amend section 5-104.12 to read:

(A) Water meeting the requirements specified under Subparts 5-101, 5-102, and 5-103 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

(1) A supply of containers of commercially bottled drinking water;

(2) One or more closed portable water containers;

(3) An enclosed vehicular water tank;

(4) An on-premises water storage tank; or

(5) Piping, tubing, or hoses connected to an adjacent approved source.

(B) The regulatory authority may grant a temporary variance from requirements of Subparts 5-101, 5-102, and 5-103 by continuing or re-issuing previously issued permits where:

(1) Failure to comply with the code requirements is due to a failure of a community, municipal or public utility water supply system to meet the regulatory authority's requirements;

(2) The regulatory authority is satisfied that necessary remedial action is ongoing or reasonably imminent in connection with such water supply system; and

(3) Continuance or re-issuance of the permit is conditional upon the carrying out of such remedial action and the provision of such other measures by the certificate or license holder which will in the judgment of the regulatory authority afford reasonable interim protection to the public health including, but not limited to, adequate warnings to public and personnel as to the safety of the water delivered to the premises from the distribution system and notice of measures to avoid use or consumption of such water or to render it safe for consumption; adequate warnings as to the need for supervision of children and others needing supervision against use of such water; provision of alternative potable water and adequate notification as to its availability; and measures to avoid the use and the availability of water on the premises.

(ddd) Amend paragraph 5-203.11(A) to read: Except as specified in ¶¶ (B) and (C) of this section, at least 1 handwashing lavatory or the number of handwashing lavatories necessary for their convenient use by employees in areas specified under § 5-204.11 shall be provided. Food establishments opened prior to July 1, 1965 are exempt from this require-

ADMINISTRATIVE RULES

ment provided that employees can meet the requirements under §§ 2-301.12 and 2-301.13.

(eee) Amend paragraph 5-203.11(C) to read:

An adequate number of handwashing stations shall be provided for each temporary food establishment to include:

- (1) A minimum of one enclosed container that has a minimum water capacity of five gallons;
- (2) A spigot that can be opened to provide a constant flow of water;
- (3) Soap;
- (4) Water;
- (5) Paper towels; and
- (6) A collection container for wastewater.

(fff) Amend section 5-203.12 to read:

(A) Except as specified in ¶ (B) of this section, toilet facilities shall be installed according to ORS 455.010 through 455.895 (1998 Oregon Structure Specialty Code, 2000 Amendments) for the number of toilets.

(B) Food establishments with occupancy of 15 or less to include both employees and patrons may have only one toilet fixture and adjacent lavatory on the premises.

(ggg) Amend section 5-302.16 to read: A food grade hose shall be used for conveying drinking water from a water tank and shall be:

(hhh) Adopt paragraphs 5-302.16(A) through (E) as written.

(iii) Amend section 6-402.11 to read:

(A) Except for ¶ (B) and (C) of this section, toilet rooms shall be conveniently located and accessible to employees during all hours of operation and shall be an integral part of the building.

(B) Toilet facilities for the customer are required only in establishments constructed or extensively remodeled after May 11, 1974.

(C) Food establishments limited to drive-in or handout service are not required to provide toilet rooms facilities for the customer.

(jii) Add paragraph 8-101.10(C) to read: Plans submitted shall be reviewed and commented on by a sanitarian registered in accordance with ORS 700.

(kkk) Amend subparagraph 8-201.13(A)(2) to read: A variance is required as specified under § 3-502.11, ¶ 4-204.110(B), or subparagraph 3-203.12(B)(2)(b); or

(lll) Amend paragraph 8-302.14(A) to read: The name, mailing address, telephone, number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;

(mmm) Amend paragraph 8-303.30(C) to read: Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under ORS 183.

(nnn) Amend subparagraph 8-304.11(G)(2) to read: The regulatory authority directs the replacement to meet current code requirements after the food establishment has been closed for a minimum of 12 consecutive months, or

(ooo) Amend paragraph 8-304.11(H) to read: Upgrade or replace refrigeration equipment if the circumstances under subparagraphs (G)(1)-(3) of this section occurs first, or by no later than the time specified under ¶ 3-501.16(C);

(ppp) Amend paragraph 8-304.11(J) to read: Accept notices issued and served by the regulatory authority as may be authorized under ORS 183 and 624; and

(qqq) Amend paragraph 8-304.11(K) to read: Be subject to the administrative, civil, injunctive, and criminal remedies as may be authorized under ORS 183 and 624.

(rrr) Amend paragraph 8-401.10(C) to read: For temporary food establishments:

(1) Except for Subparagraph (C)(2) of this section, the regulatory authority shall inspect at least once during the operation of a temporary food establishment.

(2) For benevolent temporary food establishments, the regulatory authority shall either:

- (a) Inspect, or
- (b) Provide a consultation.

(sss) Amend paragraph 8-403.10(A) to read: (A) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under ¶ 8-302.14(C), inspection date, and employee food safety cards; and

(ttt) Amend section 8-403.20 to read: The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under §§ 8-404.11, and 8-405.11.

(uuu) Amend paragraph 8-405.11(B) to read: Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 14 calendar days after the inspection, for the permit holder to correct critical Code violations or HACCP plan deviations.

(vvv) Amend paragraph 8-501.20(C) to read: (C) Closing the food establishment by summarily suspending a permit to operate as may be provided under ORS 624.

(www) Amend paragraph 8-501.30(C) to read: (C) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided under ORS 183.

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

Stat. Auth.: ORS 624.100

Stats. Implemented: ORS 624.100

Hist.: HD 20-1986, f. 12-22-86, ef. 2-2-87; HD 6-1989, f. 9-6-89, cert. ef. 9-7-89; HD 10-1992, f. 10-2-92, cert. ef. 10-5-92; HD 19-1994, f. & cert. ef. 7-1-94; HD 16-1995, f. 12-28-95, cert. ef. 1-1-96; OHD 24-2001, f. 10-31-01, cert. ef. 1-1-02; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

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; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-162-0300

Employee Practices

(1) Employees shall not consume food in the mobile food unit. Mobile food unit employees may drink beverages while operating the mobile food unit if the following conditions are met:

(a) The beverage container must be covered and have a straw or handle to minimize contact with drinking surfaces;

(b) The container must be stored in a manner which will not expose food, food-contact surfaces, utensils, equipment or single service items to contamination from the drinking vessel; and

(c) The container must be cleaned and sanitized at regular intervals.

(2) Employees shall not use tobacco in any form inside the mobile food unit. Employees shall use tobacco only outside of the mobile food unit.

(3) Employees shall handle soiled equipment or utensils in a way that minimizes contamination of their hands.

(4) All mobile food unit personnel shall wear clean outer garments and shall conform to a high degree of personal cleanliness, grooming, and hygienic practices at all times while engaged in preparing or transporting food or drink or washing and storing utensils and equipment.

(5) Effective March 1, 2003, the use of latex gloves in mobile food units is prohibited.

Stat. Auth.: ORS 624.390

Stats. Implemented: ORS 624.390

Hist.: HD 10-1997, f. & cert. ef. 7-8-97; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-162-0930

Commissaries

(1) The commissary or other fixed food service establishment used as a base of operation for mobile food units or pushcarts shall be constructed and operated in compliance with the requirements of OAR 333-150-0000.

(2) Notwithstanding section (1) of this rule, commissaries which are constructed in or adjacent to a single family residence are not required to provide a separate restroom, if a restroom in the residence is available at all times during operation of the commissary. The restroom facility must meet the requirements of OAR 333-150-0000.

Stat. Auth.: ORS 624.390

Stats. Implemented: ORS 624.390

Hist.: HD 10-1997, f. & cert. ef. 7-8-97; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

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

ADMINISTRATIVE RULES

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; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0010

Application of Rules

(1) Except as otherwise set forth in ORS 624.100 and these rules, Bed and Breakfast Facilities shall meet the applicable requirements in OAR 333-150-0000 of the Oregon Food Sanitation Rules.

(2) If more than nine bedrooms or accommodations for 19 or more persons are available on a daily basis, commercial grade dishwashing and separate refrigeration equipment must be provided.

Stat. Auth.: ORS 624.100

Stats. Implemented: ORS 624.100

Hist.: HD 6-1988, f. & cert. ef. 4-4-88; HD 2-1992, f. 3-24-92, cert. ef. 3-30-92; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0020

Animal Restrictions

Bed and Breakfast Facilities shall be exempt from the provisions of OAR 333-150-0000 section 6-501.115 provided, however, that no live animal, bird, or turtle will be kept or allowed in any portion of the premises where food for the registered guests of the establishment is stored, prepared, served, offered for sale, or given away. Aquariums and aviaries shall be allowed if enclosed so as not to create a public health problem.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.100

Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0030

Equipment Replacement

Bed and Breakfast Facilities shall meet the provisions of OAR 333-150-0000 section 8-304.11 (G) and (H) except that replacement equipment and new equipment acquired after the effective date of these Bed and Breakfast rules may be of residential design, construction and installation. The equipment must be in good repair, capable of being maintained in a sanitary condition, have nontoxic food-contact surfaces and meet all other requirements of these rules.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.100

Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0040

Employee Change Rooms

Bed and Breakfast Facilities shall be exempt from the provisions of OAR 333-150-0000 sections 6-305.11, 6-403.11 (B) and 6-501.110 provided, however, that no person shall change clothes, store clothing or personal effects in any area used for the storage or preparation of food or for utensil washing or storage.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.100

Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0050

Dishwashing

(1) All food service utensils and equipment shall be scraped, cleaned, and/or sanitized as circumstances of use require.

(2) Bed and Breakfast Facilities shall comply with provisions of OAR 333-150-0000 for manual and/or mechanical cleaning and sanitizing of equipment and utensils, however, at the option of the owner or operator a domestic or homestyle dishwasher may be used provided the following performance criteria can be met:

(a) The dishwasher must effectively remove physical soil from all surfaces of dishes;

(b) The dishwasher must sanitize dishes either by the application of enough accumulative heat or by the application of adequate chemical solutions to the surface of the dish;

(c) Machines relying on heat for sanitizing shall produce heat unit equivalents in the final rinse and drying cycles which comply time and temperature relationships or equivalents listed in Table 1 (155° F. minimum):

TABLE 1

155° F — 150 seconds

161° F — 30 seconds

165° F — 15 seconds

170° F — 5 seconds

(d) If machine or water line mounted thermometers which indicate temperature of the final rinse water as it enters the manifold are not provided, the operator shall provide and daily use a registering thermometer or thermopaper to check the temperature at the dish surface during the final sanitizing rinse and drying cycles;

(e) The dishwasher must be installed and operated according to manufacturer's instructions for the highest level of sanitization possible when sanitizing Bed and Breakfast Facilities' utensils; a copy of the instructions must be available on the premises at all times;

(f) The pressure of the final rinse water supplied to the dishwasher shall not be less than 15 nor more than 25 pounds per square inch, (psi);

(g) There shall be sufficient area or facilities such as portable dish tubs and drain boards for the proper handling of soiled utensils prior to washing and of cleaned utensils after sanitization so as not to interfere with safe food handling, handwashing and the proper use of dishwashing facilities.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.100

Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0060

Plumbing

Notwithstanding provisions of OAR 333-150-0000 sections 5-202.11 and 5-402.11, existing food preparation sinks and mechanical dishwashers in Bed and Breakfast Facilities are not required to have indirect sewer connections. However, any new food preparation sinks or dishwashers installed after the effective date of these rules or existing installations in which backflow has been demonstrated shall comply with the Oregon State Plumbing Specialty Code. In existing food preparation sinks which are directly plumbed and where food is placed in the sink below the rim then food must be placed in a container where the rim is above the flood rim of the sink. Bed and Breakfast Facilities shall meet OAR 333-150-0000 section 5-203.14, in preventing contamination of the potable water system. New plumbing in a Bed and Breakfast Facility shall be installed and maintained in accordance with the Oregon State Plumbing Specialty Code.

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

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.100

Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0070

Ventilation

Bed and Breakfast Facilities shall be exempt from the provisions of OAR 333-150-0000 sections 6-304.11 and 6-501.14(A), however, in the event that the inspecting sanitarian determines that sufficient ventilation must be mechanical in nature, such ventilation shall be installed and operated according to state and local code.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.100

Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0080

Construction

In Bed and Breakfast Facilities, only new and replacement walls and ceilings (or their coverings), constructed after the effective date of these rules need comply with OAR 333-150-0000 sections 6-201.11, 6-201.16 and 6-201.17 provided, however, that all walls and ceilings (and their coverings) must be in good repair and maintained in a clean and sanitary condition.

Stat. Auth.: ORS 624

Stats. Implemented: ORS 624.100

Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0090

Utility Facilities

Bed and Breakfast Facilities shall be exempt from the provisions of OAR 333-150-0000 sections 5-203.13 and 6-306.10 provided, however, that hot water must be available for janitorial purposes. The use of hand-

ADMINISTRATIVE RULES

washing lavatories, utensil-washing or equipment-washing or food preparation sinks for this purpose is prohibited.

Stat. Auth.: ORS 624
Stats. Implemented: ORS 624.100
Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0100

Food Storage

Bed and Breakfast Facilities shall be exempt from the 333-150-0000 sections 6-202.111 and 6-202.112. However, no sleeping accommodations shall be allowed in any area where utensils are washed or where food is stored, prepared, or served.

Stat. Auth.: ORS 624
Stats. Implemented: ORS 624.100
Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0120

Laundry Facilities

Bed and Breakfast Facilities shall be exempt from the provisions of OAR 333-150-0000 section 4-803.13 provided that food service laundry be laundered and stored separately from guest or resident laundry and laundry operations are separated from food preparation areas.

Stat. Auth.: ORS 624
Stats. Implemented: ORS 624.100
Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

333-170-0130

Toilet and Handwashing Facilities

Toilet and handwashing facilities in Bed and Breakfast Facilities shall comply with OAR 333-150-0000 of the Oregon Food Sanitation Rules except as follows:

(1) Bed and Breakfast Facilities are exempt from OAR 333-150-0000 sections 5-203.12 and 6-402.11 provided an employees restroom can be designated during meal preparation and service, and guests' restrooms are available. New toilet facilities shall be installed according to the Oregon State Plumbing Specialty Code.

(2) Notwithstanding OAR 333-150-0000 section 4-501.16, handwashing facilities may be designated at a sink compartment used for dishwashing provided this sink is not being used to store or wash soiled dishes or prepare food during food preparation and service. Handwashing facilities, in the kitchen, shall be available at all times during food preparation and service. If facility operation results in handwashing facilities being unavailable, then a separate handwashing lavatory in the food preparation area will be required.

(3) Handwashing signs are required to be properly posted at all sinks designated for employee handwashing.

(4) "Guests' restrooms" not designated for food service worker use do not need to comply with Oregon Food Sanitation Rules.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 624
Stats. Implemented: ORS 624.100
Hist.: HD 6-1988, f. & cert. ef. 4-4-88; OHD 11-2002, f. & cert. ef. 8-7-02; 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04

Department of Human Services, Self-Sufficiency Programs Chapter 461

Adm. Order No.: SSP 1-2004(Temp)

Filed with Sec. of State: 2-5-2004

Certified to be Effective: 2-5-04 thru 6-30-04

Notice Publication Date:

Rules Amended: 461-135-0845

Subject: Rule 461-135-0845 is being amended to remove the reference to the life estate table at 26 CFR 20.231-7 (04-01-99), and the appropriate life estate table is being added to the rule instead. Also some minor stylistic changes are being made, such as replacing "shall be" with "is."

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0845

Valuation of Life Estate, Reversionary Interest and Property

(1) Effective July 18, 1995, the value of an expressly created life estate or other interest in real or personal property or other asset measured by or valued with respect to a life span, including that of the relevant recip-

ient of public assistance, is established by reference to the life estate valuation tables set forth in this rule and is valued as of the time of death of the recipient of public assistance irrespective of the actual life span of the measuring life. [Table not included. See ED. NOTE.]

(2) For public assistance recovery purposes, the interest of a person in real or personal property or other asset held in joint tenancy with right of survivorship (including transfers with right of survivorship covered by ORS 93.180) or other form of concurrent ownership with one or more other persons with right of survivorship, other than a spouse, is presumed to be the value of the fractional share held by the person. The fractional share of a person is presumed to be the share reflected in the ownership documents. Such presumption may be rebutted under the Consideration Furnished Test or by Convincing Evidence of the actual consideration contributed by another co-owner of the property or asset. In the absence of any stated fractional share on the Ownership Documents, each co-owner is presumed to have an equal fractional share of ownership of the whole, unless rebutted by the Consideration Furnished Test or as otherwise established by Convincing Evidence.

(3) With respect to Real or Personal Property or an Asset held jointly by spouses, as Tenants in Common, tenants by the entirety, with right of survivorship or otherwise, such property or asset is conclusively deemed to be owned one-half by each spouse; provided, however, that in the event the Ownership Documents expressly set forth a different fractional share of ownership, and such fractional share is lawful in the appropriate jurisdiction, then the fractional share set forth in such Ownership Documents is presumed to be the fractional share owned by each spouse. Such presumption may be rebutted by Convincing Evidence.

(4) The Value of the Real Property prior to the Time of Death, is determined:

(a) Establishing the fair market value of the property, to the satisfaction of the Department; or

(b) An appraisal performed by an appraiser certified or licensed in the applicable jurisdiction, whichever the Department determines in its sole discretion most accurately reflects the Value of the Real Property; and

(c) Convincing Evidence of liens and other encumbrances against the Real Property which liens and encumbrances is evaluated and, if appropriate, subtracted from the established fair market or appraised value of the Real Property.

(5) The Value of Personal Property consisting of shares of stock or other securities traded on an exchange is evidenced by the average of the bid and ask prices on the date of the Time of Death, or the next trading day thereafter. If such bid and ask prices are unavailable for certain stocks or securities, the Value may be established by a written estimate from the corporation or other entity issuing such shares or securities of the Value, or if such estimate is unobtainable, an estimate from a broker, trader or other Person with knowledge in the field of the Value. Liens and encumbrances established by Convincing Evidence against shares of stock or other securities is subtracted from the value of such stock or securities established by the foregoing procedure.

(6) The Value of tangible Personal Property, including, but not limited to, livestock, furniture, vehicles and other tangible items may be established:

(a) By a written estimate from a Person knowledgeable in the field of appraising such items of Personal Property; or

(b) From published sources such as catalogs of antiques or collectibles, blue books or other Convincing Evidence that accurately establishes the Value of the property. Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.

(7) The Value of intangible Personal Property not otherwise provided for in this rule, is established by a written estimate from a Person knowledgeable in the field of appraising such items of intangible Personal Property. Liens and encumbrances established by Convincing Evidence against tangible personal property is subtracted from the value of such property established by the foregoing procedure.

(8) Notwithstanding anything to the contrary contained in this rule, in cases where an inventory has been filed with the appropriate court or an estate tax return has been filed with the appropriate governmental authority, the Value of any Real or Personal Property or other Asset is presumptively established by the amounts set forth on such inventory or estate tax return. The presumptive Value established by such inventory or return may be rebutted by Convincing Evidence.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 410.070

Stats. Implemented: ORS 414.105

ADMINISTRATIVE RULES

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2004(Temp), f. & cert. ef. 2-5-04 thru 6-30-04

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

.....
Adm. Order No.: SSP 2-2004(Temp)
Filed with Sec. of State: 2-13-2004
Certified to be Effective: 2-13-04 thru 3-31-04
Notice Publication Date:

Rules Amended: 461-155-0225
Subject: Rule 461-155-0225 is being filed as a temporary rule to reflect the annual increase in the federal poverty levels as published in the Federal Register.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0225 Income Standard; OHP

(1) If a financial group contains a person with significant authority in a business entity — a “principal” as defined in OAR 461-140-0040 — the group is ineligible for the OHP program if the average monthly gross income of the business entity exceeds \$10,000. If the need group is not ineligible under this section, its eligibility is evaluated under section (2) of this rule.

(2) The countable income standards for OHP are as follows:

(a) The countable income standard for OHP-OPC and OHP-OPU is 100 percent of the 2004 federal poverty level.

OHP 100% Countable Income Standard

No. in Need Group — Amount

1 — \$776
2 — 1,041
3 — 1,306
4 — 1,571
5 — 1,836
6 — 2,101
7 — 2,366
8 — 2,631
9 — 2,896
10 — 3,161

Each additional person — 265

(b) The countable income standard for OHP-OP6 is 133 percent of the 2004 federal poverty level.

OHP 133% Countable Income Standard

No. in Need Group — Amount

1 — \$ 1,032
2 — 1,384
3 — 1,737
4 — 2,089
5 — 2,442
6 — 2,794
7 — 3,147
8 — 3,499
9 — 3,851
10 — 4,204

Each additional person — 352

(c) The countable income standard for OHP-OPP and OHP-CHP is 185 percent of the 2004 federal poverty level (see section (2)(a) of this rule).

OHP 185% Countable Income Standard

No. in Need Group — Amount

1 — \$1,435
2 — 1,926
3 — 2,416
4 — 2,906
5 — 3,396
6 — 3,887
7 — 4,377
8 — 4,867
9 — 5,357
10 — 5,848

Each additional person — 490

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 411.060, ORS 411.070

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; 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 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; 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 10-1998, f. 6-29-98, cert. ef. 7-1-98; 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 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 2-2004(Temp), f. & cert. ef. 2-13-04 thru 3-31-04

Adm. Order No.: SPD 1-2004
Filed with Sec. of State: 2-4-2004
Certified to be Effective: 2-4-04
Notice Publication Date: 1-1-03

Rules Amended: 411-055-0000, 411-055-0003
Subject: The Residential Care Facilities rules are being proposed for permanent amendment effective February 1, 2004. Rule 411-055-0003 is being revised to extend the period for the moratorium on licensing of Residential Care Facilities from June 30, 2003 to June 30, 2005. This rule is also being amended to extend licensing eligibility to facilities that meet specified criteria in the rule. Rule 411-055-0000 is being revised to update definitions relating to these changes.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-055-0000

Definitions

(1) “AAA” means a Type B Area Agency on Aging (AAA), which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act, which has responsibility for local administration of Department of Human Services (DHS) programs. For the purpose of these rules, AAAs contract with the Department to perform specific activities in relation to residential care facilities including conducting inspections and investigations regarding protective service, abuse and neglect; monitoring; and making recommendations DHS, Seniors and People with Disabilities (SPD) regarding residential care facility license approval, denial, revocation, suspension, non-renewal and civil penalties.

(2) “Abuse” means any act or absence of action inconsistent with prescribed resident care. This includes but is not limited to:

(a) Physical assault such as hitting, kicking, scratching, pinching, choking or pushing;

(b) Neglect of care, including improper administration of medication(s), failure to seek appropriate medical care, inadequate changing of beds or clothes, and failure to help with personal grooming;

(c) Denying meals, clothes, or aids to physical functioning;

(d) Use of derogatory or inappropriate names, phrases, or profanity; ridicule; harassment; coercion; threats; cursing; intimidation; or sexual exploitation;

(d) Use of derogatory or inappropriate names, phrases, or profanity; ridicule; harassment; coercion; threats; cursing; intimidation; or sexual exploitation;

(e) Placing unreasonable restrictions on residents which violates the resident Bill of Rights;

(f) Using restraints, except when a resident’s actions present an imminent danger to self or others and only until appropriate action is taken by medical, emergency, or police personnel; or

(g) Financial exploitation which includes, but is not limited to, unreasonable rate increases, borrowing from or loaning money to residents, witnessing wills in which provider is beneficiary, adding provider’s name to resident bank accounts or other personal property without the prior approval of family or case manager, inappropriately expending residents’ personal funds, co-mingling residents’ funds with provider or other residents’ funds, or becoming guardian or conservator.

(3) “Activities of Daily Living” (ADL) means those personal functional activities required by an individual for continued well being including eating/nutrition, dressing, personal hygiene, mobility, toileting and behavior management. Under ORS 443.400 - 443.640 and 443.991, the following definitions apply:

(a) “Independent” means the resident can perform the ADL without help;

(b) “Assistance” means the resident can perform some part of an ADL, but cannot do it entirely alone; and

(c) “Dependent” means the resident cannot perform any part of an ADL; it must be done entirely by someone else.

(4) “Administrator” means the person designated by the licensee as his/her agent for the daily operation and maintenance of the facility.

(5) “Aging in Place” means the process by which a person chooses to remain in his/her living environment, (“home”), despite the physical and/or mental decline that may occur with the aging process. For aging in place to

ADMINISTRATIVE RULES

occur, needed services are added, increased or adjusted to compensate for the physical and/or mental decline of the individual.

(6) "Applicant" means the person or persons who complete an application for a license. Applicant includes a sole proprietor, each partner in a partnership, each member in a limited liability company, or the corporation or entity that owns the residential care facility business.

(7) "Care" means the provision of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreation or medication management.

(8) "Choice" means viable options created for residents to enable the individuals to exercise greater control over their lives.

(9) "Classification" means a designation of license assigned to a facility based on the type, education, experience, training and number of the facility staff.

(10) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the license.

(11) "Continuous Nursing Care" means nursing care required by, and provided to, a resident twenty-four hours each day on a round-the-clock basis.

(12) "Department (DHS)" means the Department of Human Services.

(13) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by designing a residential program that delivers services in a manner which shows courtesy and respect for a resident's right to make decisions.

(14) "Direct Care Staff" means an employee responsible and available for providing services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreation or medication management directly to residents.

(15) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services and operations.

(16) "Exception" means a written variance from a regulation or provision of these rules.

(17) "FPS" means the Office of Facilities Planning and Safety within Department of Human Services, Health Services.

(18) "Fire and Life Safety Code" means the State of Oregon Structural Specialty Code and Fire and Life Safety Code. Residential care facilities must meet at least an SR-2 rating or higher.

(19) "Homelike" means an environment which promotes the dignity, security and comfort of residents through the provision of personalized care and services to encourage independence, choice and decision making by a resident. Homelike is also supported by the use of residential building materials and furnishings.

(20) "Incident of ownership" means:

- (a) An ownership interest; or
- (b) An indirect ownership interest; or
- (c) A combination of direct and indirect ownership interest.

(21) "Independence" means supporting resident capabilities and facilitating use of those abilities. Independence is supported by creating barrier free structures and careful design of assistive devices.

(22) "Indirect ownership interest" means an ownership interest in an entity that has an ownership interest in another entity. This term includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(23) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to the needs and preferences.

(24) "Legal Representative or Designee" means Attorney at Law, person holding a general power of attorney or special power of attorney for health care, guardian, conservator, or any person appointed by a court to manage the personal or financial affairs of the resident or person or agency legally responsible for the welfare or support of the resident, other than the facility.

(25) "Medical Emergency" means a change in medical condition that requires immediate care of a level or type that the provider is unable to provide or behavior that poses an imminent danger to the resident or to other residents.

(26) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.

(27) "Neglect", (whether intentional, careless, or due to inadequate experience, training, or skill), means failure to provide care necessary to insure the health, safety, and well-being of a resident; failure to follow the

Service Plan; failure to make a reasonable effort to discover what care is necessary for the well-being of the resident; or failure to provide a safe and sanitary environment.

(28) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to persons other than licensed nursing personnel, which is governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(29) "Owner" means a person with an ownership interest.

(30) "Ownership interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(31) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid and General Assistance resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(32) "Privacy" means a specific area and/or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

(33) "Resident" means any person who is receiving room, board, care, and services in a residential care facility for compensation on a 24-hour basis.

(34) "Resident Rights" or "Rights" means civil, legal and human rights, including but not limited to those rights listed in OAR 411-055-0200.

(35) "Residential Care Facility (RCF)" means a building, complex or distinct part thereof, consisting of shared or individual living units in a home-like surrounding where six or more seniors and adult persons with disabilities may reside. The facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules, using a program approach that promotes resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, independence, and home-like surroundings.

(36) "SPD" means Seniors and People with Disabilities of the Department of Human Services.

(37) "Self-Administration of Medication" means the act of a resident placing a medication in or on his/her own body. This means the resident manages and takes his/her own medications, in that the resident identifies the medication and the times and manners of administration, and places the medication internally or externally on his/her own body without assistance.

(38) "Separate and Distinct Part" means maintained and operated separately from any other facility with sleeping, dining and living areas used only by residents, employees and invited guests of the facility.

(39) "Service Area" means a geographic area within a fifteen (15) mile radius of the proposed site.

(40) "Service Plan" means a written plan for services developed with the resident and/or significant others and includes recognition for the resident's capabilities and choices. The plan defines the division of responsibility in the implementation of the services and specifies measurable goals, including by whom, when and how often care and services will be provided. The plan is developed at the time of admission and is reviewed and updated at least semi-annually and when the condition of the resident changes.

(41) "Services" means activities which help the residents develop appropriate skills to increase or maintain their level of functioning or which assist them to perform personal care or activities of daily living.

(42) "Special Diet" means diabetic, low fat, low sodium, soft diet, or otherwise ordered by a physician.

(43) "Underserved" means services are significantly unavailable within the service area in a comparable setting; for the general public, a specific population (e.g., dementia or traumatic brain injury) or recipients of Medicaid.

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

Stat. Auth.: ORS 443.400

Stats. Implemented: ORS 443.400

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 1-2002, f. & cert. ef. 4-23-02; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 1-2004 f. & cert. ef. 2-4-04

411-055-0003

Licensing Moratorium

(1) Effective August 16, 2001, and for any applications received after August 16, 2001, a moratorium exists on all new licenses until June 30, 2005.

The Department of Human Services may issue a license to an applicant for operation of a residential care facility who complies with OAR Chapter 411, Division 055 under the following conditions:

ADMINISTRATIVE RULES

(a) The facility is applying for a license renewal according to OAR 411-055-0029 and is not seeking an increase in license capacity;

(b) There is a change of ownership or management of the facility and the applicant is not seeking an increase in license capacity;

(c) The facility is relocating within the service area of the currently licensed facility and the applicant is not seeking an increase in the capacity of the license;

(d) The schematic plans or construction drawings for a proposed facility were submitted prior to August 16, 2001;

(e) The applicant can demonstrate to the satisfaction of the Department that the proposed facility will serve a population for whom insufficient services exist in the service area; or

(f) A Continuing Care Retirement Community that provides care exclusively to residents within its closed system.

(2) In the event of two competing applicants within a service area that meet paragraph (1)(e) of this rule, priority consideration will be given to:

(a) Applicants who serve low income residents and make a commitment to participate in the Medicaid program, and there are insufficient Medicaid resources in the area, and;

(b) Applicants who can demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances and permit requirements and have the present ability to deliver quality care to citizens of this state

(3) Applicants seeking to demonstrate that a service area is underserved must comply with all licensing requirements set forth in this rule. Applicants must submit a current market analysis completed by a third party professional, which validates that an area is underserved and must include:

(a) A current demographic overview of the service area;

(b) A description of the area and regional economy and the effect on the market for the project;

(c) Identification of the number of persons in the service area who are potential residents;

(d) Information on similar proposed facilities in the service area which have received plans approval from the Department's Facilities Planning and Safety Program;

(e) Description of available amenities, (i.e., transportation, hospital, shopping center, traffic conditions, etc.);

(f) A description of the extent, types and availability of residential care and assisted living facilities located in the service area, as defined in ORS 443.400 - 443.455; and

(g) The rate of occupancy, including the existence of waiting lists, for existing and recently completed developments competing for the same market segment.

(4) Licensees with 100 or more units may request an increase of up to ten percent of the capacity shown on the facility license every two years. Licensees having a licensed capacity of less than 100, may request an increase in capacity of up to ten in a two year period. Where increasing capacity requires remodeling or modification of the existing facility, all building requirements and standards set forth in these rules must be met.

Stat. Auth.: ORS 443 & ORS 443

Stats. Implemented: ORS 443.415

Hist.: SDSL 1-2002, f. & cert. ef. 4-23-02; SPD 1-2004 f. & cert. ef. 2-4-04

Adm. Order No.: SPD 2-2004

Filed with Sec. of State: 2-4-2004

Certified to be Effective: 2-4-04

Notice Publication Date: 1-1-04

Rules Amended: 411-056-0005, 411-056-0007

Subject: The Assisted Living Facilities rules are being proposed for permanent amendment effective February 1, 2004. Rule 411-056-0007 is being revised to extend the period for the moratorium on licensing of Assisted Living Facilities from June 30, 2003 to June 30, 2005. This rule is also being amended to extend licensing eligibility to facilities that meet specified criteria in the rule. Rule 411-056-0005 is being revised to update definitions relating to these changes.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-056-0005

Definitions

For the purpose of these rules, authorized under ORS 443.400 - 443.460 and 443.991, the following definitions apply:

(1) "AAA" means a Type B Area Agency on Aging (AAA) which is an established public agency within a planning and service area designated

under Section 305 of the Older Americans Act which has responsibility for local administration of Department of Human Services (DHS) programs. For the purpose of these rules, the AAAs contract with the Department to perform specific activities in relation to licensing assisted living facilities including: conducting inspections and investigations regarding protective service, abuse monitoring, and making recommendations to the Department regarding assisted living license approval, denial, revocation, suspension, non-renewal and civil penalties.

(2) "Abuse" means:

(a) Any physical injury to a resident caused by other than an accident. Physical injuries include injuries that a reasonable and prudent person would be able to prevent such as hitting, pinching or striking, or injury resulting from rough handling;

(b) Neglect, which results in physical harm or discomfort or loss of human dignity. Neglect includes failure to provide agreed upon care or services to a resident, failure to make a reasonable effort to assess what care is necessary for the well-being of the resident, or failure to provide a safe and sanitary environment;

(c) Sexual contact, including fondling of a resident by an employee, agent or other resident by force, threat, duress or coercion, or sexual contact with a resident who has no ability to consent;

(d) Financial exploitation which includes illegal or improper use of a resident's resources or personal property for the personal profit or gain of another person; borrowing resident funds; spending resident funds without the resident or their designee's consent or if the resident is not capable of consenting; spending resident funds for items or services from which the resident cannot benefit or appreciate; or spending resident funds to acquire items for use in common areas when such purchase is not authorized by the resident;

(e) Verbal abuse, including the use of oral, written or gestured communication to a resident, or to a visitor or staff about a resident within that resident's presence, that describes the resident in disparaging or derogatory terms;

(f) Mental abuse including humiliation, harassment, threats of punishment or deprivation directed toward the resident;

(g) Corporal punishment;

(h) Involuntary seclusion of a resident for convenience of staff, or discipline; or

(i) Using restraints, except when a resident approves or requests the use of the restraint as a supportive or enabling device to increase independence; or when a resident's actions present an imminent danger to self or others and only until appropriate action is taken by medical, emergency, or police personnel.

(3) "Activities of Daily Living (ADL)" are tasks usually performed in the course of a normal day in an individual's life which include; eating/nutrition, dressing/grooming, bathing/personal hygiene, mobility, toileting, and behavior management.

(a) "Independent" means the resident can perform an ADL task without assistance of another person or needs minimal reminding.

(b) "Assistance" means the resident can perform some portions of a task independently but requires assistance or supervision with other portions of the task. Assistance ranges from supervision to physical performance of one or more portions of a task.

(c) "Dependent" means the resident is dependent on another person to perform all portions of a task. The person does not perform any part of the ADL even with mechanical aids; or the person would perform the ADL task, but has been ordered not to by a physician.

(4) "Applicant" means the person or persons who complete an application for a license. Applicant includes a sole proprietor, each partner in a partnership, each member in a limited liability company, or the corporation or entity that owns the assisted living facility business.

(5) "Assisted Living Facility" means a building, complex or distinct part thereof, consisting of fully self-contained individual living units where six or more seniors and persons with disabilities may reside. The facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, independence, and home-like surroundings.

(6) "Choice" means a resident has viable options which enable the resident to exercise greater control over his/her life. Choice is supported by the provision of sufficient private and common space within the facility to provide opportunities for residents to select where and how to spend time and receive personal assistance.

ADMINISTRATIVE RULES

(7) "Department of Human Services, Seniors and People with Disabilities" means an organizational unit within the Department that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities, or are elderly or have physical disabilities.

(8) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by designing a structure which allows personal assistance to be provided in privacy and delivering services in a manner that shows courtesy and respect.

(9) "Direct Care Staff" means an employee who provides service and assistance to residents including activities of daily living and medication tasks.

(10) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services and operations.

(11) "Exception" means a written variance from a regulation or provision of these rules.

(12) "First Payor" means policy of insurance, or benefits from Veterans Administration, Medicare, Medicaid, Long Term Care insurance or other payor source.

(13) "FPS" means the Office of Facilities Planning and Safety within Department of Human Services, Health Services.

(14) "Home" means a living environment which creates an atmosphere supportive of the resident's preferred lifestyle. Home is also supported by the use of residential building materials and furnishings.

(15) "Incident of ownership" means:

- (a) An ownership interest; or
- (b) An indirect ownership interest; or
- (c) A combination of direct and indirect ownership interest.

(16) "Independence" means supporting resident capabilities and facilitating use of those abilities. Independence is supported by creating barrier-free structures and careful design of assistive devices.

(17) "Indirect ownership interest" means an ownership interest in an entity that has an ownership interest in another entity. This term includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(18) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to those needs and preferences.

(19) "Licensee" means the individual, firm or partnership, association, or corporation who applied for, and was issued a license and whose name is designated as owner on the license.

(20) "Managed Risk" means a process by which a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.

(21) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat medical conditions (i.e., heart disease or diabetes). These diets include small frequent meals, no added salt, reduced or no added sugar and simple textural modifications. Medically complex diets are not included.

(22) "Nursing Care" means the practice of nursing as governed by ORS Chapter 678 and Administrative Rules adopted by the Oregon State Board of Nursing in OAR Chapter 851, Division 047.

(23) "Owner" means a person with an ownership interest.

(24) "Ownership interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(25) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid and General Assistance resident for personal incidental needs. For the purpose of these rules, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(26) "Privacy" means a specific area and/or time over which the resident maintains a large degree of control. Privacy is supported by designing living space which is not shared with others, except by personal choice, and by services that are delivered with respect for the resident's civil rights.

(27) "Psychoactive Medications" means medications used to alter mood, level of anxiety, behavior or cognitive processes. This term includes antidepressants, antipsychotic, sedatives, hypnotics, and anti-anxiety medications.

(28) "Resident" means any individual residing within an assisted living facility.

(29) "Restraint" means any physical device that the resident cannot manipulate which is used to restrict movement or normal access to the resident's body.

(30) "Service Area" means a geographic area within a fifteen (15) mile radius of the proposed site.

(31) "Service Plan" means a written plan for services developed by a service planning team and the resident, or the resident's legal representative, which reflects the resident's capabilities, choices and if applicable, measurable goals and managed risk issues. The plan defines the division of responsibility in the implementation of the services.

(32) "Service Planning Team" means two or more individuals who assist the resident in determining what services/care are needed, preferred, and will be provided to the resident.

(33) "Services" means supervision or assistance provided in support of a resident's needs, preferences and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psycho-social and physical functioning.

(34) "Underserved" means services are significantly unavailable within the service area in a comparable setting; for the general public, a specific population (e.g., dementia or traumatic brain injury) or recipients of Medicaid.

(35) "Unit" means an individual living space constructed as a completely private apartment, including living and sleeping space, kitchen area, bathroom and adequate storage areas.

Stat. Auth.: ORS 410 & ORS 443

Stats. Implemented: ORS 443.400 & ORS 443.450

Hist.: SSD 14-1989, f. & cert. ef. 9-1-89; SDSD 3-1999, f. 3-1-99, cert. ef. 4-1-99; SDSD 2-2002, f. & cert. ef. 4-23-02; SDSD 7-2002, f. & cert. ef. 8-1-02; SPD 2-2004, f. & cert. ef. 2-4-04

411-056-0007

Licensing Moratorium

(1) Effective August 16, 2001, and for any application received after August 16, 2001, a moratorium exists on all new licenses until June 30, 2005. The Department of Human Services may issue a license to an applicant for operation of an assisted living facility who complies with OAR Chapter 411, Division 056 under the following conditions:

(a) The facility is applying for a license renewal according to OAR 411-056-0008(9) and is not seeking an increase in licensed units;

(b) There is a change of ownership or management of the facility and the applicant is not seeking an increase in license capacity;

(c) The facility is relocating within the service area of the currently licensed facility and the applicant is not seeking an increase in the units of the license;

(d) The schematic plans or construction drawings for a proposed facility were submitted prior to August 16, 2001;

(e) The applicant can demonstrate to the satisfaction of the Department that the proposed facility will serve a population for whom insufficient services exist in the service area; or

(f) A Continuing Care Retirement Community that provides care exclusively to residents within its closed system.

(2) In the event of two competing applicants within a service area that meet paragraph (1)(e) of this rule, priority consideration will be given to:

(a) Applicants who serve low income residents and make a commitment to participate in the Medicaid program, and there are insufficient Medicaid resources in the area, and;

(b) Applicants who can demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances and permit requirements and have the present ability to deliver quality care to citizens of this state.

(3) Applicants seeking to demonstrate that a service area is underserved must comply with all licensing requirements set forth in this rule. Applicants must submit a current market analysis completed by a third party professional, which validates that an area is underserved and must include:

(a) A current demographic overview of the service area;

(b) A description of the area and regional economy and the effect on the market for the project;

(c) Identification of the number of persons in the service area who are potential residents;

(d) Information on similar proposed facilities in the service area which have received plans approval from the Department's Facilities Planning and Safety Program;

(e) Description of available amenities, (i.e., transportation, hospital, shopping center, traffic conditions, etc.);

(f) A description of the extent, types and availability of residential care and assisted living facilities located in the service area, as defined in ORS 443.400 - 443.455; and

ADMINISTRATIVE RULES

(g) The rate of occupancy, including the existence of waiting lists, for existing and recently completed developments competing for the same market segment.

(4) Licensees with 100 or more units may request an increase of up to ten percent of the capacity shown on the facility license every two years. Licensees having a licensed capacity of less than 100, may request an increase in capacity of up to ten in a two year period. Where increasing capacity requires remodeling or modification of the existing facility, all building requirements and standards set forth in these rules must be met.

Stat. Auth.: ORS 410 & ORS 443

Stats. Implemented: ORS 443.415

Hist.: SDDS 2-2002, f. & cert. ef. 4-23-02; SPD 2-2004, f. & cert. ef. 2-4-04

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

Adm. Order No.: VRS 1-2004

Filed with Sec. of State: 1-30-2004

Certified to be Effective: 1-30-04

Notice Publication Date: 1-1-04

Rules Adopted: 582-020-0005, 582-020-0015, 582-020-0125

Rules Amended: 582-020-0010, 582-020-0020, 582-020-0030, 582-020-0040, 582-020-0050, 582-020-0060, 582-020-0070, 582-020-0080, 582-020-0090, 582-020-0100, 582-020-0110, 582-020-0120

Subject: Clarifies purposes of conflict resolution rules. Updates rules to reflect changes in federal regulations, including mediation option requirements. Provides procedural incentives and protections for clients seeking mediation. Extends timeline between request and hearing for Impartial Fair Hearing from 45 days to 60 days. Adds Formal Administrative Review for decisions of Impartial Fair Hearings Officers and sets out applicable procedures. Requires that mediators be listed on the Oregon State Agency Mediator Roster of the State of Oregon Department of Justice.

Rules Coordinator: Robert Trachtenberg—(503) 945-6734

582-020-0005

Dispute Resolution, General

(1) It is the intention of the Office of Vocational Rehabilitation Services (OVRs) to resolve disputes between OVRs and its clients quickly and fairly.

(2) Clients who are dissatisfied or disagree with a decision that affects the provision of vocational rehabilitation services shall have available a continuum of dispute resolution options, including informal negotiation and problem-solving, mediation, impartial fair hearings, and formal administrative review.

(3) OVRs shall inform its clients about the range of dispute resolution options available and their right to seek the assistance of the Client Assistance Program.

Stat. Auth.: ORS 344.530 & 344.590

Stats. Implemented: ORS 344.530, 344.550, 344.590

Hist.: VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0010

Definitions

(1) "Aggrieved," as used in ORS 344.590 means a client who is dissatisfied with any determination made by OVRs personnel that affects the provision of vocational rehabilitation services, including a delay in making a decision.

(2) "Client," as used in Division 020 includes an applicant, client, applicant's representative, or the client's representative as well as applicants or clients who are denied or terminated from services.

(3) "Delay," as used in ORS 344.590 means:

(a) OVRs failed to make a decision within the time limit provided by law; or

(b) If the law does not impose a time limit, that the client has made a dated, written request for a decision and OVRs has unreasonably delayed in making the decision.

(4) "Formal Administrative Review" means an impartial review of a decision of an Impartial Hearing Officer under 34 CFR 361.57(g) and OAR 582-020-0125.

(5) "Good Cause" means due to unforeseen circumstances beyond the control of the parties, including but not limited to the client's extended illness that requires significant medical care or illness or death of a family member.

(6) "Mediation" means the act or process of using a qualified and impartial mediator to act as mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

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

Stat. Auth.: ORS 344.530(2) & 344.590

Stats. Implemented: ORS 183.310 - 183.550, 344.511 - 344.690 & Ch. 734, OL 1971

Hist.: VRD 21, f. & ef. 3-5-76; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1997, f. & cert. ef. 11-20-97; VRD 1-1998, f. & cert. ef. 2-26-98; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0015

Mediation

(1) OVRs will offer assistance to help clients request mediation.

(2) OVRs will inform its clients that they may request the assistance of the Client Assistance Program in seeking mediation.

(3) A client who is dissatisfied or disagrees with a decision that affects the provision of vocational rehabilitation services may request that the differences be resolved through mediation. The client may use the OVRs Request for Mediation form or its equivalent, to request mediation. If an equivalent is used, the request shall be in writing and shall include the client's name, address, phone number; the date; and a brief statement as to the basic issue(s) of disagreement and how the client would like the issue(s) resolved.

(4) Participation in the mediation process is voluntary on the part of both the client and OVRs. If OVRs declines to mediate an issue following a request for mediation under OAR 582-020-0015(3), OVRs shall provide written notice to the client that mediation is declined and the client shall be advised of their right to request an Impartial Fair Hearing, consistent with OAR 582-020-0020, if a request is not already pending.

(5) Selection of Mediator:

(a) OVRs shall select and/or maintain a pool of mediators who are listed on the Oregon State Agency Mediator Roster of the State of Oregon Department of Justice, who have indicated an interest or expertise in disability related issues, and who qualify as mediators under 34 CFR 361.5(b)(43).

(b) Upon receipt of a request for mediation from the client, OVRs will contact on a rotating basis a mediator from among those in the pool who are geographically near the OVRs office of the client. If that mediator is not available within two weeks, other mediators will be contacted using this same identification process until one is identified who can provide timely services. If no mediator is mutually selected from the pool of mediators geographically near the OVRs office of the client, OVRs will contact on a rotating basis the mediators from a wider geographic range.

(c) Each party shall be given the opportunity at the outset to agree to or reject an identified mediator prior to the beginning of mediation services.

(6) Agreement to Mediate:

(a) Prior to the beginning of the first mediation session, the mediator shall provide an Agreement to Mediate for signature by both parties, consistent with the format in current use by OVRs.

(b) The mediation shall occur between the OVRs counselor or assigned OVRs employee and the client. The client shall be allowed the choice of being represented during mediation sessions by the Client Assistance Program or another advocate. The inclusion or participation of any other individuals for either side shall be at the discretion of the mediator, unless otherwise prohibited by law.

(c) All discussions shall be confidential and may not be used as evidence in any subsequent Impartial Fair Hearing, administrative or civil proceeding.

(7) Conclusion of Mediation:

(a) At any point during the mediation process, either party or the mediator may elect to terminate the mediation.

(b) A successful mediation shall be concluded with a written agreement prepared by the mediator and signed by the OVRs counselor or assigned OVRs employee and the client. Both parties shall receive a copy of the signed agreement. This final agreement shall become part of the OVRs record. If this agreement includes any changes to the Individualized Plan for Employment (IPE), a revision to the IPE or amended IPE that incorporates the change(s) shall be written and signed by the counselor or assigned OVRs employee and the client. No other written record of these mediation discussions will be retained by the mediator, OVRs or the client.

(c) If an agreement is not reached, OVRs shall provide the client with written notice that the mediation process has ended and the client shall be advised of their right to request an Impartial Fair Hearing, consistent with OAR 582-020-0020, if a request is not already pending. No other written

ADMINISTRATIVE RULES

record of these mediation discussions will be retained by the mediator, OVRS or the client.

(d) Nothing in OAR 582-020-0015(7) shall prohibit the mediator, OVRS, or the client from maintaining and retaining documentation to the extent necessary for work schedule or payment purposes.

(8) Rights After Mediation If OVRS received the written request for mediation within 60 days of the decision in dispute, the client may request an opportunity to present this issue to an Impartial Hearing Officer by filing a written request under OAR 582-020-0030 within 60 days of either the written notice that mediation is declined under 582-020-0015(4) or the written notice that mediation has ended under 582-020-0015(7)(c).

Stat. Auth.: ORS 344.530 & 344.590

Stats. Implemented: ORS 344.530, 344.550, 344.590

Hist.: VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0020

Notice of Right to a Hearing

(1) The notice described in OAR 582-020-0020(2) must be provided in writing:

(a) At the time the client applies for vocational rehabilitation services;

(b) If a client is assigned to a category during an order of selection;

(c) At the time the IPE is developed; and

(d) Whenever vocational rehabilitation services are reduced, suspended, or terminated.

(2) The Notice required by OAR 582-020-0020(1) shall give the client written notice of the right to request mediation or a hearing if the client is dissatisfied with the decision. The Notice shall include the following information:

(a) The date of the notice;

(b) The decision;

(c) The basis of the decision;

(d) The client's right to request mediation or a hearing if the client is dissatisfied with the decision, except that the mediation option may be excluded once used for the same decision at issue;

(e) Where and how to file the request;

(f) That hearings are conducted according to federal statute and regulations, Oregon's Administrative Procedures Act, and Division 20 of the OVRS Administrative Rules;

(g) That mediators and hearing officers are independent of OVRS and the procedures for their assignment from the pool to a particular case;

(h) The availability of the Client Assistance Program to assist the client with mediation or a hearing, including contact information;

(i) That interpreters and materials in alternative formats are available, if needed; and

(j) That OVRS must receive a request for hearing within 60 calendar-days of the date of the notice, or, if a client submits a written request for mediation within 60 days of the decision in dispute, the client may request a hearing within 60 days of either the written notice declining mediation or the written notice that mediation has ended. If the request for hearing is not received as required and the client does not demonstrate good cause for the delay, as defined in OAR 582-020-0010(5), the client will have waived the right to a hearing.

(3) If the client is represented by the Client Assistance Program or another representative, OVRS shall also provide notice to the representative.

Stat. Auth.: ORS 344.530(2) & 344.590

Stats. Implemented: ORS 183.310 - 183.550, 344.511 - 344.690 & Ch. 734, OL 1971

Hist.: VRD 21, f. & ef. 3-5-76; VRD 1-1981, f. & ef. 12-1-81; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1997, f. & cert. ef. 11-20-97; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0030

Hearing Request

(1) A client who is dissatisfied with or aggrieved by a decision that affects the provision of vocational rehabilitation services may request a hearing. The client will use the OVRS Request for Impartial Fair Hearing form or its equivalent to request a hearing. If an equivalent is used, the request shall be in writing and shall include:

(a) A description of the OVRS decision(s) concerning the provision of vocational rehabilitation services that are the subject of the disagreement; and

(b) A statement that the client disagrees or is dissatisfied with the decision; and

(c) A description of how the issue(s) could be resolved to the client's satisfaction; and

(d) A request for a hearing; and

(e) The signature of the client, or as appropriate, of the client's guardian or representative.

(2) OVRS shall forward the request to an Impartial Hearing Officer if the hearing request:

(a) Includes the information required by OAR 582-020-0030(1); and

(b) There is no immediate agreement by the client to delay the hearing timeline for mediation or informal resolution.

(3) If OVRS believes that the hearing request does not meet the requirements of OAR 582-020-0030(1), OVRS may contact the client or client's representative promptly to obtain a corrected request. If the hearing request is corrected, OVRS will forward the corrected hearing request to the Impartial Hearing Officer and the time period under OAR 582-020-0040(2) shall start with the date that OVRS receives the correction. If the client prefers to proceed under the original hearing request, OVRS shall forward the original hearing request to the Impartial Hearing Officer.

(4) At the time OVRS forwards a hearing request to the Impartial Hearing Officer, OVRS may request in writing that the Impartial Hearing Officer dismiss the hearing request because it does not comply with OAR 582-020-0030(1) and/or 582-020-0040(1). The Impartial Hearing Officer shall provide the client an opportunity to respond to the request for dismissal and shall submit a written decision prior to the date scheduled for hearing on the merits of the hearing request.

(5) If the client or the client's guardian or representative requests assistance or the client is unable to request a hearing without assistance, OVRS shall assist the client in completing the hearing request.

(6) The client may withdraw a request for hearing any time before there is a final order. The withdrawal shall be submitted in writing to OVRS.

(7) If the request for hearing is withdrawn:

(a) Prior to the selection of the Impartial Hearing Officer, the OVRS Agency Representative shall transmit the withdrawal to the OVRS Dispute Resolution Coordinator;

(b) After the selection of the Impartial Hearing Officer, OVRS will assure that the Impartial Hearing Officer is notified, and request that an order dismissing the request for hearing be issued.

Stat. Auth.: ORS 344.530(2) & 344.590

Stats. Implemented: ORS 183.310 - 183.550, 344.511 - 344.690 & Ch. 734, OL 1971

Hist.: VRD 21, f. & ef. 3-5-76; VRD 1-1981, f. & ef. 12-1-81; VRD 1-1990, f. & cert. ef. 11-26-90; VRD 2-1993, f. & cert. ef. 9-15-93; VRD 4-1997, f. & cert. ef. 11-20-97; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0040

Deadlines and Time

(1) OVRS must receive a request for hearing no later than 60 calendar-days after the date of the verbal or written notice — or delay as defined in OAR 582-020-0010(4) — concerning the furnishing or denial of vocational rehabilitation services, unless good cause exists, except as provided in 582-020-0015(8).

(2) For any hearing request received on or after February 1, 2004, the hearing shall be held no later than 60 calendar-days after the date of the receipt by OVRS of the hearing request, unless the parties agree to an extension for a specific time. Extensions of this timeline shall be documented in writing.

(3) The Impartial Hearing Officer shall provide the client, client's representative if applicable, OVRS counselor, OVRS Agency Representative, and the OVRS Field Office the decision and written report described in OAR 582-020-0110(1) and (2) no later than 30 calendar-days after the completion of the hearing, unless the parties agree to an extension for a specific time.

(4) Both parties have 20 days from the mailing of the decision of the Impartial Hearing Officer to request a Formal Administrative Review to challenge all or any part of a decision of an Impartial Hearing Officer. The date of mailing shall be the date identified on the certificate of mailing attached to the decision; if there is no certificate, the date of mailing shall be the date of the postmark; if there is no certificate or postmark, the date of mailing shall be the date of the decision.

(5) The decision of the Impartial Hearing Officer is a final order and may be implemented 28 days after the decision is issued, except as provided in OAR 582-020-0040(6). If both parties agree in writing that they will not appeal the decision of the Impartial Hearing Officer, the decision may be implemented earlier than 28 days after it is issued.

(6) If either party requests a Formal Administrative Review within 20 days, any actions imposed on either party by the Impartial Hearing Officer that are the subject of the Formal Administrative Review will be delayed until after the Formal Administrative Review has been completed. Once the Formal Administrative Review is completed, the Final Order of the

ADMINISTRATIVE RULES

Reviewing Official will be implemented as provided in OAR 582-020-0125(7).

(7) If the last calendar-day of a time period in Division 20 of Chapter 582 falls on a Saturday, Sunday, or legal holiday, the period will be extended until the next working day.

Stat. Auth.: ORS 344.530(2) & 344.590

Stats. Implemented: ORS 183.310 - 183.550, 344.511 - 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0050

Continuation of Services

(1) If a client has a pending request for an Impartial Fair Hearing to challenge a decision concerning the provision of vocational rehabilitation services, for the duration already agreed upon OVRS shall not suspend, reduce, or terminate the client's vocational rehabilitation services provided under an Individualized Plan for Employment (IPE) until there is a final order as provided in OAR 582-020-0040(5)-(6) unless the client requests the suspension, reduction, or termination of services, or as provided in OAR 582-020-0050(3).

(2) If a client has a pending request for mediation to challenge a decision concerning the provision of vocational rehabilitation services, for the duration already agreed upon OVRS shall not suspend, reduce, or terminate the client's vocational rehabilitation services provided under an Individualized Plan for Employment (IPE) while the mediation is pending unless the client requests the suspension, reduction, or termination of services, or as provided in OAR 582-020-0050(3), or the request for mediation was received more than 60 days after the decision in dispute.

(3) OVRS may suspend, reduce or terminate services if there is evidence that the client has obtained services through misrepresentation, fraud, collusion, or criminal conduct.

Stat. Auth.: ORS 344.530(2) & 344.590

Stats. Implemented: ORS 183.310 - 183.550, 344.511 - 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0060

Informal Resolution

(1) The client and OVRS may resolve issues or disputes informally before mediation or a hearing.

(2) The client and OVRS may resolve the issues or disputes through mediation under OAR 582-020-0015 before an Impartial Fair Hearing.

(3) If the dispute is resolved informally or through mediation, the client shall withdraw a pending request for hearing in writing or the Impartial Hearing Officer shall dismiss the matter on request.

(4) If the client is represented by the Client Assistance Program or another representative, the representative must receive notice of informal resolution settlement offers.

Stat. Auth.: ORS 344.530(2) & 344.590

Stats. Implemented: ORS 183.310 - 183.550, ORS 344.511 - 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0070

Selection of Impartial Hearing Officer

(1) Impartial Hearing Officers are assigned from a pool of qualified persons who meet the requirements of 34 CFR 361.5(b)(25) identified jointly by OVRS and the State Rehabilitation Council.

(2) Impartial Hearing Officers are assigned on a rotational basis unless the parties agree in advance of assignment on a specific hearing officer from the pool outside of the rotation.

(3) Either party may request that the assigned Impartial Hearing Officer remove himself or herself because of a potential conflict of interest or disqualification. Requests based on conflict of interest should be reviewed under the standards of 34 CFR 361.5(b)(25)(i)(F) and section JR 2-106 of the Oregon Code of Judicial Conduct. If the Impartial Hearing Officer removes himself or herself or is removed under OAR 582-020-0070(5), a new Impartial Hearing Officer will be chosen by rotation from the pool unless the parties agree to a specific Impartial Hearing Officer from the pool outside of the rotation.

(4) If the Impartial Hearing Officer denies a request to withdraw under OAR 582-020-0070(3), he or she must advise the parties in writing of the nature of the conflict and the rationale for the decision not to remove himself or herself.

(5) The Impartial Hearing Officer's decision not to remove himself or herself may be appealed immediately to the OVRS Administrator, whose decision is final.

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

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0080

Evidence

The client may review the OVRS case file and review the OVRS evidence before and during the hearing. However, materials protected under 34 CFR 361.38(c)(2) because of potential harm to the client may be withheld from clients representing themselves if these materials are not offered in evidence at the hearing. At the hearing, the client may examine the OVRS witnesses, call witnesses to testify, and introduce additional evidence.

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

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0090

The Hearing

(1) The hearing shall be held at a time consistent with OAR 582-020-0040(2) and designated by the Impartial Hearing Officer.

(2) The hearing shall be held in a location that is accessible and convenient to the client, and agreed to by the Impartial Hearing Officer, the client, and OVRS.

Stat. Auth.: ORS 344.530(2) & ORS 344.590

Stats. Implemented: ORS 183.310 - ORS 183.550, ORS 344.511 - ORS 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0100

Agency Representation during Impartial Hearings

(1) OVRS may be represented by an Assistant Attorney General.

(2) Subject to the approval of the Attorney General, an employee of OVRS is authorized to appear as the agency representative in hearings governed by OAR chapter 582, division 020.

(3) An OVRS representative may not make "legal argument."

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(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 of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the agency 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.

(4) When an agency representative represents OVRS, the Impartial Hearing Officer shall advise the 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 Impartial Hearing Officer shall provide reasonable opportunity for the OVRS 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 344.530(2) & 344.590

Stats. Implemented: ORS 183.310 - 183.550, 344.511 - 344.690 & Ch. 734, OL 1971

Hist.: VRD 4-1997, f. & cert. ef. 11-20-97; VRD 1-1998, f. & cert. ef. 2-26-98; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0110

Impartial Hearing Officer's Decision

(1) The Impartial Hearing Officer's decision shall be based on the approved State Plan, the federal Rehabilitation Act, federal vocational rehabilitation regulations, relevant state statutes, the Oregon Administrative Rules, and/or OVRS policy.

(2) The Impartial Hearing Officer shall provide a full written report of the findings and grounds for his or her decision to the client, client's representative if applicable, OVRS counselor, OVRS Agency Representative, and the OVRS Field Office within the time prescribed by OAR 582-020-0040(3).

(3) The decision of the Impartial Hearing Officer shall be final upon the date of mailing to the client and OVRS, except that either party may request a Formal Administrative Review under OAR 582-020-0125.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 344.530(2) & 344.590
Stats. Implemented: ORS 183.310 - 183.550, 344.511 - 344.690 & Ch. 734, OL 1971
Hist.: VRD 4-1997, f. & cert. ef. 11-20-97; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0120

Appeals by OVRS

The Administrator or the Administrator's designee shall approve any decision by OVRS to challenge a decision by an Impartial Hearing Officer, a Reviewing Official, or a court of law.

Stat. Auth.: ORS 344.530(2) & 344.590
Stats. Implemented: ORS 183.310 - 183.550, 344.511 - 344.690 & Ch. 734, OL 1971
Hist.: VRD 4-1997, f. & cert. ef. 11-20-97; VRS 1-2004, f. & cert. ef. 1-30-04

582-020-0125

Formal Administrative Review

(1) A party who is dissatisfied with the decision or any part of the decision of the Impartial Hearing Officer issued on or after February 1, 2004 may seek an impartial review of the decision by filing a Request for Formal Administrative Review within 20 days of the mailing (as described at OAR 582-020-0040(4)) of the Impartial Hearing Officer decision. The request shall be in writing filed with the OVRS Dispute Resolution Coordinator at the OVRS Central Administrative Office in Salem.

(2) The Formal Administrative Review shall be conducted by a Reviewing Official, who shall be the Director of the Department of Human Services or the designee of the Director. The designee may not be an employee of OVRS, or an individual previously involved in the vocational rehabilitation of the client, or an individual with a personal or financial conflict of interest.

(3) On receipt of a timely Request for Formal Administrative Review, the OVRS Dispute Resolution Coordinator shall promptly notify the Reviewing Official and the parties to the Impartial Hearing Officer decision. The OVRS Dispute Resolution Coordinator shall provide the entire hearing record to the Reviewing Official.

(4) The Reviewing Official shall provide both parties with an opportunity to submit in writing additional evidence and information relevant to a final decision concerning the matter under review. Each party shall provide copies to the opposing party of any materials submitted directly to the Reviewing Official. If the Reviewing Official does not provide a schedule for submitting written materials, all written materials must be received by the Reviewing Official no later than 20 days after the filing date of the Request for Formal Administrative Review.

(5) The Reviewing Official shall make an independent, final decision following review of entire hearing record and provide the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision to the client or as appropriate, the client's representative, and to the OVRS Dispute Resolution Coordinator within 30 days of the Request for Formal Administrative Review.

(6) The Reviewing Official may not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the client unless the Reviewing Official concludes, based on clear and convincing evidence, that the decision of the Impartial Hearing Officer is clearly erroneous on the basis of being contrary to the approved State Plan, the federal Rehabilitation Act, federal vocational rehabilitation regulations, or state regulations and policies that are consistent with federal requirements.

(7) The decision of the Reviewing Official is a final order and shall be implemented unless directed otherwise by a state or federal court.

Stat. Auth.: ORS 344.530 & 344.590
Stats. Implemented: ORS 344.530, 344.550, 344.590
Hist.: VRS 1-2004, f. & cert. ef. 1-30-04

.....
Department of Justice
Chapter 137

Adm. Order No.: DOJ 3-2004

Filed with Sec. of State: 1-29-2004

Certified to be Effective: 1-29-04

Notice Publication Date: 1-1-04

Rules Adopted: 137-084-0001, 137-084-0005, 137-084-0010, 137-084-0020, 137-084-0030

Subject: The rules establish procedures and rates for payment for medical services provided to victims of sexual assault from the Sexual Assault Victims' Emergency Medical Response Fund.

Rules Coordinator: Carol Riches—(503) 378-6313

137-084-0001

Definitions

(1) "Application Form" means the Application for Payment Sexual Assault Victims' Emergency Medical Response Fund form. (A copy of the Application Form is set out as an Appendix to these administrative rules.) [Form not included. See ED. NOTE.]

(2) "Complete Medical Assessment" means use of an Oregon State Police SAFE Kit in conjunction with a medical examination of a victim of sexual assault conducted within the accepted patient standard of care by an eligible medical services provider and the offering and, if requested, provision of prescriptions for emergency contraception and sexually transmitted disease prevention.

(3) "Department" means the Oregon Department of Justice.

(4) "Eligible Medical Services Provider" means a person who has the facilities and supplies necessary to provide the complete medical assessment as provided in these rules and who is currently licensed in Oregon, Washington, Idaho or California in one of the following categories: a SANE certified nurse, a registered nurse acting under the direct supervision of a Doctor of Medicine or a Doctor of Osteopathy, a nurse practitioner, a Doctor of Medicine, or a Doctor of Osteopathy.

(5) "Eligible victim" means a person who has self-identified or been identified by another as a victim of a sexual assault that occurred in Oregon and who receives a medical examination by an eligible medical services provider within the time periods established in OAR 137-084-0010(4) and (5).

(6) "Emergency Contraception" means administering prophylactic drugs to prevent pregnancy, or providing a prescription for such medication to be filled on-site, in conjunction with a complete medical assessment or a partial medical assessment.

(7) "Fund" means the Sexual Assault Victims' Emergency Medical Response Fund.

(8) "Medical Examination" means a medical examination of a victim of sexual assault conducted within the accepted patient standard of care by an eligible medical services provider.

(9) "Oregon State Police SAFE Kit" means the sexual assault forensic evidence collection kit, including protocol guidelines, approved by and distributed by the Oregon Department of State Police.

(10) "Partial Medical Assessment" means a medical examination of a victim of sexual assault conducted within the accepted patient standard of care by an eligible medical services provider and the offering and, if requested, provision of prescriptions for emergency contraception and sexually transmitted disease prevention.

(11) "SANE Certified Sexual Assault Nurse" means a nurse who has received certification as a SANE from the International Association of Forensic Nurses or from the Oregon Attorney General's Sexual Assault Task Force.

(12) "Sexually Transmitted Disease Prophylaxis" means administering prophylactic drugs to prevent sexually transmitted disease, or providing a prescription for such medication to be filled on-site, in conjunction with a complete medical assessment or a partial medical assessment.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: 2003 OL Ch. 789 (SB 752)

Stats. Implemented: 2003 OL Ch. 789 (SB 752)

Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04

137-084-0005

Contributions to the Fund

(1) Any person or organization may contribute money to the Fund by way of gift, grant or donation.

(2) Any contribution to the Fund should be given to the Department accompanied by notice in writing from the contributor stating the intention to have the contribution deposited into the Fund.

(3) Any contributions to the Fund received by the Department shall be deposited in the Fund as soon as practicable.

Stat. Auth.: 2003 OL Ch. 789 (SB 752)

Stats. Implemented: 2003 OL Ch. 789 (SB 752)

Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04

137-084-0010

Claims Processing

(1) A victim of a sexual assault who wants the Fund to pay for a medical examination, collection of forensic evidence using the Oregon State Police SAFE Kit, emergency contraception, or sexually transmitted disease prophylaxis must submit a completed Application Form to the victim's medical services provider. (A copy of the Application Form is set out as an Appendix to these administrative rules.) [Form not included. See ED. NOTE.]

ADMINISTRATIVE RULES

(2) To obtain payment from the Fund, an eligible medical services provider must submit the Application Form to the Department within one year of the date the medical services are provided.

(3) All medical services invoices must be submitted by the eligible medical services provider with the Application Form. Invoices submitted separately will not be processed.

(4) To be paid for by the Fund, a complete medical assessment must be completed within 84 hours (three and one-half days) of the sexual assault of the victim and use of the Oregon State Police SAFE Kit must have been authorized by appropriate law enforcement personnel and the Kit must have been released to appropriate law enforcement personnel in a timely manner after its use for collection of information.

(5) To be paid for by the Fund, a partial medical assessment must be completed within 168 hours (seven days) of the sexual assault of the victim.

(6) Completed Application Forms submitted with medical services invoices will be processed for payment by the Fund within 60 days of submission.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: 2003 OL Ch. 789 (SB 752)
Stats. Implemented: 2003 OL Ch. 789 (SB 752)
Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04

137-084-0020

Maximum Amounts Paid for Medical Services

(1) The Fund will pay eligible medical services providers the actual costs incurred for providing medical services to sexual assault victims up to the following maximum amounts:

(a) \$380 for a medical examination plus collection of forensic evidence using the Oregon State Police SAFE Kit;

(b) \$175 for a medical examination without collection of forensic evidence using the Oregon State Police SAFE Kit;

(c) \$55 for emergency contraception (including urine pregnancy test);

(d) \$100 for sexually transmitted disease prophylaxis.

(2) An additional payment of \$75 will be made to eligible medical services providers who document that the medical examination, as part of either a partial or complete medical assessment, was conducted by a SANE certified nurse.

(3) The payment amounts set out in this rule will be reviewed at least every two years by the Attorney General or the Attorney General's designee to determine whether they should be adjusted to meet current circumstances.

(4) An eligible medical services provider who submits a bill to the Fund under these rules may not bill the victim or the victim's insurance carrier for a medical examination, collection of forensic evidence using the Oregon State Police SAFE Kit, emergency contraception, or sexually transmitted disease prophylaxis, except to the extent the Department is unable to pay the bill due to lack of funds or declines to pay the bill for reasons other than untimely or incomplete submission of the bill to the Fund under OAR 137-084-0030(2)(e).

Stat. Auth.: 2003 OL Ch. 789 (SB 752)
Stats. Implemented: 2003 OL Ch. 789 (SB 752)
Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04

137-084-0030

Payment Restrictions and Disqualifications

(1) The Fund will not pay for any service not specifically described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030. Examples of services not covered by the Fund include, but are not limited to: treatment of injuries; DNA testing; HIV testing; laboratory testing of blood for any purpose; and prescriptions filled off-site of the location of a medical examination. Nothing in this rule is intended to preclude an eligible medical services provider from submitting a claim against the victim, the victim's insurance carrier or any other source for payment for services not specifically described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030.

(2) The Fund reserves the right not to pay for medical services described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030 for any one of the following reasons:

(a) Services were not provided by an eligible medical services provider.

(b) Services were provided to someone other than an eligible victim.

(c) Services were not provided in accordance with the requirements in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0001 through 137-084-0030, including the timeliness requirements for complete medical assessments (within 84 hours (three and one-half days) of the sexual assault) and partial medical assessments (within 168 hours (seven days) of the sexual assault).

(d) Services provided were duplicate services for the same incident.

(e) Failure of the eligible medical services provider to submit a completed Application Form, submission of incomplete invoice(s) for medical services or submission of the Application Form or invoice(s) for medical services more than one year after date services provided. [Form not included. See ED. NOTE.]

(f) Insufficient funds in the Fund to cover the services provided. The Fund will pay in full for services provided and billed to the Fund until the money in the Fund is exhausted.

(3) If the Attorney General or the Attorney General's designee determines that the Fund will not pay for one or more of the services described in 2003 Oregon Laws, Ch. 789 or OAR 137-084-0020(1) and (2) for reasons other than those set out in 137-084-0030(2)(e) above, the Attorney General or the Attorney General's designee will provide notice to the medical services provider(s) affected. After receiving such notice, a medical services provider may bill the victim, the victim's insurance carrier or any other source for those medical services provided but not paid for by the Fund.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: 2003 OL Ch. 789 (SB 752)
Stats. Implemented: 2003 OL Ch. 789 (SB 752)
Hist.: DOJ 3-2004, f. & cert. ef. 1-29-04

Adm. Order No.: DOJ 4-2004(Temp)

Filed with Sec. of State: 1-30-2004

Certified to be Effective: 2-1-04 thru 7-1-04

Notice Publication Date:

Rules Adopted: 137-085-0001, 137-085-0010, 137-085-0020, 137-085-0030, 137-085-0040, 137-085-0050

Subject: The attached temporary rules are necessary to establish and operate the School Safety Hotline. As directed by ORS 180.650, the rules provide the critical framework for the operation of a toll-free telephone line that will be available to school age children and other members of the public for the purpose of reporting criminal or suspicious activities on school grounds or at school sponsored activities. The rules establish the protocols for the operation of the Hotline by any provider that is contracted by the state. Specifically, the rules protect the identity of a caller while maximizing opportunities to allow follow-up calls by either the callers or the local law enforcement contacts to provide or obtain further information. The rules establish the requirements for receiving calls, producing call reports, and transmitting reports to the appropriate agency or organization.

Rules Coordinator: Carol Riches—(503) 378-4400

137-085-0001

Definitions

(1) "Hotline" means the School Safety Hotline contemplated under ORS 180.650.

(2) "Provider" means the individual, organization, state agency or political subdivision which, through contract or other agreement with the Oregon Department of Justice, operates the School Safety Hotline.

(3) "Department" means the Oregon Department of Justice

(4) "Reporter" means any individual contacting the School Safety Hotline.

Stat. Auth.: ORS 180.650(3)(a)
Stats. Implemented: ORS 180.650(3)(a)
Hist.: DOJ 4-2004(Temp), f. 1-30-04, cert. ef. 2-1-04 thru 7-1-04

137-085-0010

School Violence Reporting

(1) The Hotline will be available 24-hours a day, 7-days a week.

(2) The Hotline will, at a minimum, have available a toll-free telephone number. Any services offered by the Hotline will be provided without charge to any individual contacting the Hotline.

(3) Nothing prohibits the Hotline provider from offering reporting capability through other mediums in addition to the toll-free telephone number, including the Internet, facsimile or any other mechanism.

(4) The Hotline is not an emergency call center. Emergencies requiring immediate law enforcement response should also be reported to law enforcement by calling 911.

(5) The Hotline will be available in English and Spanish. The Hotline will attempt to receive and interpret contacts in any language.

(6) The Hotline will receive any information alleging fighting, threats, weapons, property destruction, and bullying within any school in Oregon

ADMINISTRATIVE RULES

(K-12, public or private) or on property controlled by any Oregon school or school district.

(7) Information will be accepted from school personnel, local law enforcement, parents, grandparents, students or any other concerned citizen who has sufficient information regarding the incidents of school violence.

Stat. Auth.: ORS 180.650(3)(a)
Stats. Implemented: ORS 180.650(3)(a)
Hist.: DOJ 4-2004(Temp), f. 1-30-04, cert. ef. 2-1-04 thru 7-1-04

137-085-0020

Acceptance of School Violence Reports

(1) The Hotline will accept information from known and anonymous reporters.

(2) The Hotline will offer a defined method of identification and tracking that preserves the anonymity of any reporter.

(3) The Hotline will inform reporters that emergencies requiring immediate law enforcement attention should be reported to 911.

(4) The Hotline will report immediately to law enforcement any reports that identify threatened, imminent or actual life-threatening acts of violence. (E.g., bomb threats, murder threats, etc.)

(5) In non-emergency situations (e.g., situations that are not threatened, imminent or actual life-threatening acts of violence), the Hotline will provide reports to the appropriate agency or organization within 24 hours, or on the next business day if the report is received on a holiday or weekend.

(6) The Hotline will provide reporters with options for suicide counseling or provide contact information for agencies offering suicide counseling.

(7) The Hotline will attempt to collect the following information from reporters:

(a) Name of the individual alleged to be involved with school violence.

(b) Name of the school attended and location of the school.

(c) Description of the act or threat of violence.

(d) Time of any act or threatened act of violence.

(e) Names of any victims of the school violence.

(f) Information regarding how the reporter became aware of the activity or threat. (E.g., student at school, teacher at school, etc.)

(8) The Hotline will maintain all information provided by the reporter, verbatim or as close to verbatim as possible, for distribution to the report receiving agency.

(9) The Hotline will maintain a system in which reporters can ascertain information regarding the status of their report using their anonymous identifier.

(10) The Hotline will maintain a system in which responding organizations can provide updates on the status of reports, while maintaining reporter confidentiality.

Stat. Auth.: ORS 180.650(3)(a)
Stats. Implemented: ORS 180.650(3)(a)
Hist.: DOJ 4-2004(Temp), f. 1-30-04, cert. ef. 2-1-04 thru 7-1-04

137-085-0030

Reporting to School District

(1) The Department will give the Provider a list which includes a central contact for each of Oregon's public school districts.

(2) The Department will update the list at least annually, or more frequently as changes in information dictate.

(3) The Hotline is responsible for developing systems to ensure reports are provided to the appropriate school district.

(4) The school district will be provided with all information provided by the reporter.

(5) The school district will be provided with information on how to update the Hotline on any action taken as a result of the report.

(6) The Hotline will inform the school district of any other organizations or agencies that received the report.

Stat. Auth.: ORS 180.650(3)(a)
Stats. Implemented: ORS 180.650(3)(a)
Hist.: DOJ 4-2004(Temp), f. 1-30-04, cert. ef. 2-1-04 thru 7-1-04

137-085-0040

Reporting to Law Enforcement

(1) The Department will give the Provider a list which includes a central contact for each of Oregon's law enforcement agencies.

(2) The Department will update the list at least annually, or more frequently as changes in information dictate.

(3) The Hotline is responsible for developing systems to ensure reports are provided to the appropriate law enforcement agency.

(4) The law enforcement agency will be provided with all information provided by the reporter.

(5) The law enforcement agency will be provided with information on how to update the Hotline on any action taken as a result of the report.

(6) The Hotline will inform the law enforcement agency of any other organizations or agencies that received the report.

Stat. Auth.: ORS 180.650(3)(a)
Stats. Implemented: ORS 180.650(3)(a)
Hist.: DOJ 4-2004(Temp), f. 1-30-04, cert. ef. 2-1-04 thru 7-1-04

137-085-0050

Reporting to Non-public Schools

(1) The Provider will maintain a list of contacts for private schools.

(2) The Hotline is responsible for developing systems to ensure reports are provided to the appropriate private school administrator.

(3) The private school administrator will be provided with all information provided by the reporter.

(4) The private school will be provided with information on how to update the Hotline on any action taken as a result of the report.

(5) The Hotline will inform the private school of any other organizations or agencies that received the report.

Stat. Auth.: ORS 180.650(3)(a)
Stats. Implemented: ORS 180.650(3)(a)
Hist.: DOJ 4-2004(Temp), f. 1-30-04, cert. ef. 2-1-04 thru 7-1-04

.....

Adm. Order No.: DOJ 5-2004

Filed with Sec. of State: 2-11-2004

Certified to be Effective: 2-11-04

Notice Publication Date: 11-1-03

Rules Adopted: 137-060-0100, 137-060-0110, 137-060-0120, 137-060-0130, 137-060-0140, 137-060-0150, 137-060-0160, 137-060-0200, 137-060-0210, 137-060-0220, 137-060-0230, 137-060-0240, 137-060-0250, 137-060-0260, 137-060-0300, 137-060-0310, 137-060-0320, 137-060-0330, 137-060-0340, 137-060-0350, 137-060-0360, 137-060-0400, 137-060-0410, 137-060-0420, 137-060-0430, 137-060-0440, 137-060-0450

Rules Repealed: 137-060-0010, 137-060-0011, 137-060-0012, 137-060-0013, 137-060-0014, 137-060-0015, 137-060-0016, 137-060-0020, 137-060-0021, 137-060-0022, 137-060-0023, 137-060-0024, 137-060-0025, 137-060-0026, 137-060-0030, 137-060-0031, 137-060-0032, 137-060-0033, 137-060-0034, 137-060-0035, 137-060-0036, 137-060-0040, 137-060-0041, 137-060-0042, 137-060-0043, 137-060-0044, 137-060-0045

Subject: Adopts new model garnishment forms for notices of garnishment issued by state agencies and county tax collectors. Repeals existing model garnishment forms. The adoption of the new forms and repeal of the old forms are effective January 1, 2004 or upon filing, whichever is later.

Rules Coordinator: Carol Riches—(503) 378-6313

137-060-0100

Notice of Garnishment — County Tax

The garnishment forms set forth in OAR 137-060-0110 to 137-060-0160 are provided for use by county tax collectors issuing a notice of garnishment pursuant to ORS 18.900.

Stat. Auth.: ORS 18.900(8)
Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0110

County Tax — Notice of Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.900(8)
Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0120

County Tax — Garnishee Response Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.900(8)
Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0130

County Tax — Instructions to Garnishee Form

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 18.900(8)

ADMINISTRATIVE RULES

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779
Hist.: DOJ 6-2002, f. & cert. ef. 9-24-02

137-060-0140

County Tax — Challenge to Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0150

County Tax — Notice of Exempt Property Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0160

County Tax — Wage Exemption Calculation Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0200

Notice of Garnishment — State Tax

The garnishment forms set forth in OAR 137-060-0210 to 137-060-0260 are provided for use by state agencies issuing a notice of garnishment pursuant to ORS 18.900 for the collection of a state tax.

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0210

State Tax — Notice of Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0220

State Tax — Garnishee Response Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0230

State Tax — Instructions to Garnishee Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0240

State Tax — Instructions to Garnishee Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0250

State Tax — Notice of Exempt Property Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0260

State Tax — Wage Exemption Calculation Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0300

Notice of Garnishment — Debts Other than State Tax

The garnishment forms set forth in OAR 137-060-0310 to 137-060-0360 are provided for use by state agencies issuing a notice of garnishment pursuant to ORS 18.900 for the collection of debts other than state tax.

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0310

Debts other than State Tax — Notice of Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0320

Debts other than State Tax — Garnishee Response Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0330

Debt other than State Tax — Instructions to Garnishee Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0340

Debts other than State Tax — Challenge to Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0350

Debts other than State Tax — Notice of Exempt of Property Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0360

Debts other than State Tax — Wage Exemption Calculation Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0400

Notice of Garnishment — Special Notice

The garnishment forms set forth in OAR 137-060-0410 to 137-060-0450 are provided for use by state agencies issuing a special notice of garnishment pursuant to ORS 18.900 and as provided by ORS 18.902(6).

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0410

Special Notice of Garnishment — Notice of Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0420

Special Notice of Garnishment — Garnishee Response Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0430

Special Notice of Garnishment — Instructions to Garnishee Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0440

Special Notice of Garnishment — Challenge to Garnishment Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

137-060-0450

Special Notice of Garnishment — Notice of Exempt Property Form

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 18.900(8)

Stats. Implemented: ORS 18.600 — 18.910, 23.175, 23.186, OL 2003, Ch. 79, 85, 576, 779

Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04

ADMINISTRATIVE RULES

Department of Public Safety Standards and Training Chapter 259

Adm. Order No.: DPSST 1-2004

Filed with Sec. of State: 1-16-2004

Certified to be Effective: 1-20-04

Notice Publication Date: 9-1-04

Rules Amended: 259-008-0011, 259-008-0060

Subject: Changes timeframe that telecommunicators and EMD's must be fingerprinted from applying for certification to on or before date of hire.

Rules Coordinator: Mary Gaines—(503) 378-2100, ext. 2367

259-008-0011

Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher

(1) On or before the date of employment, each telecommunicator and emergency medical dispatcher shall be fingerprinted on standard applicant fingerprint cards.

(a) The hiring agency, if a public 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.

(b) If the hiring agency is a private agency it is responsible for fingerprinting and shall forward two (2) cards to the Department along with the appropriate fee.

(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.

(2) Reading and Writing Standard. Before beginning basic telecommunicator or Emergency Medical Dispatcher (EMD) training or challenging basic telecommunicator training, 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 telecommunicator or EMD training.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 1-2002, f. & cert. ef. 2-6-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04

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 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

ADMINISTRATIVE RULES

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).

[ED. NOTE: Tables and Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665
Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.665
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055; PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04

Adm. Order No.: DPSST 2-2004

Filed with Sec. of State: 1-16-2004

Certified to be Effective: 1-16-04

Notice Publication Date: 9-1-04

Rules Adopted: 259-008-0068

Subject: Provides a certification program for honorably retired police officers to maintain their certification

Rules Coordinator: Mary Gaines—(503) 378-2100, ext. 2367

259-008-0068

Retired Police Officer Certification and Maintenance Standards

(1) Definitions

(a) "Honorably retired" means reaching the state of Oregon's recognized retirement age and retiring in good standing from active service as a police officer with a minimum of five years of full-time law enforcement experience in Oregon.

(A) "Retired Police Officer" means an honorably retired police officer who may carry a DPSST Retirement card.

(B) "Certified Retired Police Officer" means an honorably retired police officer who obtains and maintains her or his certification.

(2) Certified Retired Police Officer Status

(a) The certification of an honorably retired police officer that meets and maintains the minimum standards established in section (5) of this rule will not lapse. To have police officer authority, a certified honorably retired police officer must be affiliated with and under the direction of a law enforcement agency.

(b) A certified honorably retired police officer that resumes full-time, permanent employment with a law enforcement agency, in a certified discipline, must meet active police certification requirements as required by OAR 259-008-0060.

(A) The law enforcement agency must submit the form F-4 and F-7 to the Department when a certified honorably retired police officer is hired on a permanent, full-time basis.

(3) The process for obtaining a police officer Retirement Card shall be as stated in OAR 259-008-0100.

(4) Process for obtaining Retired Police Officer certification.

(a) To avoid a lapse of certification, upon retirement or within 90 days after retirement, an honorably retired police officer must submit a form F-7R with the required fees and two fingerprint cards.

(b) After a lapse of certification (90 days) but before 2 1/2 years, the honorably retired police officer must submit the application for Retired Police Officer certification with the required fees and two fingerprint cards.

(c) After a lapse of 2 1/2 years but less than 5 years, the honorably retired police officer must submit the application for Retired Police Officer certification, complete the DPSST Police Career Office Development (COD) training course; see OAR 259-008-0025(1)(f), submit the required fees and two fingerprint cards.

(d) After a lapse of more than 5 years, the honorably retired police officer is no longer eligible to obtain a Retired Police Officer certification.

(e) For the honorably retired police officer whose certification has lapsed between October 29, 1999, and January 16, 2004, and who is not covered by (a) or (b) of this section, Certified Retired Police Officer status may be achieved by submitting a form F-7R, the required fees and two fingerprint cards, within 180 days from January 16, 2004, and provides evidence that:

(A) The police officer honorably retired between October 29, 1999, and January 16, 2004, see Definitions 1(a) for criteria; and

(B) The honorably retired police officer has had no disqualifying behavior since retirement as established by a CCH and/or other satisfactory evidence to refute an allegation(s) of disqualifying behavior if such is received by the Department from any source.

(5) Process for maintaining Certified Retired Police Officer certification.

(a) A new application must be submitted to DPSST every three years with:

(A) Two fingerprint cards; and

(B) The required fees.

(b) Evidence must be provided on a form supplied by the Department that the maintenance training, as required by OAR 259-008-0065, has been met during the previous three-year period.

(A) Failure to notify the Department of the required training will result in a warning notification letter being sent to the certified honorably retired officer.

(B) A six (6) month extension will be automatically authorized.

(C) The honorably retired police officer must request recertification, along with an explanation of why the training was not completed, and

(D) Provide verification that the missed training was completed by submitting a form F-15.

(E) Failure to complete the training and/or submit the completed Form F-15, after the warning notification letter and before the six (6) month extension has expired will result in non-renewal of the Certified Retired Police Officer certification.

(c) It is the certified honorably retired police officer's responsibility to fund and coordinate training needs to meet the mandatory training requirements.

(d) The certified honorably retired police officer who maintains the retired certification will be excluded from the "lapsed" status and will not be required to retake any basic police training in order to re-certify as an active police officer.

(e) The renewal application, fingerprints, and fees will not be required if the honorably retired officer is employed in a full-time capacity.

(6) Denial or revocation of a Retired Police Officer Certification shall be handled in the same manner as active police officer certification pursuant to OAR 259-008-0070.

(7) Fees. Payments to the Department are non-refundable, and must be paid by personal check, money order or cashier's check. No credit cards or cash will be accepted. The Department, in carrying out the provisions of OAR 259-008-0068, shall charge the following fees.

(a) A fee of \$40 shall be submitted with each application for a Certified Retired Police Officer certification.

(b) A fee of \$39 shall be submitted with each application for a fingerprint criminal history check. An additional fee of \$24 will be charged for the third submittal of fingerprint cards when rejected for filing by the FBI.

Stat. Auth.: ORS 181.667

Stats. Implemented: ORS 181.667

Hist.: DPSST 2-2004, f. & cert. ef. 1-16-04

Department of Transportation Chapter 731

Adm. Order No.: DOT 1-2004

Filed with Sec. of State: 1-20-2004

Certified to be Effective: 1-20-04

Notice Publication Date: 11-1-03

Rules Amended: 731-007-0050

Rules Repealed: 731-007-0050(T)

Subject: The amendment to this rule will ensure the Agency's rules are in compliance with the state statutes. The 2003 Legislature passed HB 3422 (Oregon Laws 2003, Chapter 535) during the 2003 session, with an effective date of August 1, 2003. This bill modified the legal requirements for Sub-Contractor Disclosure on Public Improvement Projects. Changes include requiring the bidder to submit to the public contracting agency the first-tier subcontractor disclosure from two working hours (instead of four working hours) after the date and time of the deadline; submittal of the first-tier subcontractor disclosure shall only apply to public improvements with a contract value of more than \$100,000 (instead of \$75,000); and the dollar value of the subcontract will be added to the disclosure form. These changes were adopted by temporary rule effective August 1, 2003 so ODOT could

ADMINISTRATIVE RULES

legally advertise and bid projects scheduled to go to contract after August 1, 2003. The department now making these changes permanent, along with the addition of language in subsection (2)(c) specifying that ODOT will consider contract award only for those bids for which timely disclosure is received.

Rules Coordinator: Brenda Trump—(503) 945-5278

731-007-0050

Disclosure and Substitution of First-Tier Subcontractors

(1) Required Disclosure. Within two working hours of the Bid Closing on an ITB for a Public Improvement having a Bid price exceeding \$100,000, a Bidder shall submit to ODOT a disclosure form as described by this rule. The disclosure form shall identify any first-tier subcontractors (those Entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if awarded, whose subcontract value would be equal to or greater than:

- (a) Five percent of the total Contract Bid, but at least \$15,000; or
- (b) \$350,000 regardless of the percentage of the total Bid.

(2) Disclosure Deadline and Bid Opening. For each Bid Proposal or ITB to which this rule applies, ODOT shall:

(a) Receive bids until the time identified as Closing time and at the location described in the ITB and immediately thereafter publicly open the bids;

(b) Set the Bid Opening at the time and place identified in the ITB; and

(c) Consider for Contract award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Agency.

(3) Bidder Instructions and Disclosure Form. For the purposes of this rule, ODOT in its solicitation shall:

- (a) Prescribe the disclosure form that must be utilized; and
- (b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure

Bidders are required to disclose information about certain first-tier subcontractors when the Contract value for a Public Improvement is greater than \$100,000 (see ORS 279.027). Specifically, when the Bid of a first-tier subcontractor is greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, you must disclose the following information about that subcontract within two (2) working hours of Bid Closing:

- a) The subcontractor's name,
- b) The category of work the subcontractor will be performing, and
- c) The dollar value of the subcontract.

If you will not be using any subcontractors that are subject to the above disclosure requirements, you are required to indicate "NONE" on the accompanying form. ODOT MUST REJECT THE BID(S) OF A BIDDER WHO, IF REQUIRED TO SUBMIT THIS DISCLOSURE FORM, FAILS TO SUBMIT THE DISCLOSURE FORM WITH THE REQUESTED INFORMATION BY THE STATED DEADLINE. (See OAR 731-007-0050).

To determine disclosure requirements, ODOT recommends that you disclose subcontract information for any subcontractor as follows:

- 1) Determine the lowest possible Bid. That will be the base Bid amount less all alternate deductive Bid amounts (exclusive of any options that can only be exercised after Bid award).
- 2) Provide the required disclosure information for any first-tier subcontractor whose potential Contract services (i.e., subcontractor's base Bid amount plus all alternate additive Bid amounts, exclusive of any options that can only be exercised after Contract award) are greater than or equal to: (i) 5% of the lowest Bid amount, but at least \$15,000, or (ii) \$350,000, regardless of the percentage. Total all possible Work for each subcontractor in making this determination (e.g., if a subcontractor will provide \$15,000 worth of services on the base Bid and \$40,000 on an additive alternate, then the potential amount of subcontractor's services is \$55,000. Assuming that \$55,000 exceeds 5% of the lowest Bid, provide the disclosure for both the \$15,000 services and the \$40,000 services).

For determination of compliance with the disclosure requirements, ODOT will use the total Bid amount submitted by the contractor as verified by ODOT."

(4) Submission. A Bidder shall submit the disclosure form required by this rule within two working hours of Bid Closing in the manner specified by the ITB.

(5) Late Submission. Compliance with the disclosure and submittal requirements of ORS 279.027(2) and this rule is a matter of Responsiveness. Bids which are submitted by Bid Closing, but for which the separate disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract award.

(6) Substitution. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279.322. ODOT does not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. However, ODOT is not precluded from making related inquiries or investigating complaints in order to enforce Contract provisions that require compliance generally with laws, rules and regulations.

(7) This rule applies to public improvement contracts first advertised on or after the effective date of August 1, 2003.

Stat. Auth.: ORS 184.616, 184.619 & 279.049

Stats. Implemented: ORS 279.027 & ORS 279.322

Hist.: DOT 1-2000(Temp.), f. 1-19-00, cert. ef. 2-1-2000 thru 7-29-00; DOT 3-2000, f. 7-14-00, cert. ef. 7-29-00, Renumbered from 731-005-0020; DOT 2-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 6-29-02; DOT 2-2002, f. 6-24-02, cert. ef. 6-30-02; DOT 3-2003(Temp), f. 7-21-03 cert. ef. 8-1-03 thru 1-27-04; DOT 1-2004, f. & cert. ef. 1-20-04

Department of Transportation, Highway Division Chapter 734

Adm. Order No.: HWD 1-2004

Filed with Sec. of State: 1-20-2004

Certified to be Effective: 1-20-04

Notice Publication Date: 11-1-03

Rules Amended: 734-017-0005

Subject: The 72nd Oregon Legislative Assembly passed Senate Bill 666 (Oregon Laws 2003, Chapter 757) which exempted regularly scheduled medical transport service motor vehicles from the prohibition on use of tires with metal objects. For the purposes of this exemption the term "medical transport service vehicle" is being defined.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-017-0005

Definitions

(1) As used in OAR 734-017-0005 through 734-017-0025, the following definitions apply:

(a) "Traction Tire":

(A) Tires with studs allowed under ORS 815.165;

(B) Tires marked as mud and snow or all-season radial tires when used on vehicles exempt under ORS 815.145(4); and

(C) Tires identified by the Rubber Manufacturers Association as meeting tests indicating the tire provides greater traction than mud and snow tires under winter driving conditions.

(b) "Chains" — Link chains, cable chains or another device that attaches to the wheel, vehicle or outside of the tire that is specifically designed to augment the traction of a vehicle under ice or snow conditions.

(2) As used in ORS 815.165(10), "motor vehicles used for regularly scheduled medical transport services" is a vehicle used for regularly scheduled, point-to-point transportation for medical purposes and is not a vehicle described by either of the following:

(a) A vehicle regulated by a political subdivision under ORS 221.485.

(b) A vehicle, commonly known as a private passenger car or private passenger van, that is used by the owner of the vehicle or a relative of the owner of the vehicle for personal transportation for medical purposes.

Stat. Auth.: ORS 184.616, 184.619 & 815.045

Stats. Implemented: ORS 815.045, 815.140 & 815.165

Hist: 2 HD 15-1981, f. & ef. 11-20-81; HWY 4-1995, f. & cert. ef. 10-17-95; HWY 10-1997(Temp), f. 10-21-97, cert. ef. 11-1-97; TO 8-1998, f. & cert. ef. 9-14-98; HWD 1-2004, f. & cert. ef. 1-20-04

Department of Veterans' Affairs Chapter 274

Adm. Order No.: DVA 2-2004(Temp)

Filed with Sec. of State: 1-21-2004

Certified to be Effective: 1-22-04 thru 3-5-04

Notice Publication Date:

Rules Amended: 274-020-0341

Rules Suspended: 274-020-0341(T)

Subject: This Temporary rule amends and supersedes the Temporary OAR filed October 8, 2003 and effective October 8, 2003 through April 5, 2004. Applications on all ODVA's Veterans' Home Loan Program loans that have a maturity date of no more than 30 years and received on or after January 22, 2004, shall have the interest rate of 5.125 percent with an origination fee of 1.0 percent or 5.0 percent with an origination fee of 1.5 percent.

Rules Coordinator: Charles E. Gehley—(503) 373-2142

ADMINISTRATIVE RULES

274-020-0341

Interest

(1) Prior to May 27, 1971, fixed interest rates on loans to eligible veterans are as follows:

(a) Four percent on all loans through August 21, 1969;

(b) Effective August 22, 1969, four percent on the first \$18,500 of a home loan balance, and four percent on the first \$50,000 of a farm loan balance;

(c) For loans made from August 22, 1969 through May 26, 1971, the interest rate on the loan amount in excess of \$18,500 for home loans and \$50,000 for farm loans is as follows:

(A) Effective August 22, 1969, 5.2 percent;

(B) Effective September 4, 1969, 6.9 percent;

(C) Effective December 10, 1969, 7.1 percent;

(D) Effective April 8, 1970, 6.8 percent;

(E) Effective August 19, 1970, 6.4 percent;

(F) Effective January 6, 1971, 5.4 percent.

(2) As provided by ORS 407.325, the interest rate on variable rate real property loans are as follows:

(a) Effective May 27, 1971, 5.9 percent on all loans;

(b) Effective April 1, 1981, 7.2 percent on loans for which applications were received after December 31, 1980;

(c) Effective April 1, 1981, 6.2 percent on loans in effect or for which applications were received on or before December 31, 1980;

(d) Effective November 1, 1981, 7.5 percent on loans for which applications were received after December 31, 1980, and before August 24, 1981. The loan payment for principal and interest on the loans affected will be adjusted on February 1, 1982;

(e) Effective December 22, 1981, 11 percent on loans for which applications were received on or after August 24, 1981;

(f) Effective January 1, 1983, 6.7 percent on loans for which applications were received on or after July 1, 1979, and on or before December 31, 1980;

(g) Effective January 1, 1983, 8.2 percent on loans for which applications were received after December 31, 1980, and before August 24, 1981;

(h) Effective October 15, 1982, 10.5 percent on loans for which applications were received on or after August 24, 1981, and funds were disbursed on or after October 15, 1982;

(i) Effective January 1, 1983, the interest rate shall be adjusted to 10.5 percent on loans for which applications were received on or after August 24, 1981, and funds were disbursed before October 15, 1982.

(3) As provided by ORS 407.325, the interest rate on variable rate personal property loans shall be as follows:

(a) Effective May 30, 1975, 7.9 percent on personal property and leaseholds. Leaseholds were defined as real property on October 4, 1977, with rates established as provided in section (2) of this rule;

(b) Effective November 1, 1981, 13 percent on loans for which applications were received on or after August 24, 1981;

(c) Effective December 22, 1981, 11 percent on loans for which applications were received on or after August 24, 1981;

(d) Effective October 15, 1982, 10.5 percent on loans for which applications were received on or after August 24, 1981, and funds were disbursed on or after October 15, 1982;

(e) Effective January 1, 1983, the interest rate shall be adjusted to 10.5 percent on loans for which applications were received on or after August 24, 1981, and funds disbursed before October 15, 1982;

(4) Effective January 1, 1986, the interest rate on certain loans shall be changed as follows:

(a) The interest rate on 6.2 percent loans becomes 7.2 percent;

(b) The interest rate on 6.7 percent loans becomes 7.7 percent;

(c) The interest rate on 7.9 percent loans becomes 8.9 percent;

(d) The interest rate on 8.2 percent loans becomes 9.2 percent.

(5) As provided by ORS 407.327, the interest rate on loans made on or after:

(a) April 15, 1992, shall be fixed and shall be 7.6 percent on loans for which applications were received on or after April 8, 1992.

(b) August 17, 1992, shall be fixed and shall be 7 percent on loans with a maturity date of 15 years or less, and 7.3 percent on loans with a maturity date in excess of 15 years.

(c) April 1, 1993, shall be fixed and shall be 6.7 percent on loans with a maturity date of 15 years or less, and 7.0 percent on loans with a maturity date in excess of 15 years.

(d) November 1, 1993, shall be fixed and shall be 6.0 percent on loans with a maturity date of 15 years or less, and 7.0 percent on loans with a maturity date in excess of 15 years.

(6) As provided by ORS 407.327, the interest rate on loans for which applications were received from April 15, 1994, through June 21, 1994, shall be fixed and shall be 6.6 percent on loans that have a maturity date of at least 15 years, and 7.0 percent on loans with a maturity date in excess of 15 years. (Temporary Rule)

(7) As provided by ORS 407.327, the interest rate on loans for which applications were received on or after:

(a) June 22, 1994, shall be fixed and shall be 7.0 percent on loans that have a maturity date of at least 15 years, and 7.4 percent on loans with a maturity date in excess of 15 years.

(b) September 20, 1994, through November 17, 1994, shall be fixed and shall be 7.4 percent on loans that have a maturity date of at least 15 years, and 7.7 percent on loans with a maturity date in excess of 15 years. (Temporary Rule)

(c) November 18, 1994, shall be fixed and shall be 7.9 percent on loans that have a maturity date of at least 15 years, and 8.1 percent on loans with a maturity date in excess of 15 years.

(d) May 11, 1995, shall be fixed and shall be 7.4 percent on loans that have a maturity date of at least 15 years, and 7.6 percent on loans with a maturity date in excess of 15 years. (Temporary)

(e) May 18, 1995, shall be fixed and shall be 7.1 percent on loans that have a maturity date of at least 15 years, and 7.3 percent on loans with a maturity date in excess of 15 years. (Temporary)

(f) June 26, 1995, shall be fixed and shall be 6.80 percent on loans that have a maturity date of at least 15 years, and 7.0 percent on loans with a maturity date in excess of 15 years.

(g) November 1, 1995, shall be fixed and shall be 6.30 percent on loans that have a maturity date of not less than 15 years or more than 30 years.

(h) February 7, 1997, shall be fixed and shall be 6.60 percent on all loans that have a maturity date of no more than 30 years.

(i) February 2, 1998, shall be fixed and shall be 6.30 percent on all loans that have a maturity date of no more than 30 years.

(j) August 1, 1998, shall be fixed and shall be 5.95 percent on all loans that have a maturity date of no more than 30 years.

(k) September 22, 1999, shall be fixed, and shall be 5.95 percent with an origination fee of 2.00 percent, or 6.00 percent, with an origination fee 1.75 percent, on loans that have a maturity date of no more than 30 years.

(l) December 16, 1999, shall be fixed, and shall be 6.85 percent with an origination fee of 2.00 percent, or 6.90 percent, with an origination fee of 1.75 percent, on all loans that have a maturity date of no more than 30 years. (Temporary)

(m) March 31, 2000, shall be fixed, and shall be 6.50 percent with an origination fee of 2.00 percent, or 6.55 percent with an origination fee of 1.75 percent, on all loans that have a maturity date of no more than 30 years.

(n) June 12, 2000, shall be fixed, and shall be 7.15 percent with an origination fee of 2.00 percent, or 7.20 percent with an origination fee of 1.75 percent, on all loans that have maturity date of no more than 30 years. (Temporary)

(o) July 17, 2000, shall be fixed, and shall be 6.90 percent with an origination fee of 2.00 percent, or 6.95 percent with an origination fee of 1.75 percent, on all loans that have a maturity date of no more than 30 years. (Temporary)

(p) September 11, 2000, shall be fixed, and shall be 6.25 percent with an origination fee of 2.00 percent, or 6.30 percent with an origination fee of 1.75 percent, on all loans that have a maturity date of no more than 30 years.

(q) September 10, 2001, shall be fixed, and shall be 5.95 percent on all loans that have a maturity date of no more than 30 years.

(r) April 1, 2002, shall be fixed, and shall be 6.15 percent on all loans that have a maturity date of no more than 30 years. (Temporary)

(s) June 27, 2002, shall be fixed, and shall be 5.95 percent on all loans that have a maturity date of no more than 30 years.

(t) September 26, 2002, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be:

(A) 5.95 percent with an origination fee of 1.0 percent;

(B) 5.79 percent with an origination fee of 1.5 percent; or

(C) 5.65 percent with an origination fee of 2.0 percent. (Temporary)

(u) January 21, 2003, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) ODVA's Veterans' Loan Program 1990 loans.

(i) 5.55 percent with an origination fee of 1.0 percent;

(ii) 5.39 percent with an origination fee of 1.5 percent; or

(iii) 5.25 percent with an origination fee of 2.0 percent.

ADMINISTRATIVE RULES

- (B) ODVA's Post Vietnam Era Veterans' Home Loan Program loans:
- (i) 5.95 percent with an origination fee of 1.0 percent;
 - (ii) 5.79 percent with an origination fee of 1.5 percent; or
 - (iii) 5.65 percent with an origination fee of 2.0 percent.
- (v) April 21, 2003, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:
- (A) ODVA's Veterans' Loan Program 1990 loans:
- (i) 5.25 percent with an origination fee of 1.0 percent; or
 - (ii) 4.99 percent with an origination fee of 1.5 percent.
- (B) ODVA's Post Vietnam Era Veterans' Home Loan Program loans:
- (i) 5.25 percent with an origination fee of 1.0 percent; or
 - (ii) 5.125 percent with an origination fee of 1.5 percent. (Temporary)
- (v) July 25, 2003, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:
- (A) 5.375 percent with an origination fee of 1.0 percent; or
- (B) 5.25 percent with an origination fee of 1.5 percent. (Temporary)
- (w) August 1, 2003, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:
- (A) 5.50 percent with an origination fee of 1.0 percent; or
- (B) 5.375 percent with an origination fee of 1.5 percent. (Temporary)
- (x) August 15, 2003, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:
- (A) 5.75 percent with an origination fee of 1.0 percent; or
- (B) 5.625 percent with an origination fee of 1.5 percent.
- (y) October 8, 2003 shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:
- (A) 5.5 percent with an origination fee of 1.0 percent; or
- (B) 5.375 percent with an origination fee of 1.5 percent. (Temporary)
- (z) January 22, 2004 shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:
- (A) 5.125 percent with an origination fee of 1.0 percent; or
- (B) 5.0 percent with an origination fee of 1.5 percent.
- (8) As provided by ORS 407.327, the interest rate on home improvement loans for which applications are received on or after:

- (a) November 12, 1997, shall be fixed and shall be 7.95 percent.
- (b) February 2, 1998, shall be fixed and shall be 7.5 percent.

Stat. Auth.: ORS 406.030, 407.115, 407.325 & 407.327
Stats. Implemented: ORS 407.325 & 407.327

Hist.: DVA 40, f. 5-27-71, ef. 5-27-71; DVA 45, f. & ef. 12-1-75; DVA 49, f. & ef. 6-1-77; DVA 50, f. 11-16-77, ef. 12-1-77; DVA 2-1978, f. & ef. 12-1-78; DVA 1-1979, f. & ef. 12-5-79; DVA 4-1980, f. & ef. 12-1-80; DVA 6-1980(Temp), f. 12-19-80, ef. 1-1-81; DVA 1-1981, f. 3-1-81, ef. 4-1-81; DVA 2-1981(Temp), f. 3-11-81, ef. 4-1-81; DVA 4-1981, f. & ef. 4-16-81; DVA 5-1981(Temp), f. & ef. 8-10-81; DVA 7-1981, f. 10-30-81, ef. 11-1-81; DVA 8-1981, f. 10-30-81, ef. 12-1-81; DVA 10-1981(Temp), f. & ef. 12-22-81; DVA 3-1982(Temp), f. & ef. 2-3-82; DVA 11-1982, f. 4-23-82, ef. 1-1-83; DVA 15-1982, f. & ef. 6-1-82; DVA 27-1982(Temp), f. & ef. 10-15-82; DVA 5-1983, f. & ef. 2-15-83; DVA 10-1985, f. 8-23-85, ef. 1-1-86; DVA 6-1992(Temp), f. & cert. ef. 4-15-92; DVA 9-1992, f. & cert. ef. 8-3-92; DVA 10-1992(Temp), f. & cert. ef. 8-17-92; DVA 1-1993, f. & cert. ef. 1-4-93; DVA 6-1993(Temp), f. 3-30-93, cert. ef. 4-1-93; DVA 8-1993, f. 7-30-93, cert. ef. 9-27-93; DVA 10-1993(Temp), f. 10-18-93, cert. ef. 11-1-93; DVA 1-1994, f. 1-10-94, cert. ef. 2-1-94; DVA 2-1994(Temp), f. & cert. ef. 4-15-94; DVA 4-1994, f. & cert. ef. 6-22-94; DVA 5-1994(Temp), f. 9-15-94, cert. ef. 9-20-94; DVA 6-1994(Temp), f. 11-15-94, cert. ef. 11-18-94; DVA 2-1995, f. & cert. ef. 3-23-95; DVA 3-1995(Temp), f. & cert. ef. 5-11-95; DVA 4-1995(Temp), f. & cert. ef. 5-18-95; DVA 6-1995(Temp), f. 6-23-95, cert. ef. 6-26-96; DVA 13-1995, f. & cert. ef. 10-23-95; DVA 14-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; DVA -1996, f. & cert. ef. 3-22-96; DVA 1-1997(Temp), f. 1-24-97, cert. ef. 2-7-97; DVA 3-1997, f. & cert. ef. 6-25-97; DVA 5-1997, f. & cert. ef. 10-22-97; DVA 2-1998(Temp), f. 1-26-98, cert. ef. 2-2-98 thru 7-31-98; DVA 6-1998, f. & cert. ef. 6-23-98; DVA 8-1998(Temp), f. 7-28-98, cert. ef. 8-1-98 thru 1-27-99; DVA 1-1999, f. & cert. ef. 1-22-99; DVA 2-1999, f. & cert. ef. 9-22-99; DVA 4-1999(Temp), f. 12-14-99, cert. ef. 12-16-99 thru 6-12-00; DVA 2-2000(Temp), f. 3-30-00, f. 3-31-00 thru 6-12-00; DVA 6-2000, f. & cert. ef. 5-23-00; DVA 7-2000(Temp), 6-12-00 thru 12-9-00; DVA 8-2000(Temp), f. 7-14-00, cert. ef. 7-17-00 thru 12-9-00; DVA 9-2000(Temp), f. 9-8-00, cert. ef. 9-11-00 thru 12-9-00; DVA 10-2000, f. 12-5-00, cert. ef. 12-10-00; DVA 6-2001(Temp), f. 9-7-01, cert. ef. 9-10-01 thru 3-8-02; DVA 2-2002, f. & cert. ef. 2-22-02; DVA 3-2002(Temp), f. 3-29-02, cert. ef. 4-1-02 thru 9-27-02; DVA 5-2002(Temp), f. 6-26-02, cert. ef. 6-27-02 thru 9-27-02; DVA 6-2002, f. & cert. ef. 9-24-02; DVA 8-2002(Temp), f. 9-25-02, cert. ef. 9-26-02 thru 3-24-03; DVA 1-2003(Temp), f. 1-17-03, cert. ef. 1-21-03 thru 3-24-03; DVA 2-2003, f. & cert. ef. 3-24-03; DVA 4-2003(Temp), f. 4-18-03, cert. ef. 4-21-03 thru 10-17-03; DVA 6-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 10-17-03; DVA 7-2003(Temp), f. 7-31-03, cert. ef. 8-1-03 thru 10-17-03; DVA 8-2003(Temp), f. 8-14-03, cert. ef. 8-15-03 thru 10-17-03; DVA 10-2003, f. & cert. ef. 9-23-03; DVA 13-2003(Temp), f. & cert. ef. 10-8-03 thru 4-5-04; DVA 2-2004(Temp), f. 1-21-04, cert. ef. 1-22-04 thru 4-5-04

.....
Health Licensing Office
Chapter 331

Adm. Order No.: HLO 1-2004

Filed with Sec. of State: 2-13-2004

Certified to be Effective: 2-13-04

Notice Publication Date: 1-1-04

Rules Adopted: 331-001-0000, 331-001-0010, 331-001-0020, 331-010-0000, 331-010-0010, 331-010-0020, 331-010-0030, 331-

010-0040, 331-020-0000, 331-020-0010, 331-020-0020, 331-020-0030, 331-020-0040, 331-020-0050, 331-020-0060, 331-020-0070, 331-030-0000, 331-030-0010, 331-030-0020, 331-030-0030

Subject: Passage of HB 2325 by the 2003 Legislature further organized oversight and centralized services for 15 health and related professions, improving consistency in the Agency's statutes and synchronizing the various programs under the agency's umbrella.

The objective is to uniformly apply administrative and disciplinary statutes. Each board or council's authority over practice standards and education is preserved.

Agency rules implement the provisions resulting from legislation passed in 1999 (HB 2465), 2001 (HB 2247, HB 2248, HB 2249 and HB 2259), and 2003 (HB 2325). The Oregon Health Licensing Agency rules address the following:

Division 01 - Procedural requirements: Notice of Proposed Rulemaking, Model Rules of Procedure, and Applicability of Agency Rules.

Division 10 - General administration: Definitions, fee, refund of payments, charges for copies and documents and notification requirements.

Division 20 - Regulatory Operations: Disciplinary Procedures, Rules and Orders, Judicial Review, Requiring Answers to Charges as Part of Notices to Parties in Contested Cases, Hearing Requests and Answers, Inquiry, Civil Penalty Considerations and Discipline.

Division 30 - Certification, Licensure and Registration Requirements: Application Requirements, Procedure for Issuing and Renewing Certificates, Licenses and Registrations, Authorization to Practice, Duplicates and Sanctions.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-001-0000

Notice of Proposed Rulemaking

(1) The Health Licensing Office will notify persons on the agency's official rulemaking mailing list by postcard, electronic mail, facsimile, or printed copy before the adoption, amendment, or repeal of any permanent rule.

(2) A copy of proposed rules and permanently filed rules shall be posted on the agency's Web site.

(3) Persons may obtain a printed copy upon written request and payment of appropriate fee for copies of agency documents.

(4) The Health Licensing Office shall:

(a) Publish notice of the adoption, amendment, or repeal in the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.

(b) Mail such notice to persons on the Health Licensing Office's mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule.

(c) Mail or deliver such notice to the Associated Press and Capitol Building Press Room.

(d) Mail notice to certain legislators at least 49 days before the effective date of the rule, pursuant to ORS 183.335(1)(d).

(e) Mail such notice to the following persons, organizations, or publications listed according to the agency's programs, where the agency determines that such persons, organizations, or publications would have an interest in the subject matter of the proposal:

(A) Board of Athletic Trainers:

(i) Oregon Medical Association;

(ii) Oregon Public Health Association;

(iii) Health Services Council;

(iv) Oregon Athletic Trainers Society;

(v) National Athletic Trainers Association;

(vi) Emergency Medical Technicians;

(vii) Oregon School Activities Association;

(viii) Board of Medical Examiners;

(ix) Physical Therapist Licensing Board;

(x) Oregon Physical Therapy Association.

(B) Board of Cosmetology:

(i) National Cosmetology Association of Oregon;

(ii) Association of Oregon Cosmetology Colleges;

(iii) Oregon State Department of Education, Private Career Schools and Veterans Education;

ADMINISTRATIVE RULES

- (iv) United Food and Commercial Workers Union, Barbering and Cosmetology Division;
- (v) Oregon beauty industry trade papers and newsletters (upon request);
- (vi) Oregon licensed career schools of barbering, hair design, facial and/or nail technology.
- (C) Board of Denture Technology:
 - (i) Gray Panthers;
 - (ii) United Seniors of Oregon;
 - (iii) Oregon State Denturist Association;
 - (iv) Oregon Dental Association;
 - (v) Oregon Dental Hygienists Association;
 - (vi) Oregon Dental Assistants Association;
 - (vii) Oregon Association of Dental Labs;
 - (viii) Oregon Board of Dentistry;
 - (ix) Oregon State Department of Education, Private Career Schools and Veterans Education;
- (x) Department of Community Colleges and Workforce Development;
 - (xi) Oregon Public Health Association;
 - (xii) Oregon State Public Interest Research Group;
- (D) Board of Direct Entry Midwifery:
 - (i) Oregon Midwifery Council;
 - (ii) Oregon Association of Naturopathic Physicians;
 - (iii) Chiropractic Association of Oregon;
 - (iv) Oregon Pediatric Society;
 - (v) Oregon Medical Association;
 - (vi) Oregon Chapter of the American College of Nurse-Midwives;
 - (vii) Oregon Chapter of the American College of Obstetrics and Gynecologists;
 - (viii) Oregon Public Health Association;
 - (ix) Oregon Academy of Family Physicians;
 - (x) Oregon Nurses Association;
 - (xi) Oregon Association of Hospitals and Health Systems;
 - (xii) Oregon Primary Care Association; and
 - (xiii) Health Services Council.
- (E) Respiratory Therapist Licensing Board:
 - (i) Oregon Society of Respiratory Care;
 - (ii) American Association of Respiratory Care;
 - (iii) Oregon Association of Hospitals and Health Systems;
 - (iv) Association for Home Care;
 - (v) Oregon Health Services, Department of Human Services;
 - (vi) Oregon Medical Association;
 - (vii) Board of Medical Examiners;
 - (viii) National Board of Respiratory Care.
- (F) Environmental Health Registration Board:
 - (i) Oregon Environmental Health Association (OEHA);
 - (ii) County Health Departments;
 - (iii) National Environmental Health Association (NEHA);
 - (iv) Oregon Department of Agriculture;
 - (v) Oregon Department of Environmental Quality;
 - (vi) Oregon Health Services, Department of Human Services;
 - (vii) Oregon Society of Soil Scientists;
 - (viii) Conference of Local Environmental Health Supervisors (CLEHS);
 - (ix) Conference of Local Health Officials (CLHO).
- (G) Advisory Council for Electrologists, Permanent Color Technicians and Tattoo Artists:
 - (i) Oregon Association of Licensed Electrologists;
 - (ii) State Representative, International Guild for Professional Electrologists;
 - (iii) Oregon schools of electrolysis, permanent coloring and tattooing;
 - (iv) Oregon State Department of Education, Private Career Schools;
 - (v) American Electrology Association.
 - (vi) National Tattoo Association;
 - (vii) Professional Tattoo Artists Guild;
 - (viii) The Society of Permanent Cosmetic Professionals;
 - (ix) Alliance of Professional Tattoosists;
 - (x) National Cosmetic Tattooing Association;
 - (xi) Oregon Medical Association;
 - (xii) Board of Medical Examiners.
- (H) Advisory Council on Hearing Aids:
 - (i) Oregon Hearing Aid Society;
 - (ii) Oregon Speech and Hearing Association;
 - (iii) Oregon Academy of Otolaryngology;

- (iv) Oregon Board of Examiners for Speech Pathology and Audiology;
 - (v) Oregon Disabilities Council;
 - (vi) Oregon Association of the Deaf;
 - (vii) Oregon Chapters of Self-Help for the Hard of Hearing;
 - (viii) United Seniors; and
 - (ix) Gray Panthers.
 - (I) Body Piercing Licensing Program:
 - (i) Association for Professional Piercers;
 - (ii) Oregon Retail Council;
 - (iii) National Cosmetology Association of Oregon;
 - (iv) Ear Piercing Manufacturers of the United States;
 - (v) Oregon beauty and piercing industry trade papers and newsletters (upon request).
- Stat. Auth.: ORS 183, 676.605, 676.615, OL 2003, Ch. 547
Stats. Implemented: ORS 183, 676.605, 676.615, OL 2003, Ch. 547
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-001-0010

Model Rules of Procedure

Pursuant to ORS 183.341, the Health Licensing Office adopts the Model Rules of Procedures as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act as amended and effective January 1, 2004.

Stat. Auth.: ORS 183, 676.605
Stats. Implemented: ORS 183, 676.605
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-001-0020

Applicability of Agency Rules

The provisions of OAR 331-001-0000 through 331-030-0030 shall apply in the administration and regulation of all programs administered by the agency except as otherwise specifically provided.

Stat. Auth.: ORS 676.615, OL 2003, Ch. 547
Stats. Implemented: ORS 676.615, OL 2003, Ch. 547
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-010-0000

Definitions

Unless the context requires otherwise, the following definitions shall apply to OAR Chapter 331.

(1) "Agency" means the Health Licensing Office, also referred to as the Oregon Health Licensing Agency.

(2) "Authorization" means the official document, i.e. certificate, license, permit or registration, issued by the Health Licensing Office as prima facie evidence of the right to practice in accordance with the laws and rules of the regulatory programs administered by the agency.

(3) "Director" means, pursuant to ORS 676.610, the individual who has sole responsibility for the administrative, fiscal, human resource and regulatory functions of the agency.

(6) "Health Licensing Office" means the agency assigned to carry out the administrative, programmatic and daily operations, and regulatory functions of the Boards, Councils and Programs listed in Oregon Laws 2003, Chapter 547, Section 6.

(7) "Practitioner" means the individual issued a certificate, license, permit or registration by the agency who has received authorization within their defined field of practice.

(8) "Program" means the office and staff designated to carry out the daily functions of the Body Piercing Licensing Program as defined in ORS 690.500 - 690.570; or as the context requires, means the collective boards, councils and programs administered by the agency.

(9) "Regulatory authority" means a recognized governing body of a city, county, state or country that has been charged with the responsibility for overseeing the administration and regulation of an occupation or profession.

Stat. Auth.: ORS 676.615, OL 2003, Ch. 547 Sec. 6
Stats. Implemented: ORS 676.615, OL 2003, Ch. 547 Sec. 6
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-010-0010

Fees

(1) Payments made to the Health Licensing Office should be made for the exact amount of the transaction.

(2) Transactions conducted with the agency where either the payment or required documentation is incomplete or incorrect may be returned to the payer for correction before being processed by the agency.

(3) Fees will be applied as directed by the applicant, authorization holder or payer. Fees misapplied may be corrected by written request spec-

ADMINISTRATIVE RULES

ifying the certificate, license, permit or registration number(s) affected and the action requested, subject to conditions in OAR 331-010-0020(2).

(4) Fees paid to the agency are not transferable between programs or from person-to-person where the applicant was eligible for service and service was rendered pursuant to application or transaction request submitted to the agency.

(5) Payments received by the agency without indication as to purpose or intent or as an amount of overpayment will first be applied toward any outstanding civil penalty balance or administrative processing fee owed.

(6) Fee schedules are published in the administrative rules for each Board, Council or Program administered by the agency.

(7) Dishonored Check or Electronic Payment. Pursuant to ORS 30.701, whenever a bank check, credit or debit transaction in payment of an obligation due for fees, penalties, copies of records or materials, or other services to the agency, is dishonored by the bank upon which the check is drawn, the applicant or authorization holder will be assessed and must pay an administrative processing fee in the amount of \$25. The agency may take any other disciplinary action against an authorization holder or payer and may seek other legal remedies in pursuing to effect collection of the returned items. If a check is returned for NSF or uncollected funds the agency will attempt to collect payment electronically.

Stat. Auth.: ORS 30.701, 676.625, OL 2003, Ch. 547 Sec.10, 14, 22, 30, 50, 61, 69, 86, 100
Stats. Implemented: ORS 30.701, 676.625, OL 2003, Ch. 547 Sec.10, 14, 22, 30, 50, 61, 69, 86, 100

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-010-0020

Refund of Payments

(1) The Health Licensing Office will not refund any payment, which includes fees, penalties or other charges, unless there has been an error by the agency. Information not known by the agency because the authorization holder or payer supplied the incorrect information is not considered an error.

(2) The agency will not refund fees, penalties or other moneys overpaid by \$25 or less unless such refund is requested in writing by the payer, or representative of the payer, within three years after the date payment is received by the agency, as provided by ORS 293.445.

(3) Application fees will not be refunded.

(4) When an applicant withdraws their application for a certificate, license, permit, or registration prior to the issuance of the authorization, or fails to complete the application process, the agency may refund the certificate, license, permit or registration fee, but will retain the application fee.

(5) Examination and initial authorization fees will be refunded if the applicant does not meet the qualifications for examination or authorization.

(6) Examination fees may not be refunded once an applicant has been approved or scheduled to take the examination, even if the applicant is unable to participate in the examination. The agency will not incur any expense in refunding fees or rescheduling an examination.

Stat. Auth.: ORS 30.701, 293.445, 676.625, 676.625, OL 2003, Ch. 547 Sec.10, 14, 22, 30, 50, 61, 69, 86, 100

Stats. Implemented: ORS 30.701, 293.445, 676.625, 676.625, OL 2003, Ch. 547 Sec.10, 14, 22, 30, 50, 61, 69, 86, 100

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-010-0030

Charges for Copies and Documents

(1) All requests for copies of public records pertaining to the Health Licensing Office, or any program it administers, shall be submitted in writing, electronic mail, or by completion of an electronic form provided by the agency. Requests are subject to disclosure according to the Public Records Law, ORS 192.410 to 192.505, and rules adopted thereunder.

(2) The agency may charge a fee reasonably calculated to reimburse the agency for costs of providing and conveying copies of public records. Fees shall not exceed the cost of locating, compiling, making available for inspection, preparing copy in paper, audio, computer disk, microfilm or machine readable format, and delivering public records. All fees assessed must be paid before public records are made available.

(3) Individuals may contact the agency for the cost of obtaining copies of official agency records.

(4) Charges to the general public shall be payable in cash, cashier's check, money order, or credit/debit card. Payment by personal check for copies of official documents is not accepted.

Stat. Auth.: ORS 197.410 - 192.505, 676.625, OL 2003, Ch. 547 Sec.10, 14, 22, 30, 50, 61, 69, 86, 100

Stats. Implemented: ORS 197.410 - 192.505, 676.625, OL 2003, Ch. 547 Sec.10, 14, 22, 30, 50, 61, 69, 86, 100

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-010-0040

Notification Requirements

(1) Authorization holders in any program administered by the Health Licensing Office shall notify the agency in writing within 30 calendar days of a change in the following information:

- (a) Name;
- (b) Residential or mailing address;
- (c) Area code and telephone number;
- (d) Employment status; or
- (e) Work location.

(2) The holder of a facility license or an independent contractor registration, from any program administered by the Health Licensing Office, shall notify the agency in writing within five calendar days of a change to the following business information:

- (a) Business name;
- (b) Business telephone number, including area code;
- (c) General hours of operation;
- (d) Address change resulting from city or U.S. Postal Service action;

or

- (e) Closure or sale of business facility or practice.

(3) Independent contractors must submit written notice to the agency indicating the facility name, authorization number, telephone number and address for any of the following changes:

- (a) Before a change in permanent work location;
- (b) Before working at multiple licensed facilities on a temporary basis;

(c) When working for a temporary personnel service, provide the agency with a monthly listing of facilities at which they worked on a temporary basis.

Stat. Auth.: ORS 676.615

Stats. Implemented: ORS 676.615

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0000

Contested Case Procedure

(1) Subject to the approval of the Attorney General, an officer or employee of the agency is authorized to appear on behalf of any Board, Council, or Program administered by the agency when the agency proposes to refuse to issue, renew, suspend, revoke, place on probation or impose a civil penalty on any applicant, licensee, registrant or other individual.

(2) The agency representative may not make legal argument on behalf of the agency:

(a) "Legal argument" includes arguments on:

- (A) The jurisdiction of the agency to hear the contested case;
- (B) The constitutionality of a statute, rule, and/or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(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 of the facts to the statutes or rules directly applicable to the issues in the contested case;
- (B) Comparison of prior actions of the agency 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.

Stat. Auth.: ORS 183, OL 2003, m Ch. 547, Sec. 4

Stats. Implemented: ORS 183, OL 2003, m Ch. 547, Sec. 4

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0010

Requiring an Answer to Charges as Part of Notices to Parties in Contested Cases

In addition to the requirements stated in OAR 137-003-0000 of the Attorney General's Model Rules of Procedure adopted under OAR 331-001-0010, the notice to parties in contested cases may include a statement that an answer to the assertions or charges will be required and, if so, the consequence of failure to answer. A statement of the consequences of failure to answer may be satisfied by enclosing a copy of OAR 331-020-0020 with the notice.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

ADMINISTRATIVE RULES

331-020-0020

Hearing Requests and Answers; Consequences of Failure to Answer

(1) A hearing request, and answer when required, shall be made in writing to the Agency Director by the party or their attorney and an answer shall include the following:

(a) An admission or denial of each factual matter alleged in the notice; and

(b) A short, concise statement of each relevant affirmative defense the party may have.

(2) Except for good cause:

(a) Factual matters alleged in the notice and not denied in the answer shall be presumed admitted;

(b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;

(c) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency; and

(d) Evidence shall not be taken on any issue not raised in the notice and the answer.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0030

Inquiries; Filing a Complaint

(1) An individual may contact the Health Licensing Office to inquire on the licensing record, status or employment of a person issued a certificate, license, permit or registration by the agency, or to comment on any issue concerning an individual regulated by the agency.

(2) Complaints against individuals practicing in one of the professions or occupations listed in Oregon Laws 2003, chapter 547, section 6, may be filed with the agency. The complaint may be made on forms provided by the Agency, which includes the following information:

(a) The name, address and telephone number of the person making the complaint;

(b) The name of the person or facility against which the complaint is being made;

(c) A concise description of the charge against the person or facility listing the date, time and circumstances of the alleged violation; and

(d) The signature of the person making the complaint.

Stat. Auth.: ORS 183, 676.605, OL 2003, Ch. 547, Sec. 6

Stats. Implemented: ORS 183, 676.605, OL 2003, Ch. 547, Sec. 6

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0040

Complaint Processing and Investigation

Pursuant to Oregon Laws 2003, chapter 547, section 1, complaints filed with the Health Licensing Office will be handled as follows:

(1) The agency will determine if the complaint is related to a profession or occupation regulated and administered by the agency and the complaint falls within authority delegated to the agency by statute.

(2) The agency investigator(s):

(a) Will review the information and as applicable, interview parties and witnesses, and examine physical evidence relating to the complaint;

(b) Will advise on whether an authorization holder or other individual practiced within the acceptable standards of the particular Board, Council or Program;

(c) May attempt to informally resolve the matter;

(d) Will make recommendations for agency or Board action.

(3) After receiving advice from the investigator(s), the agency will determine what action will be taken in accordance with Oregon Laws 2003, chapter 547, section 1.

Stat. Auth.: ORS 183, 676.605, 676.615, OL 2003, Ch. 547, Sec. 1, 2

Stats. Implemented: ORS 183, 676.605, 676.615, OL 2003, Ch. 547, Sec. 1, 2

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0050

Response to Inquiry

Any person subject to a complaint involving conduct or service performed or provided may be required by the agency to respond. The person must respond to the agency within 20 calendar days from the date of the request, in the form and manner requested by the agency.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0060

Civil Penalty Considerations

(1) Pursuant to Oregon Laws 2003, chapter 547, section 4, any person who violates any provision of law or rules of a regulated profession or

occupation administered by the Health Licensing Office and listed Oregon Laws 2003, chapter 547, section 6, may incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed \$5,000 for each violation.

(2) In establishing the amount of the penalty for each violation, the agency will consider and evaluate each case on an individual basis. The agency will consider, but not be limited to factors listed in Oregon Laws 2003, chapter 547, section 4, subsection (4), in determining the amount of the penalty.

Stat. Auth.: ORS 676.615, OL 2003, Ch. 547, Sec. 4

Stats. Implemented: ORS 676.615, OL 2003, Ch. 547, Sec. 4

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-020-0070

Discipline

(1) The Health Licensing Office may discipline authorization holders for violations of laws and rules, in accordance with Oregon Laws 2003, chapter 547, section 3.

(2) Failure to cooperate with the agency or its agent is unprofessional conduct and is subject to disciplinary sanctions, which may include suspension or revocation and refuse to issue or renew or place on probation and assessment of civil penalties. Failure to cooperate with the agency or its agent includes, but is not limited to, the following:

(a) Failing to provide information within the specified time allotted and as requested by the agency;

(b) Failing to temporarily surrender custody of original client records to the agency upon request, which includes treatment charts, models, health histories, billing documents, correspondence and memoranda;

(c) Interference, use of threats or harassment which delays or obstructs any person in providing evidence in any investigation, contested case, or other legal action instituted by the agency;

(d) Interference, use of threats or harassment which delays or obstructs the agency in carrying out its functions under individual programs administered and regulated by the agency as listed in Oregon Laws 2003, chapter 547, section 6 and rules adopted thereunder; or

(e) Deceiving or attempting to deceive the agency regarding any matter under investigation including altering or destroying any records.

(3) The agency, at its discretion, may require supplemental training in an appropriate area of study as determined by the agency, board or council, as a disciplinary sanction. Supplemental training may be in addition to assessment of a monetary penalty or the agency, board or council may waive or reduce a penalty, in cases requiring supplemental training.

Stat. Auth.: OL 2003, Ch. 547, Sec. 3

Stats. Implemented: OL 2003, Ch. 547, Sec. 3

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-030-0000

Application Requirements

(1) An applicant who has been the subject of any disciplinary action from a regulatory authority in another state, including the imposition of a civil or criminal penalty, is not qualified for certification, licensure, permit or registration in Oregon until the Health Licensing Office determines the scope and finality of the disciplinary action and makes a determination as to an applicant's overall fitness to be certified, licensed or registered to practice in Oregon.

(2) The agency may conduct a background check of convictions by use of the Law Enforcement Data System and may determine whether the applicant has been disciplined by a regulatory authority or has been convicted of a crime that bears a relation to the fitness of the applicant to practice in accordance with ORS 670.280.

(3) Material misrepresentation or material errors of fact on the application for a certificate, license, permit or registration are grounds for refusal to issue or revoke the authorization.

(4) Application for an authorization for any program administered by the Health Licensing Office shall be made on forms prescribed and furnished by the agency.

(5) To be accepted and processed, an application must contain:

(a) Applicant's current name, address and telephone number;

(b) Applicant's date of birth;

(c) Applicant's signature and date of application;

(d) Applicant's Social Security Number and evidence of verification;

(Refer to (6) of this rule.)

(e) Applicant's ethnicity (optional);

(f) Applicant's gender (optional);

(g) Disclosure of any active or inactive disciplinary action, voluntary resignation of a certificate, license, permit or registration or sanction relat-

ADMINISTRATIVE RULES

ed to authorization imposed upon the applicant by any state or country regulatory authority;

(h) Disclosure of any active or inactive certificate, license, permit or registration issued by Oregon or another state;

(i) Payment for the exact amount of required fees; and

(j) All additional information required by the particular Board, Council or Program for which application is made.

(6) As part of your application for an initial or renewed occupational or professional authorization issued by the agency, you are required to provide your Social Security Number to the agency. This is mandatory. The authority for this requirement is ORS 25.785, 305.385, 42 USC § 405(c)(2)(C)(i), and 42 USC § 666(a)(13). Failure to provide your Social Security Number will be a basis to refuse to accept the application for or to issue or renew the certification, license, permit or registration you seek. The record of your Social Security Number will be used for child support enforcement and tax administration purposes (including identification) only, unless you authorize other uses of the number. Although a number other than your Social Security Number appears on the face of the authorization issued by the agency, your Social Security Number will remain on file with the agency.

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

Stat. Auth.: ORS 25.785, 305.385, 42 USC § 405(C)(2)(C)(i), and 42 USC § 666(a)(13),

670.280, 676.605, 676.615, OL 2003, Ch. 547

Stats. Implemented: ORS 25.785, 305.385, 42 USC § 405(C)(2)(C)(i), 42 USC § 666(a)(13),

670.280, 676.605, 676.615, OL 2003, Ch. 547

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-030-0010

Procedure for Issuing and Renewing Certificates, Licenses and Registrations

(1) Certificates, licenses and registrations for all programs administered by the Health Licensing Office shall be issued upon compliance with all requirements. The certificate, license or registration will expire on the last day of the month one year, or other period as specified by each individual program, from the date the authorization was issued.

(2) The authorization will state the holder's name, address, authorization number, expiration date and bear the signature of the holder.

(3) The agency may mail notice of expiration to the authorization holder, sending the notice to the last known address on file. The authorization holder is responsible for submitting a timely application for renewal whether or not a renewal form was mailed by the agency.

(4) Application for renewal shall be made in advance of the expiration date, and shall be submitted together with the required fee(s) and documentation, as the individual program stipulates for renewal. Payment must be postmarked or received by the agency during regular business hours on or before the expiration date.

(5) An application for renewal and payment received by the agency or postmarked after the expiration date may be assessed a late renewal fee according to requirements stipulated in each individual program's rules for certificate, license or registration renewal.

(6) Notwithstanding subsection (1) of this rule, the agency may vary the renewal date of an authorization by giving the applicant written notice of the renewal date being assigned and by making prorated adjustments to the renewal fee.

Stat. Auth.: ORS 676.605, 676.615, OL 2003, Ch. 547

Stats. Implemented: ORS 676.605, 676.615, OL 2003, Ch. 547

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-030-0020

Authorization; Duplicates

(1) An individual shall not display a sign or in any way advertise or purport to be a certificate, license, permit or registration holder or to be engaged in practice without first obtaining an authorization in the manner required according to statute and rules of a program under the administration of the Health Licensing Office:

(a) Oregon Laws 1999, chapter 736, section 6, subsection (1) — Athletic Training;

(b) Oregon Laws 2003, chapter 547, section 64 — Body Piercing;

(c) ORS 690.015 — Cosmetology;

(d) ORS 680.505 — Denture Technology;

(e) ORS 687.415 — Direct Entry Midwifery;

(f) ORS 690.355 — Electrology and Tattooing;

(g) ORS 694.025 — Hearing Aid Specialists;

(h) ORS 688.805 — Respiratory Therapy;

(i) ORS 700.020 — Environmental Health Specialists.

(2) The agency issues only one original authorization.

(3) The possession or posting of more than one of the same current authorization (original or duplicate) is prohibited.

(4) All authorization holders must carry or have immediate access to current government issued photographic identification at all times when performing services or when open for business and will provide agency enforcement officers with the appropriate identification immediately upon request. Acceptable photographic identification includes, but is not limited to, a valid driver's license, passport, or other official document issued by a recognized government entity.

(5) If for any reason a person is mistakenly issued a document that contains a material error and superseded by a corrected document, the agency has the authority to demand surrender of the incorrect authorization document issued by the agency. The individual must surrender the document requested within the time determined by the agency.

(6) The agency may issue a DUPLICATE document, if:

(a) A written request for a reproduction is submitted to the agency office, which contains the authorization holder's name, authorization number, address, telephone number, employment information, and a statement attesting that the original authorization has been lost, stolen or destroyed;

(b) The authorization is valid;

(c) Payment of the duplicate fee accompanies the request;

(d) The authorization holder is not subject to any outstanding civil penalties or other disciplinary action.

Stat. Auth.: ORS 676.605, 676.615, 690.015, 680.505, 687.415, 690.355, 694.025, 688.805, 700.020, OL 1999, Sec. 6, Sub. 1, OL 2003, Ch. 547, Sec. 64

Stats. Implemented: ORS 676.605, 676.615, 690.015, 680.505, 687.415, 690.355, 694.025, 688.805, 700.020, OL 1999, Sec. 6, Sub. 1, OL 2003, Ch. 547, Sec. 64

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

331-030-0030

Sanctions

(1) DEFAULT STUDENT LOAN: In accordance with ORS 348.393 to 348.399 and OAR 575-001-0030, the Oregon Health Licensing Office will provide the Oregon Student Assistance Commission with authorization information which may be electronically cross-matched with the agency's post-default database.

(2) The agency will refuse to issue or renew, place the person on probation, or suspend the authorization if the person is in default on any student loan guaranteed or insured by the Oregon Student Assistance Commission and is not paying in a satisfactory manner as determined by the Commission and in accordance with federal regulations.

(3) Pursuant to ORS 348.393(3), the agency will notify the authorization holder of the action being taken against the authorization at the direction of the Commission.

(4) Upon notification by the Commission and receipt of a release notice that the individual has met satisfactory borrower repayment status, the agency will issue or reinstate the authorization upon compliance with any qualifications for issuance or reinstatement.

(5) CHILD SUPPORT IN ARREARS: In accordance with ORS 25.750 to 25.783, the Health Licensing Office will provide the Support Enforcement Division of the Department of Justice with authorization information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b), and/or (c).

(6) The agency will suspend the authorization, if the Support Enforcement Division or the district attorney identifies the authorization holder as being in arrears with respect to any judgment or order requiring the payment of child support and that the case is being enforced under the provisions of ORS 25.080.

(7) Pursuant to ORS 25.762 or 25.765, the agency will notify the authorization holder of the suspension status and refer the person to the Support Enforcement Division or the district attorney for resolution.

(8) Upon notification by the Support Enforcement Division or district attorney and receipt of a release notice that the conditions resulting in the suspension no longer exist, the agency will reinstate the authorization upon compliance with all qualifications for renewal or reactivation.

(9) DEFAULT TAX FILING OR PAYMENT: In accordance with ORS 305.385, upon request the Health Licensing Office will provide the Department of Revenue with authorization information to determine if the holder has neglected or refused to file any return or to pay any tax without filing a petition with the department as stated in ORS 305.385(4)(a).

(10) The agency will propose to take action against an authorization holder identified by the Department of Revenue. If the agency proposes to refuse to issue, renew or suspend an authorization, opportunity for hearing will be accorded as provided in ORS 183.310 to 183.480 for contested cases.

(11) Upon notification by the department and receipt of a notice of release issued by the department that the authorization holder is in good

ADMINISTRATIVE RULES

standing with respect to any returns due and taxes payable to the department as of the date of the notice of release, the agency will renew, reactivate or release from suspension the authorization upon compliance with any qualifications for renewal or reactivation.

Stat. Auth.: ORS 25.080, 25.750 - 25.783, 183.310 - 183.480, 305.385, 348.393 - 348.399.
Stats. Implemented: ORS 25.080, 25.750 - 25.783, 183.310 - 183.480, 305.385, 348.393 - 348.399
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04

Landscape Contractors Board Chapter 808

Adm. Order No.: LCB 1-2004

Filed with Sec. of State: 1-27-2004

Certified to be Effective: 2-1-04

Notice Publication Date: 1-1-04

Rules Adopted: 808-002-0210, 808-002-0298, 808-002-0890

Rules Amended: 808-002-0100, 808-002-0220, 808-002-0620, 808-002-0665, 808-002-0880, 808-002-0920, 808-003-0010, 808-003-0015, 808-003-0018, 808-003-0030, 808-003-0035, 808-003-0040, 808-003-0045, 808-003-0050, 808-003-0055, 808-003-0060, 808-003-0065, 808-003-0070, 808-003-0080, 808-003-0081, 808-003-0085, 808-003-0125, 808-003-0130, 808-004-0320, 808-004-0400, 808-005-0020, 808-009-0020

Rules Repealed: 808-002-0448, 808-003-0040(T)

Subject: 808-002-0210 Adopt definition of "Claimant"

808-002-0298 Adopt definition of "Decorative Vegetation"

808-002-0890 Adopt definition of "Warranty Work"

808-002-0100 Correct statutory cite

808-002-0220 Correct statutory cite

808-002-0620 Amend definition of "Maintenance" to include the application of fertilizer

808-002-0665 Deletes reference to "registrant" and replace with "licensed landscaping business"

808-002-0880 Deletes planting of sod and seed for "architectural horticulture"

808-002-0920 Amends definition of work period to include date construction begins and statutory cites

808-003-0010 Amends definition of "Advertising" to state what is included as advertising

808-003-0015 Clarifies application fee and exam fee

808-003-0018 Clarifies licensed contractor employed by the business must hold phase of license the business offers and contractor must supervise work and attend all on-site meetings

808-003-0030 Clarifies when an application expires for applicants who fail to complete the license process

808-003-0035 Modifies references to incorrect licensing regarding tree service. ORS 671 does not give the Landscape Contractor's License the authority to remove trees, prune trees or remove limbs or stumps.

808-003-0040 Corrects references to backflow prevention devices; and must have signed LIBDI agreement with the Board prior to 4/30/1996 instead of 4/30/1995

808-003-0045 Corrects references to one exam with several sections and adds ability to install backflow prevention devices to holders of a General license if LIBDI section of the exam is passed

808-003-0050 Deletes requirement to submit W-4 forms and address requirement to submit current pay stub for proof of employment, adds supervisory responsibilities

808-003-0055 Clarifies applicant to show picture ID and the exam to be closed book

808-003-0060 Housekeeping

808-003-0065 Changes "scoring" to "exam results"

808-003-0070 Housekeeping

808-003-0080 Corrects references to one exam with several sections

808-003-0081 Changes "scores" to "results"

808-003-0085 Housekeeping

808-003-0125 Corrects statutory cite; housekeeping

808-003-0130 Clarifies exam fees are per sitting

808-004-0320 Clarifies that damages are awarded only for material delivered within the period of time the business was licensed; allows agency to process claim that would be dismissed if the previously filed claim was withdrawn prior to the on-site meeting, closed allowing subsequent filing, but does not extend the time limitations for filing a claim of one year.

808-004-0400 Clarifies process of determining jurisdiction and how to process claim if jurisdiction determined or not

808-005-0020 Deletes the amount a penalty may be reduced to

808-0049-0020 Replaces "new" with "amended" declaration of damages form

808-002-0448 Repeal definition of Hearing Officer.

808-003-0040(T) This rule is being repealed because it was a temporary rule which has not expired and is listed above with the appropriate amendments.

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6570

808-002-0100

Definitions Generally

Except where the context requires otherwise, the definitions in this division govern the interpretation of ORS 671.510 to 671.710, 671.955 and OAR chapter 808.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.510 - 671.990

Hist.: LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-002-0210

Claimant

"Claimant" means a person who files a claim against a landscaping business under ORS 671.690 to 671.710

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671

Hist.: LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-002-0220

Claims

"Claims" as used in ORS 671.690 to 671.710 and in division 4 of this chapter are of the following types:

(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" means 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 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.510 - 671.720

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-002-0298

Decorative Vegetation

"Decorative Vegetation" means plantings that are made on real property primarily for beautification purposes and serve no specific function, as for example, crop production or erosion control. "Decorative Vegetation" does not include the plantings on wetlands, pastures or agricultural property.

Stat. Auth.: ORS 670 & 671

Stats. Implemented: ORS 671

Hist.: LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

ADMINISTRATIVE RULES

808-002-0620

Maintenance

(1) "Maintenance" means the regular and practical care of existing landscapes and would include, but are not limited to,

(a) The mowing, trimming and edging of lawns;

(b) Pruning of decorative vegetation to a height of no more than 15 feet above ground level, removal of trees up to 15 feet in height where the diameter of the tree is 4 inches or less when measured at 6" to 12" above soil line. Limbs may be removed when the diameter of the limb is 3 inches or less at its origin;

(c) The preparation and planting of annuals, perennials and bulbs in existing beds;

(d) The placement of decorative rock (3" in diameter or less) or the replacement of mulching materials including, but not limited to, bark dust, chips, husks, shells or compost; or

(e) The application to lawns, trees and shrubs of fertilizer, as that term is defined in ORS 633.311.

(2) Replacement planting of lawns, shrubs and trees may occur under the definition of maintenance when the combined total of all plantings including labor, material and mark up does not exceed \$500.00 per site per year as per ORS 671.540(3).

(3) Irrigation repair and maintenance is not included in the definition of maintenance.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.540

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; LC 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 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-002-0665

Monetary Damages

"Monetary damages" may include, but is not limited to:

(1) The dollar amount required in excess of the contract amount to provide the claimant what was agreed to be provided under the terms of the contract minus any amount due and unpaid to the licensed landscaping business; or

(2) The dollar amount paid to the licensed landscaping business less the reasonable value of any work properly performed by the licensed landscaping business.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-002-0880

Sod and Seed

"Sod and Seed" means planting grass seed, vegetative parts or laying sod.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.520

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; LC 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 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-002-0890

Warranty work

"Warranty work" is work done pursuant to an agreement that warrants the quality of the work upon any portion of a project for the purpose of making corrections or repairs to the work described by the contract and supplemental agreements, whether or not final payment has been made by the consumer.

Stat. Auth.: ORS 670 & 671

Stats. Implemented: ORS 671

Hist.: LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-002-0920

Work Period

"Work Period" as used in OAR 808-004-0320 and 808-004-0600 means the time period from the date a landscaping business accepts a payment, offers a written proposal which is later accepted as a contract or

enters into a contract or begins construction, whichever occurs first, until the date the work is completed as defined in OAR 808-002-0280 or the landscaping business ceases work.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.710

Hist.: LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0010

Advertising

(1) All written advertising, except telephone and internet directory line listings, shall include the landscaping business license number.

(2) Advertising shall include, but not be limited to:

(a) Newsprint classified advertising and newsprint display advertising for work subject to ORS 671.510 through 671.710;

(b) Telephone or internet directory space ads, display ads and line listings;

(c) Business cards;

(d) Business flyers;

(e) Business letterhead;

(f) Business signs at construction sites; and

(g) Websites.

(3) No person shall advertise under the heading of "landscape contractor" or any other heading that would lead any person to believe the business is a landscape contracting business in any advertising media unless the person holds a current landscape contracting business license.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.530

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 808-010-0012; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0015

Application for License

(1) Application for a landscaping business license shall be on forms provided by the agency and shall be accompanied by:

(a) Required application fee;

(b) Surety bond or deposit as required under ORS 671.690;

(c) Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 listing the Landscape Contractors Board as the certificate holder;

(d) List of licensed landscape contractors, with accompanying license numbers, employed by the business as required under ORS 671.565; and

(e) List all assumed business names under which the landscaping business is conducted. All assumed business names listed must be on record with the Corporation Division.

(2) Application for a landscape contractor's license shall be on forms provided by the agency and shall be accompanied by:

(a) Required application and examination fees;

(b) Verification of experience and/or transcripts or copies of completion certificates from courses of study; and

(c) If applicable, name of employing licensed landscaping business or businesses.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.560 & 671.565

Hist.: LC 3, f. & ef. 2-7-77; LC 3-1980, 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 808-010-0015; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0018

Landscape Contractors Working for More than One Landscaping Business

(1) ORS 671.565 specifies that each landscaping business shall employ at least one person with a landscape contractor's license to supervise the landscaping operation of the business. If the licensed landscape contractor owns the landscaping business or is employed full-time by the landscape business there is a rebuttable presumption that the licensed landscape contractor is supervising the landscaping operation of the business.

(2) If a landscaping business employs only one licensed landscape contractor, that licensed landscape contractor must hold a license covering each phase of landscape contracting that the business offers.

(3) If a landscaping business employs more than one licensed landscape contractor the combined licenses must cover each phase of landscape contracting that the business offers.

(4) At a minimum the licensed landscape contractor must perform the following supervisory services:

(a) Review and initial the landscape plan and written contract for each job;

ADMINISTRATIVE RULES

(b) Visit the construction site at least once during construction and at least once per week for projects that take more than one week to complete to supervise the work; and

(c) Attend all on-site meetings and appear at any hearings that are a consequence of any claims filed against the landscape business.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: 671.565

Hist.: LCB 2-1998, f. & cert. ef. 4-30-98; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0030

Expiration of Application

Applicants who fail to complete the license process within the following time periods must submit a new application and fee and, if applicable, retake and pass the exam.

(1) A landscaping business license application will expire one year from the date the application was received by the agency.

(2) An individual landscape contractor's license application will expire two years after the last examination sitting or two years after the application was received by the agency, whichever is later. Exam results are subject to OAR 808-003-0065.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.670

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 808-010-0017; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0035

Limited Licenses

(1) Licenses may be issued only for the following:

- (a) All Phase;
- (b) Standard; or
- (c) Irrigation and LIBDI.

(2) Except as set forth in section (3) of this rule, the following previously-issued limited licenses shall remain valid so long as the licensee continues to renew the license:

- (a) General;
- (b) Irrigation;
- (c) Irrigation and LIBDI;
- (d) Sod & Seed; and
- (e) Trees.

(3) The "All Phase" license shall include standard, irrigation, and LIBDI, unless, in lieu of LIBDI, the landscape contractor has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform LIBDI work, with the penalty for violation of the agreement being \$1,000 and suspension of the license.

Stat. Auth.: ORS 670.310 & 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 808-010-0020; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 1-1994, f. 5-26-94, cert. ef. 6-1-94; 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 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0040

Limitation of Service by License

(1) A licensed landscaping business shall perform only those phases of landscape contracting for which its landscape contractor employees are licensed.

(2) The landscape contracting service or services a licensed landscaping business offers shall be limited to the following:

(a) An all phase license holder is entitled to perform all areas of landscape contracting, including the installation of backflow prevention devices unless, in lieu of LIBDI, the landscape contractor has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform LIBDI work.;

(b) A general limited license holder may perform all landscape contracting functions except irrigation and the installation of backflow prevention devices;

(c) An irrigation; no backflow limited license holder may only perform irrigation functions

(d) A sod and seed limited license holder may only perform grass seed planting or sod laying;

(e) A tree limited license holder may only install new or transplant trees,

(f) A standard limited license holder may perform all areas of landscape contracting except irrigation and the installation of backflow prevention devices;

(g) An irrigation; plus backflow limited license holder may perform only irrigation and the installation of backflow prevention devices.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow prevention devices shall be done by plumbers licensed by the State Plumbers Board or by licensed landscape contractors who have been qualified by examination to install backflow prevention devices and who are either employees or owners of landscaping businesses. If the device is installed by a landscape contractor, the landscape contractor shall obtain all required permits and shall install the devices in conformance with the permits;

(b) If a landscape contractor or a landscaping business fails to obtain permits to tap into the potable water system and install irrigation or ornamental water feature backflow prevention devices or fails to comply with applicable code requirements, in addition to any other remedy, the Board may suspend, condition or revoke the landscape contractor's and the landscaping business' license.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 447.060, 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 7-2003(Temp), f. 11-28-03, cert. ef. 12-1-03 thru 5-29-04; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0045

Addition to Limited Licenses

(1) Landscape contractors holding limited licenses may add to the phase of landscape contracting they perform by taking and passing additional sections of the exam. Licensees shall submit the required fees and a written request to take the additional sections of the exam.

(2) The following sections must be taken and passed to hold a standard landscape license:

(a) General license holders must take Laws and Rules, General A, General B, General C, and General D;

(b) Sod & Seed license holders must take General A, General B, General C, and General D.

(c) Tree license holders must take General A, General B, General C, and General D.

(3) Holders of a General license, Sod & Seed license or a Tree license must take and pass the irrigation and LIBDI sections of the landscape examination to become licensed to perform irrigation work and install backflow prevention devices.

(4) If a landscape business' phase of license changes because its employed landscape contractors' phases of license changes or because an employed landscape contractor ceases to be employed by the business, the business shall notify the agency in writing within ten (10) days of the change of license phase to obtain an updated license.

(a) If the individual license holder for a business leaves the employ of the business, the individual license holder must notify the agency in writing (regular mail, fax or email) within ten (10) days of date of departure; and

(b) The business for which this licensee worked must immediately stop performing those phases of landscape contracting work until they have an owner or employee who is licensed to perform those phases of landscape contracting work.

(5) When license limitations change, the agency will issue new a license at no cost to the licensee. The landscape business shall not offer or perform services for which it does not employ or have as an owner a corresponding landscape contractor licensed to perform those phases of landscape contracting.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0022; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0050

Employment; Supervisory Responsibilities

(1) An individual landscape contractor may be employed by more than one landscaping business.

(2) Upon application for and before the renewal of a landscaping business license, and at any other time the agency requests, a landscape contractor employed by the landscaping business whose phase of license is the basis for the landscape business license must:

(a) Sign and have notarized a Verification of Employment form (provided by the agency) that verifies the landscape contractor:

- (i) Is a paid employee of the landscape business;

ADMINISTRATIVE RULES

(ii) Will comply with all of the current obligations for supervising the work based on the individual landscape contractor's phase of license; and

(iii) Will attend all on-site meetings and appear at any hearings that are a consequence of any claims based on the contractor's phase of license filed against the landscape business.

(b) Submit a copy of the contractor's most current pay stub issued by the landscape business with the social security number redacted (blacked out); and

(c) Notify the agency within ten (10) days of termination of employment with any landscaping business.

(3) A landscaping business must employ at least one licensed landscape contractor who must hold a license covering each phase of the landscape operation that the landscaping business offers.

(4) If the licensed landscape contractor owns the landscaping business or is employed full-time by the landscape business there is a rebuttable presumption that the licensed landscape contractor is supervising the landscaping operation of the business.

(5) The licensed landscape contractor whose phase of license is the basis for the landscape business license must perform the following supervisory responsibilities:

(a) Review and initial the landscape plan and written contract for each job;

(b) Visit the construction site at least once during construction and at least once per week for projects that take more than one week to complete in order to supervise the work; and

(c) Attend all on-site meetings and appear at any hearings that are a consequence of any claims filed against the landscape business.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.660

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; Renumbered from 808-010-0023; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0055

Examination Requirements

(1) The agency shall provide a written or computerized examination 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 must show picture identification and the letter of authorization before taking an exam.

(4) The examination must 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 & 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; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0060

Examinations

(1) The exam will consist of the following sections:

(a) Laws & Rules which includes Contract Law, General Business, and Agency Involvement;

(b) General which includes the following sections:

(A) Plants and turf;

(B) General construction;

(C) Grading and drainage; and

(D) General safety, estimating, soil science, chemicals.

(c) Irrigation, which includes, but is not limited to pipes and fittings, electrical, head and nozzles, Hydraulics, installation/practical application, plan questions, winterizing, repair/troubleshooting, valves, plant culture, drip irrigation, design, and pumps.

(d) LIBDI, which includes, but is not limited to irrigation and ornamental water feature backflow prevention devices, piping, valves, and related plumbing code provisions.

(2) All applicants must take and successfully pass the Laws & Rules section.

(3) If an applicant desires to be able to perform all landscaping including irrigation and the installation of the backflow prevention devices, the applicant must take and successfully pass the Laws & Rules, General, Irrigation and LIBDI sections.

(4) If an applicant desires to be able to perform all landscaping except irrigation and the installation of the backflow prevention devices, the applicant must take and successfully pass the Laws and Rules and General sections.

(5) If an applicant desires to be able to perform only irrigation and the installation of the backflow prevention devices, the applicant must take and successfully pass the Laws and Rules, Irrigation and LIBDI sections.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.570

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 808-010-0025; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; 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 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0065

Scoring

(1) Each exam section shall be scored separately.

(2) Based on 100 percent, the passing score shall be 75 percent or higher for each section.

(3) A passing score shall be valid for one year from the date the exam section was taken. An applicant who fails to pass all the sections required for a particular license within one year of passing a section shall retake that section.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670

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 808-010-0026; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0070

Exam Failure

(1) Applicants who attempt and fail any section of the exam must wait two weeks before retaking any section of the exam.

(2) After three unsuccessful attempts to pass any section of a written or computerized exam, an applicant may petition the agency for an oral exam.

Stat. Auth.: ORS 183 & 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; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0080

Review of Examinations

(1) Applicants failing to pass any section(s) of the exam may schedule an appointment with agency staff to review those sections at the Board office in Salem.

(2) Requests to review failed sections of the exam must be scheduled within 30 days from notification of results.

(3) Applicants must show picture identification before reviewing any failed sections of the exam.

(4) Applicants reviewing failed sections of the exam may not:

(a) Be accompanied by another person during the review unless accompanied by an agency-approved interpreter;

(b) Retain notes taken during the review; or

(c) Challenge their examination results.

(5) Applicants will be allowed to review the failed sections of the exam once after each failure.

Stat. Auth.: ORS 183 & 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 808-010-0029; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 2-2002, f. & cert. ef. 5-24-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0081

Appeal of Examination Results

An applicant who fails any section of the exam may not appeal those results.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.570

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0085

Cheating on the Exam

(1) An applicant who is caught cheating during the examination:

(a) Will not receive a result for any sections of the exam for the current sitting;

ADMINISTRATIVE RULES

- (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; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0125

Notification

Within ten (10) days following a change of ownership, address, or bond/deposit information, the landscape contractor or landscaping business shall submit written notification to the agency as provided in ORS 671.603.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.600 & 671.605

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0034; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-003-0130

Fees

- (1) Landscaping business, initial license or renewal: \$225.
- (2) Landscape contractor, initial license or renewal: \$75.
- (3) Landscaping business, late penalty fee: \$25.
- (4) Contractor, late penalty fee: \$25
- (5) Effective January 1, 2004, Individual Landscape Contractor License Application fee: \$60.
- (6) Effective January 1, 2004, initial examination fee for any phase of license is:

- (a) \$15 for first section of the exam; and
- (b) \$10 for each additional section per exam sitting.
- (7) Effective January 1, 2004, retake fees for any section of the exam is:

- (a) \$15 for first section of the exam; and
- (b) \$10 for each additional section per exam sitting.
- (8) Effective January 1, 2004, exams sent to the DMV, additional processing and mailing fee: \$12.

(9) Examination, failure to show for a scheduled appointment:

(a) In Board office, \$20 without a 24 hour advance cancellation notice to the Board office.

(b) At Proctor Exam Site, forfeits full payment for that exam sitting.

(10) If a landscape contractor license expires, the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year.

(11) If a landscaping business license expires, and the landscaping business has continuously maintained its bond, the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year.

(12) If a landscaping business license expires, and no bond has been in effect during the interim, and a new bond is issued, the amount to be paid for reinstatement equals the required fee for one year plus a late penalty fee.

(13) The agency may waive the late fee if:

(a) The properly completed renewal form and correct fee are received by the agency prior to the expiration date and all other renewal requirements are met within one month after the expiration date; or

(b) The licensee's failure to meet the renewal date was caused entirely or in part by an agency error or omission.

(14) Payments received after Board deadlines, including, but not limited to payments for renewals, applications and civil penalties will be considered late and penalties shall be assessed.

Stat. Auth.: ORS 183.310 - 183.545, 670.310 & 671.670

Stats. Implemented: ORS 671.650 & 671.660

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1983(Temp), f. 10-14-83, ef. 10-15-83; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0035; LCB 3-1988(Temp), f. 4-11-88, cert. ef. 5-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1989(Temp), f. 5-16-89, cert. ef. 7-1-89; LCB 2-1989, f. & cert. ef. 7-24-89; LSCB 1-1995, f. & cert. ef. 2-2-95; LSCB 1-1997(Temp), f. & cert. ef. 6-10-97;

LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-2002, f. & cert. ef. 7-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

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. Damages will be awarded only for material delivered within the period of time that the landscaping business was actively 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 exist 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)(a) Except as provided in subsection (b) of this section, 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.

(b) The agency may process a claim that would otherwise be dismissed under subsection (a) of this section if the previously filed claim was:

(A) Withdrawn prior to the on-site meeting.

(B) Closed or dismissed with an explicit provision allowing the subsequent filing of a claim containing the same allegations as the closed or dismissed claim.

(c) Nothing in this section extends the time limitation for filing a claim under ORS 671.710.

Stat. Auth.: ORS 183, 670.310 & 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; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-004-0400

Initial Administrative Processing of Claims

(1) Upon receipt of a claim, the agency shall:

(a) Make a preliminary determination that the board has or lacks jurisdiction over the claim based on the information provided by the claimant;

(b) Verify that claimant has provided information required under OAR 808-004-0340 and request additional information from claimant if necessary;

ADMINISTRATIVE RULES

(2) If the agency determines that the claim should not be dismissed based on the information submitted by the claimant, the agency shall:

- (a) Furnish the landscaping business with a copy of the claim; and
- (b) Request the landscaping business respond to the claim items.

(3) If the agency determines that the claim should be dismissed based on the information submitted by claimant, the agency shall issue a proposed order to dismiss under OAR 808-004-0550.

(4) The agency may initiate an investigation to determine the validity of the claim. The investigation may include an on-site meeting.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 183.415, 183.460 & 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 5-2003, f. & cert. ef. 8-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

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 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; which may be reduced 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; which may be reduced if the respondent obtains a landscaping business license within a specified time, or 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 808-003-0040, \$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 an irrigation backflow prevention device 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 and 808-003-0040, \$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 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 prior to the installation of an irrigation backflow prevention device or fail-

ure to comply with applicable plumbing code requirements, \$500 per offense.

(17) Failure to obtain the appropriate building code permit(s), \$500 per offense.

(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.

(19) Failure to notify the agency of a change in the business' phase of license as required by OAR 808-003-0045(4), \$500.00.

(20) Failure to provide a signed statement and notarized statement as required by OAR 808-003-0050(3)(a), \$500.00.

(21) Failure to notify the Landscape Contractors Board of a change of address or employment, \$200.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 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; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

808-009-0020

Amendment to Declaration of Damages

(1) If the agency refers a claim to the Office of Administrative Hearings 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 an amended declaration of damages form. An amended declaration of damages must be delivered to the administrative law judge or Office of Administrative Hearings as required by OAR 137-003-0520 and 808-009-0085. An amended declaration of damages filed under this section must be received by the administrative law judge or the Office of Administrative Hearings 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 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 183, 670.310 & 671.670

Stats. Implemented: ORS 183.415 & 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 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04

Adm. Order No.: LCB 2-2004

Filed with Sec. of State: 1-27-2004

Certified to be Effective: 2-1-04

Notice Publication Date: 1-1-04

Rules Adopted: 808-003-0112

Subject: 808-003-0112 - Oregon and federal law require licensing agencies to collect Social Security Numbers from individual licensees for purposes of child support enforcement.

This rule also allows the agency to accept a written statement from an individual who has not been issued a Social Security Number.

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6570

808-003-0112

Social Security Number

(1) The Landscape Contractors Board will not issue or renew a license or permit unless an applicant provides his or her social security number on

ADMINISTRATIVE RULES

Office of Energy Chapter 330

the application or renewal form. The applicant need not provide the social security number on the application for renewal, if the applicant's social security number has previously been provided to the Landscape Contractors Board and is in the record.

(2) If an applicant has not been issued a social security number by the United States Social Security Administration, the Landscape Contractors Board will accept a written statement from the applicant to fulfill the requirements of section (1). The applicant must submit the written state on a form provided by the agency. This form must:

(a) Be signed by the applicant;

(b) Attest to the fact that no social security number has been issued to the applicant by the United States Social Security Administration; and

(c) Acknowledge that knowingly supplying false information under this section is a Class A misdemeanor, punishable by imprisonment of up to one year and a fine of up to \$6,250.

Stat. Auth.: ORS 671.630

Stats. Implemented: ORS 25.278

Hist.: LCB 2-2004, f. 1-27-04, cert. 2-1-04

Adm. Order No.: LCB 3-2004

Filed with Sec. of State: 1-27-2004

Certified to be Effective: 2-1-04

Notice Publication Date: 1-1-04

Rules Amended: 808-002-0200, 808-002-0500

Subject: This rule amendment defines "Casual, Minor or Inconsequential" work and "Landscaping Work" as used in SB 919.

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6570

808-002-0200

Casual, Minor, or Inconsequential

"Casual, Minor, or Inconsequential" work includes the replacement of ornamental shrubs and trees with varieties that are similar in habit and culture; the reseeding of lawns, and decorative placement of rock (3" in diameter or less); the placement of mulching materials that includes, but is not limited to bark dust, chips, husks, shells or compost; or the planting of annuals, perennials and bulbs in existing beds. Casual, minor or inconsequential" work does not include the construction of new planting areas or the construction or repair of arbors, decks, driveways, fences, retaining walls, walkways or ornamental water features. "Casual, minor or inconsequential" work does not include the construction of drainage or irrigation systems for decorative vegetation.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.540

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 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 3-2004, f. 1-27-04, cert. ef. 2-1-04

808-002-0500

Landscaping Work

"Landscaping Work" as used in ORS 671.540 and 671.660(5) means the planning or installing of lawns, shrubs, vines, trees, and other decorative vegetation including the preparation of property on which the vegetation is to be installed the installation of drainage and irrigation systems for decorative vegetation and the construction of ornamental water features. For the purposes of this rule, "preparation of property" includes, but is not limited to, the adding and incorporating of soil amendments, importation of topsoil, removal of soil and final grading to the specified aesthetic and drainage needs of a site on which landscaping work is to be performed.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.530, 671.540 & 671.660

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 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 3-2004, f. 1-27-04, cert. ef. 2-1-04

Adm. Order No.: DOE 1-2004

Filed with Sec. of State: 1-21-2004

Certified to be Effective: 1-21-04

Notice Publication Date: 11-1-03

Rules Adopted: 330-070-0059, 330-070-0064

Rules Amended: 330-070-0010, 330-070-0013, 330-070-0014, 330-070-0020, 330-070-0021, 330-070-0022, 330-070-0024, 330-070-0025, 330-070-0026, 330-070-0027, 330-070-0040, 330-070-0045, 330-070-0048, 330-070-0055, 330-070-0060, 330-070-0062, 330-070-0063, 330-070-0070, 330-070-0073, 330-070-0085, 330-070-0089, 330-070-0091, 330-070-0097

Subject: The purpose of the rule changes were to modify appliance eligibility rules to reflect changes in new federal standard testing procedures or test results. Recomputed credit amounts to reflect the amount of energy used by products. Allow ECM hydronic air handlers to qualify for energy tax credit. Rules covering renewable energy technologies were updated. Those include coordination with utility incentive programs; solar contractor certification; solar water heater yield calculations and technical requirements; and standards governing dual-purpose systems (space and water heater). Rules governing duct standards and approved testing protocols were updated. Rules to clarify eligibility for dealer owned used and leased vehicles and define eligible cost for incremental cost of vehicles were updated.

Rules Coordinator: Kathy Stuttaford—(503) 378-4128

330-070-0010

Purpose

(1) ORS 469.160 through 469.180 offer tax credits for Alternate Energy Devices (AEDs).

(2) These rules are OAR 330-070-0010 through 330-070-0097. They govern the way tax credits for AEDs will be granted or denied. None of these rules replace any building code requirements.

(3) Effective Date: January 1, 2004. All decisions made by the Oregon Department of Energy (ODOE) regarding AED eligibility, issuance of tax credit contractor certification, complaints regarding performance of tax credit certified contractors, revocation of contractor tax credit certification and other matters relating to the administration of this program after the effective date of these rules will be made consistent with the criteria and standards contained in these rules.

(4) These rules apply to tax years beginning on or after January 1, 2004. For all prior tax years, the law and rules applicable to those years remain in full force.

(5) ODOE grants or denies AED tax credits. By granting a tax credit, neither ODOE nor the state implies that the AED will save more money than it will cost. Meeting standards in these rules does not assure that an AED is safe or reliable.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-1990; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0013

Definitions

As used in OAR 330-070-0010 through 330-070-0097:

(1) "Active" — A solar AED which uses mechanical parts to collect, store and move heat.

(2) "AED" — Alternative Energy Device.

(3) Active Solar Space Heating" — A system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun's energy.

(4) "AFC" — Alkaline electrolyte fuel cell.

(5) "AFUE" (Annual Fuel Utilization Efficiency) — The efficiency rating for furnaces and boilers expressed as the ratio of the energy output to the energy (fuel) input, including part load and cycling effects, but not including fan or pump electrical energy use.

ADMINISTRATIVE RULES

(6) "Alternative Energy Device" — A system using solar energy, or geothermal energy to heat water, to heat or cool space, or to make electricity that reduces the amount of conventional energy used by a dwelling. AED includes energy efficient appliances, fuel cells, alternative fuels, and alternative fuel vehicles and related alternative fuel devices. A wind device that supplies, offsets or supplements electricity used for a dwelling or that supplies electricity to a utility is an AED.

(7) "Alternative Fuel" — Electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director of ODOE.

(8) "Alternative Fuel Device" — An alternative fuel vehicle, equipment necessary to convert a vehicle to use an alternative fuel, or a fueling system necessary to operate an alternative fuel vehicle.

(9) "Applicant" — A person who applies for a residential alternative energy device tax credit under this section.

(a) A person who files an Oregon tax return and applies for a residential alternative energy device tax credit under this section, or

(b) An Oregon Investor Owned Utility (IOU) as defined in ORS 757.005 or its subsidiaries and affiliated interests as defined in ORS 757.015 that is designated by an applicant under OAR 330-070-0013(9)(a) to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant.

(c) Any other entity qualified to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant, as determined by ODOE.

(d) An individual or business that provides the tax credit pass-through amount to the eligible AED owner, and is assigned the tax credit by the AED owner.

(10) "ARI" — Air Conditioning and Refrigeration Institute.

(11) "ASHRAE" — American Society of Heating, Refrigerating and Air Conditioning Engineers.

(12) "AWEA" — American Wind Energy Association.

(13) "BTU" — British Thermal Unit.

(14) "C_{EF}" — Energy Factor for Combined Systems. A non-dimensional descriptor of efficiency for combined space and water heating systems during operation in the water-heating mode only. This part of the three-part rating (space heating efficiency and combined efficiency being the other two) takes into account the standby losses from the storage tank, if any. A higher energy factor denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(15) "C_{AFUE}" — Annual Fuel Utilization Efficiency for Combined Systems. A descriptor of efficiency for combined space and water heating systems during operation in the space heating mode only. This part of the three-part rating (water heating efficiency and combined efficiency being the other two) does not count any standby losses from the storage tank, if any. A higher AFUE denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(16) "Tax Credit Certified Contractor" — ODOE A contractor who has been approved by ODOE as sufficiently knowledgeable about the tax credit program. A tax credit certified contractor is responsible for assuring that the applicant or system owner is knowledgeable about ODOE's AED rules and that required tax credit documentation is submitted to ODOE in a timely fashion.

(17) "Consumer Disclosure" — A form approved and provided by ODOE describing some AEDs. The contractor fills this form out and gives it to the buyer of an AED. It shows estimated energy savings of the AED, required conservation items, required maintenance, freeze protection information and other data required by ODOE. Exclusions: energy efficient appliances and alternative fuel devices.

(18) "COP" — Coefficient of Performance. The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(19) "Contractor" — A person who sells complete AED systems, AED installation, or AED design services.

(20) "Department", "Energy Office", or "Office" — The Oregon Department of Energy.

(21) "Director" — Director of ODOE or the Director's representative.

(22) "Domestic Water Heating" — The heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(23) "Dwelling" — means real or personal property inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(a) Principal residence means the dwelling owned by the applicant who on the date of the application has legal title to a dwelling, including the

mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property, and who inhabits the dwelling for no fewer than 14 days in the calendar year for which the credit is claimed;

(b) Secondary residence — means vacation property owned by the applicant; and

(c) Not qualifying — Primary or secondary residences do not include motor homes or recreational vehicles as defined in ORS 446.003.

(24) "EER" (Energy Efficiency Ratio) — A measure of a cooling system's instantaneous efficiency (cooling capacity divided by the power consumption), at DOE "A" test conditions, expressed in Btu/hr per watt.

(25) "Electric Load" — Appliance and lighting exclusive of any water or space heating use.

(26) "Energy Efficient Appliance" — A clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, space conditioning unit, solar electric alternating current (AC) module, or any other major household appliance that has been certified by ODOE to have premium energy efficiency characteristics. Lists of certified energy efficient appliances are available from ODOE.

(27) "Energy Factor"(EF) — The non-dimensional efficiency rating for water heaters. It can be loosely translated as a percentage (e.g. EF 0.93 = 93 percent). A higher energy factor denotes better efficiency.

(28) "Energy Yield Chart" — Chart developed by ODOE showing first year energy yield of an AED.

(29) "Energy Recovery Ventilator" (ERV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream that is also capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating at the lowest fan speed.

(30) "EUI(FURNACE)" — The Energy Use Index for a furnace, used to determine its electric efficiency, and calculated by the following formula, with inputs derived from the appropriate values in the Gas Appliance Manufacturers Association (GAMA) Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment: $3.412 \times E_{AE} / (3.412 \times E_{AE} + 1,000 \times E_F)$ #2.0 percent.

(31) "EUI(HERV)" — The Energy Use Index for an HRV or ERV, used to determine its electric efficiency, and calculated by dividing a model's power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(32) "FERC" — Federal Energy Regulatory Commission.

(33) "First Year Energy Yield" — Usable energy produced under average conditions by an AED in one year. Expressed in kWh, usable energy is the gross energy contribution minus any parasitic energy used to operate the system.

(34) "Fuel Cell Stack" — The portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(35) "Fuel Cell System" — A system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy. Systems using reformed fossil fuels will also produce carbon dioxide

(36) "Ground Source Heat Pump" — A heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop AED, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth.

(37) "Heating Season" — September 1 through March 31.

(38) "Heat Recovery Ventilator" (HRV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream.

(39) "HSPF" (Heating Season Performance Factor) — A measure of the heating efficiency of a heat pump system over the entire heating season (heating accomplished divided by power used), expressed as a ratio of Btu per watt-hour.

(40) "HUD" — U.S. Department of Housing and Urban Development.

(41) "Hybrid" — An AED that uses some active and some passive elements as part of the system.

ADMINISTRATIVE RULES

(42) "Hydronic Space Heating System" — A system that uses hot or warm water to deliver heat from a boiler or water heater to the living spaces in a home.

(43) "IRCC" — Interstate Renewable Energy Council.

(44) "kWh" — kilowatt-hour; 1 kWh = 3413 BTUs for purposes of ODOE calculations.

(45) "Latent Recovery Moisture Transfer" (LRMT) — In an HRV or ERV, moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is transferred.

(46) "MCFC" — Molten carbonate fuel cell.

(47) "Modified Energy Factor" (MEF) — The non-dimensional efficiency rating for clothes washers. This measure, unlike the EF, takes into account the moisture removed from the wash load in the spin cycle, thereby changing energy use in the drying cycle. A higher MEF denotes a more efficient clothes washer.

(48) "MM" — Million.

(49) "Net Cost" — What the applicant paid to design, acquire, build and install the AED. Net cost includes permit and inspection fees. Net cost may include the value of federal tax credits or utility incentives. Net cost does not include service contracts, rebates, discounts or refunds.

(50) "Net Generation" — The gross kWh produced minus internal losses and parasitic loads. The net generation is the amount available to serve dwelling loads, to provide to the utility, or both.

(51) "OG" — Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory. Operating guidelines shall be from the directory in effect at the date the rules are adopted.

(52) "ODOE" — Oregon Department of Energy.

(53) "Owner-Built" — An AED that is assembled and installed on an owner's personal property and with an owner's labor only.

(54) "PAFC" — Phosphoric acid fuel cell.

(55) "Parasitic Power" — The electrical energy the system uses to operate.

(56) "Passive" — A solar AED that relies on heated liquid or air rising to collect, store and move heat without mechanical devices.

(57) "Passive Solar Space Heating" — This refers to a system or building design that collects and stores solar energy received directly through south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun's energy using only convection, radiation and conduction of energy. See section 330-070-0062 for details.

(58) "Pass-Through Amount" — The minimum amount required to be passed through to an eligible AED owner in exchange for the right to claim the tax credit. The pass-through amount shall be determined on an annual basis by the Director.

(59) "Pass-Through Provider" — An individual or business that pays the pass-through amount to an eligible system owner and applies for the tax credit in place of the system owner.

(60) "Pass-Through Verification" — Information collected by ODOE verifying that the approved pass-through amount has been provided, that the AED owner has relinquished his or her claim to a tax credit and has assigned the credit to the pass-through provider.

(61) "PEM" — Polymer electrolyte, or proton exchange, membrane fuel cell.

(62) "Performance Checked Duct System" — A forced air duct system whose premium efficiency characteristics are that it has been tested for duct leakage by a tax credit certified contractor using ODOE approved testing procedures, and that it has been repaired or constructed using ODOE approved materials to reduce duct air leakage. For purposes of the tax credit, performance checked ducts are considered energy efficient appliances.

(63) "Performance Checked Heat Pumps and Air Conditioners" — A heat pump or air conditioner whose premium efficiency characteristics are that it has been tested using approved procedures and repaired or serviced as needed by a tax credit certified contractor to assure that refrigerant charge and system air flow are within ranges recommended by the equipment manufacturer. For purposes of the tax credit, performance tested heat pumps and air conditioners are considered energy efficient appliances.

(64) "Placed in Service" — The date when an AED is ready and available to produce usable energy.

(65) "SEER" (Seasonal Energy Efficiency Ratio) — a measure of the efficiency of a cooling system over the entire cooling season (cooling accomplished divided by power used), expressed in Btu/kWh.

(66) "SOFC" — Solid oxide fuel cell.

(67) "Solar Attic Fan" — A device that uses photovoltaics to power a fan that pulls hot air out of an attic or roof space. Such a device may either be a complete, all-in-one unit or be comprised of a small photovoltaic panel and a DC powered attic fan designed to be run by photovoltaic panel.

(68) "Solar Domestic Water Heating System" — A configuration of solar collectors, pump, heat exchanger and storage tank designed to heat water. System types include forced circulation, integral collector storage, thermosyphon, and self-pumping. For the purpose of determining system yields, a configuration of components is considered a new system if changes occur in any of the following: type or size of collectors, heat exchanger type or effectiveness, size of storage tank, or system type.

(69) "Solar Electric AC Module" — A solar photovoltaic module coupled with a utility interactive inverter. The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(70) "SRCC" — Solar Rating and Certification Corporation.

(71) "Sensible Recovery Efficiency" (SRE) — In an HRV or ERV, the sensible (measurable) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(72) "STC" — Standard Test Conditions, which are 25 degrees Celsius cell temperature and 1000 watts per square meter.

(73) "Sunchart" — A chart or form issued or approved by ODOE showing the plotted path of the sun and any objects which block the sun from the AED. This shall include plant life and structures. The viewpoint shall be from the center of the lower edge of the collector. It shall show whether the plant life is made up of evergreen or leafy trees. If there is no shading on the AED, contractors shall indicate this in writing on the chart and shall include their signature and the date of the analysis.

(74) "System Certification" — Certification that an AED as described in the application meets criteria for the tax credit.

(75) "System Owner" — A person who owns the AED.

(76) "Total Solar Resource Fraction" — the fraction of usable solar energy that is received by the solar panel/collector throughout the year. This accounts for impacts due to external shading, collector tilt and collector orientation.

(77) "Unheated Spaces" — Attics, garages, and any space with an average ambient temperature of 50 degrees Fahrenheit or below.

(78) "Used Equipment" — Any solar tank or collector which previously has been installed or any piece of equipment not under current manufacturers' warranty.

(79) "Verification Form" — Form filed with Department of Revenue (upon request) by applicant claiming eligibility for the tax credit. Verification that an AED has been installed and has met all the requirements. Contractor shall submit a copy of form to ODOE.

(80) "Wastewater Heat Recovery Device" — A device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling's hot water supply system.

(81) "Water Factor" (WF) — The measure of water efficiency in clothes washers. Measured in gallons per cubic foot of tub capacity, per cycle (gal/ft³/cycle).

(82) "Wind AED" — A wind alternative energy device. A qualifying wind energy conversion system that uses wind to produce mechanical or electrical power or energy. This includes turbines, towers and their associated components needed to form a complete system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0014

Pass-Through

(1) Any person or business that provides the approved tax credit pass-through amount to the person who owns, constructs or installs the eligible energy device is entitled to claim the tax credit associated with that device in place of the system owner, contractor or installer.

ADMINISTRATIVE RULES

(2) The pass-through amount shall be determined and published at least each year and may be periodically revised by the Director.

(3) In addition to other required information, verification information for tax credits obtained by pass-through providers shall include verification that the approved pass-through amount has been provided, and acknowledgement that the person originally eligible to receive a tax credit has relinquished his or her claim to the credit and has assigned the credit to the pass through provider.

Stat. Auth.: ORS 469.040, 469.160-180 & 469.710-720
Stats. Implemented: ORS 469.040, 469.160-180 & 469.710-720
Hist.: DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0020

Who Is Eligible

(1) To qualify for a credit, a person must:

(a) Have an income tax liability in Oregon; and

(b) Purchase, construct, install and certify an AED in accordance with these rules (OAR 330-070-0010 - 330-070-0097); and

(c) Be the owner or contract buyer of an Oregon dwelling served by the AED, or be a tenant of the dwelling owner; and

(A) Use the dwelling as a primary or secondary residence; or

(B) Rent or lease the dwelling to a tenant who uses the dwelling or dwellings as a principal or secondary residence.

(2) If the basis for the credit is the installation of an energy efficient appliance, the credit shall be allowed only to the taxpayer who actually occupies the dwelling as a principal or secondary residence.

(3) If the basis for the credit is a fueling station necessary to operate an alternative fuel vehicle, unless the verification form and certificate are transferred, the contractor who constructs the dwelling that incorporates the fueling station or who installs the fueling station in the dwelling may claim the credit. If the alternative energy device is an alternative fuel vehicle or related equipment, the credit must be claimed by the owner.

(4) A tax credit may be transferred. Any person that pays the present value of the tax credit for an alternative energy device to the person who originally purchases, constructs or installs the device shall be entitled to claim the credit in place of the original credit owner.

(5) For a qualified vehicle owned by lessor during period of first new use, the lessor may pass-through the right to claim the credit to the lessee exercising the first new use.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.160
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0021

Eligible Devices

(1) To earn a tax credit, the AED shall:

(a) Be a complete system. That is, the system must be able to collect, store, convert, monitor, and distribute energy to the dwelling it serves. Exception: Additions to existing AED systems, that are not pool, spa, or hot tub systems, shall be eligible when they increase the energy production capacity and the kWh saved by the system;

(b) Be a system that is built, installed, and operated in accord with ORS 469.160 through 469.180;

(c) Be a system with manufacturer's warranties against defects in products and materials;

(d) Be a system that complies with general and specific standards in these rules as they apply to AED systems. (OAR 330-070-0020; 330-070-0040 through 330-070-0055; and 330-070-0060 through 330-070-0097); and be one of the following:

(A) A system that uses solar energy;

(B) A ground water heat pump or ground loop AED;

(C) A renewable energy system that heats or cools space, heats water, or makes electricity;

(D) An energy efficient appliance including a wastewater heat recovery device;

(E) An alternative fuel device; vehicles licensed and registered for first new use on Oregon roadways and used vehicles being modified for first new use of a qualifying alternative fuel device are eligible for the tax credit.

(F) A fuel cell system; and

(G) Heat pump water heaters.

(2) These devices are not eligible for an AED tax credit:

(a) Standard efficiency furnaces;

(b) Standard backup heating systems;

(c) Wood stoves or wood furnaces, or any part of a heating system that burns wood;

(d) Heat pump water heaters that are part of a geothermal heat pump space heating system;

(e) Structures that cover or enclose a swimming pool and are not attached to the dwelling;

(f) Swimming pools and hot tubs used to store heat;

(g) Photovoltaic systems installed on recreational vehicles;

(h) Additions to existing pool, spa and hot tub systems;

(i) Above ground, un-insulated swimming pools, spas and hot tubs;

(j) Conversions of systems from one type to another. An example is a conversion of a draindown solar hot water system to a drainback solar hot water system;

(k) Used equipment;

(l) Repairs and maintenance of systems having received prior certification for an AED tax credit;

(m) Water source heat pump — A system that uses surface or subsurface water in a single pass without recirculation (open loop);

(n) Hydro systems; and

(o) Wind systems that are used to heat or cool buildings, or to heat domestic, swimming pool or hot tub water.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0022

Amount of Credit

(1) The amount of the AED tax credit is based on the first-year energy yield of an eligible AED. The energy yield basis for a solar tax credit may be adjusted by ODOE to account for less than optimal solar access.

(2) The amount of the AED tax credit shall not exceed the lesser of:

(a) \$1,500 or the first-year energy yield of the AED in kWh multiplied by 60 cents for AEDs used for solar or geothermal space heating, cooling, electrical energy production or domestic water heating for tax years beginning on or after January 1, 1998. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed must be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to maximum credit amounts set in subsections (a) through (c) of this section.

(c) For each alternative fuel device, the credit allowed is 25 percent of the eligible cost of the alternative fuel device, not to exceed \$750 for devices placed in service on or after January 1, 1998. Individual credit may be claimed for both an alternative fuel vehicle and an alternative fuel fueling system.

(A) Eligible cost is the difference in the cost between the conventional fueled vehicles of similar size with similar features and the cost of an alternative fuel vehicle and its charging or fueling systems.

(1) Conventional fuel vehicles manufactured by the same manufacturer with the same seating capacity and/or cab cubic volume or weight difference which are less than 20 percent, may be used to define eligible costs, provided that other features (upholstery, audio, suspension, body appointment) are similar.

(2) Low-speed alternative fuel vehicles for which no conventional fueled vehicle is available for comparison (seating cap/size/features) must use a minimum of \$1,500 to determine cost difference for the alternative fueled vehicle.

(d) For fuel cell systems, \$1,500 or the first year energy yield of the AED in kWh multiplied by 60 cents, for systems placed in service on or after January 1, 2000.

(3) For an energy efficient appliance, the credit allowed under this section shall equal:

(a) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved, not to exceed \$1,000 for each tax year on or after January 1, 1999. Total not to exceed 25 percent of the cost of the appliance.

(4) The amount of the tax credit must not exceed the net cost of the AED to the applicant.

(5) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0060 through 330-070-0097, as those rules apply;

(b) Be the net cost of acquiring the system.

ADMINISTRATIVE RULES

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have net cost prorated. Net cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) ODOE may find an AED to be too large for a dwelling. In such case net cost must be prorated. Net cost must be based on the largest useful size of an AED for the dwelling. ODOE must determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and an addition may not exceed the maximum eligible amount of tax credit available in the year the addition is installed.

(6) For purposes of the tax credit, the net eligible cost of the AED is only those costs necessary for the system to yield energy savings and must not include:

- (a) Unpaid labor including the applicant's labor;
 - (b) Operating and maintenance costs;
 - (c) Land costs;
 - (d) Legal and court costs;
 - (e) Patent search fees;
 - (f) Fees for use permits or variances;
 - (g) Loan interest;
 - (h) Amounts from vendors of an AED that reduce its cost. These include rebates, discounts and refunds;
 - (i) Service contracts;
 - (j) Cost of moving a used AED from one site to another;
 - (k) Cost of repair or resale of a system;
 - (l) Any part of the purchase price which is optional, such as an extended warranty; and
 - (m) Delivery fees.
- Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0024

Year Credit Claimed

(1) The tax credit is claimed for the tax year in which the alternative energy device is placed in service. However, the credit must be claimed for the tax year the AED is purchased if the system is placed in service by April 1 of the following tax year.

(2) The tax credit may not exceed a person's tax liability. Unused credit may be carried forward for a maximum of 5 years.

(3) Proof of purchase must be a contract or invoices dated in the year for which the applicant is claiming the credit.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0025

Application for System Certification

(1) Applicants for the tax credit must get a system certification from ODOE.

(2) Applications for a system certification must be made in a form developed by ODOE:

(a) All applications must contain a statement that the system and contractor or owner-builder will meet all federal, state and local requirements;

(b) All applications will request purchasers to voluntarily provide social security numbers for use as an identification number in maintaining internal records. The purchaser's social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) All applications must state:

(A) The net cost of the AED;

(B) The location of the AED;

(C) Estimated first-year energy yield of the AED by the contractor or from the ODOE energy yield chart, (found in the ODOE AED System Directory), if any; and

(D) That the purchaser has received an operating manual for the AED. Exception: No operating manual is required for sunspaces or direct gain space heating systems.

(d) All applications must state that the contractor agrees to make any changes required by ODOE for the system to comply with ORS 469.160 through 469.180;

(e) All applications must be signed by the purchaser and contractor, if any, or, a form of electronic signature acceptable to ODOE shall be provided; and

(f) A contractor or applicant must not give ODOE false or misleading information about an AED.

(3) System certification applications for solar water heating AEDs must contain:

(a) The number of collectors;

(b) The manufacturer and/or supplier;

(c) The collector dimensions and/or the net area of the collectors;

(d) The amount of heat storage;

(e) The system type;

(f) Declaration of SRCC certification status or equivalence as determined by ODOE;

(g) A description of the freeze protection for the system;

(h) A description of the over-heat protection for the system;

(i) The system model;

(j) Orientation and tilt of the collector;

(k) A sunchart for the collector location;

(l) A Consumer Disclosure signed by the applicant and contractor or supplier, if any;

(m) A statement that the purchaser has received a copy of consumer information supplied by ODOE; and

(n) Any other data ODOE requires.

(4) System certification applications for active solar space heating AEDs must contain:

(a) All the data required in sections (2) and (3) of this rule;

(b) A heat loss estimate for the home;

(c) The type and amount of thermal storage;

(d) A sunchart for the collector location; and

(e) Any other data ODOE requires.

(5) System certification applications for passive solar space heating AEDs must contain:

(a) A copy of the building permit plans;

(b) A copy of the window specifications used;

(c) The type and amount of thermal storage;

(d) A sunchart taken at the center of the solar glazing; and

(e) Any other data ODOE requires.

(6) System certification applications for photovoltaic AEDs must contain:

(a) The brand name of the module(s);

(b) The module(s) area;

(c) The rated DC output in watts of the module(s) under Standard Test

Conditions (STC);

(d) A description of the storage provided if storage is a part of the system;

(e) Storage brand and model;

(f) Storage capacity in kWh;

(g) The brand name of the inverter if an inverter is part of the system;

(h) The capacity of the inverter;

(i) Orientation and tilt of the array;

(j) A sunchart of the array location; and

(k) Any other data ODOE requires.

(7) System certification applications for ground water heat pumps and ground loop AEDs must contain:

(a) For all systems connected to a well, data on the well including:

(A) Depth;

(B) Diameter (cased);

(C) Temperature;

(D) Static water level below grade;

(E) A copy of the well driller's log, if available; and

(F) Any other data ODOE requires.

(b) For systems connected to a heat pump:

(A) Brand name and model number of the heat pump;

(B) Rated output at the entering water temperature;

(C) Estimated system COP rated by ARI under Standard 325 -85 at an entering water temperature of 50 degrees Fahrenheit; and

(D) Any other data ODOE requires.

(c) For ground loop heat pump systems:

(A) All the information in subsection (7)(b) of this rule; and

(B) Brand name, rated output, estimated COP;

(C) Length and depth of the loop;

(D) Materials and spacing used;

(E) Type of heat transfer fluid; and

(F) Any other data ODOE requires.

ADMINISTRATIVE RULES

(8) System certification applications for energy efficient appliances must contain:

- (a) Taxpayer's name and principal address;
- (b) Installation location by street address;
- (c) The name of the dealer or licensed and bonded contractor;
- (d) The dealer's business location;
- (e) The brand name, make, model number, capacity and/or size of the appliance;

(f) A signed copy of the sales agreement, which will include all of the following:

- (A) Verification of purchaser's name and address; and
- (B) Verification of model of appliance; and
- (C) Verification of actual price paid for appliance.
- (g) Certification of new equipment warranty; and
- (h) Any other data ODOE requires.

(9) System certification applications for alternative fuel devices must contain:

- (a) Taxpayer's name;
- (b) Taxpayer i.d. or social security number;
- (c) State of Oregon vehicle registration number;
- (d) Installation location by street address;
- (e) The name of the dealer or licensed and bonded contractor;
- (f) The dealer's business location;
- (g) The brand name, make, model number, or component list of the

AFD;

(h) A signed copy of the sales agreement, which will include all of the following:

- (A) Verification of purchaser's name and address; and
- (B) Verification of model of, or components used for AFD; and
- (C) Verification of actual price paid for the AFD.
- (i) Certification of new equipment warranty;

(j) An optional letter attached to the application declaring that the applicant designates an Investor Owned Utility (IOU) or other qualifying entity as the eligible recipient of the credit certificate on behalf of the project owner applicant that includes:

(A) Name, address, contact person, phone number, facsimile number of the IOU or designated qualifying party; and

(B) Signature, or form of electronic signature acceptable to ODOE, of an authorized representative of the IOU or other designated qualifying party stating willingness to accept the tax credit certificate; and

(k) Any other data ODOE requires.

(10) System certification applications for fuel cells shall provide information regarding:

- (a) The rated fuel cell stack peak capacity, in kW;
- (b) The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);
- (c) Whether or not the system is grid connected;
- (d) The fuel used by the system;
- (e) The type of fuel stack (PEM, PAFC, SOFC, etc.);
- (f) An estimate of the average load, in kW, expected to be placed on the system;

(g) The thermal energy production rate, in BTU/hour, at peak capacity and at the average load specified in (10)(f) above;

(h) Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and

(i) Any other data ODOE requires.

(11) A system certification may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1988(Temp), f. & cert. ef. 1-13-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0026

Contractor Tax Credit Certification

(1) Contractors may on a voluntary basis be placed on the ODOE tax credit certified list for a particular technology upon successful completion of ODOE-required training. Placement on this list is intended to assist consumers in finding local contractors that sell and install AEDs and can assist with tax credit application.

(2) A contractor tax credit certification applies only to the following products:

- (a) Solar water heating systems;
- (b) Ground source heat pumps; and
- (c) Photovoltaic systems.

(3) The tax credit certified contractor's status is not based on technical skills, but rather on knowledge and understanding of the tax credit program requirements and expectations.

(4) Tax credit certified contractor status entitles a contractor to:

(a) Inform the owner that he or she has attended an ODOE administrative training class and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.

(b) Provide the system owner with the additional tax credit amount for solar water heating systems installed according to the Oregon Solar Energy Industries Association (OSEIA) tank insulation standard in effect at the time the rules are adopted. The additional tax credit amount is determined by ODOE and indicated on the list of OG300 certified systems;

(c) Be a pass-through provider and/or assist in use of pass-through transactions as described in section 330-070-0014.

(5) Tax credit certified contractor status requires that the contractor must:

(a) Have acquired training required by the Director for providing the services necessary for that technology.

(b) Participate in annual update trainings.

(c) Provide all clients with a copy of materials deemed necessary by the Director prior to sale of the system.

(d) Provide ODOE with a completed application and verification form, a copy of the final invoice for the system that is marked "inspected and paid for," and complete pass-through verification information, if applicable.

(e) Provide a written full warranty for the system that lasts no less than 12 months after the system is approved by the local building inspector.

(6) Any contractor who sells or installs more than 12 AEDs in one year must apply for a tax credit contractor certification.

(7) Any contractor who installs at least 6 systems in one year may apply for a tax credit contractor certification.

(8) First-time application for a tax credit contractor certification must be made in a form developed by ODOE. The first-time application information must include:

(a) Proof that the contractor is registered with the Construction Contractors Board and has any license, bonding insurance and permit that is required by the Construction Contractors Board for the sale, construction, and installation of the AED;

(b) Proof that the contractor has taken training required by the Director for providing the services necessary for that technology;

(c) A list of the systems to be installed;

(d) A copy of the system specifications and owners manual;

(e) The owner's names and addresses of three systems installed by the applicant over the past 12 months that ODOE may inspect;

(f) Names and addresses of all retail outlets, partners and investors in the business, officers, licensed plumbers, licensed electricians and installation foremen employed by the contractor;

(g) Areas of the state where the contractor will be installing the AEDs;

(h) Sample copies of sales contracts, including any warranty provisions;

(i) Proof that the contractor's installers have received necessary training and relevant licensing for the installation of the AED. For ground source systems, proof that installers have reviewed training from the factory in both loop design and mechanical installation; and

(j) Any other information ODOE determines is needed.

(9) Tax credit contractor certifications must be renewed annually. Renewal of tax credit contractor certification requires that:

(a) The contractor submit a completed renewal request form provided by ODOE; and

(b) The contractor attend a certification workshop provided by ODOE on an as-needed basis to be determined by ODOE.

(10) A tax credit certified contractor must notify ODOE within 10 days if changes are made in any of the information in the application.

(11) ODOE may reject any application if the AED does not comply with ORS 469.160 through 469.180 and OAR 330-070-0010 through 330-070-0097. ODOE will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include written reasons.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

ADMINISTRATIVE RULES

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0027

Applications Review

(1) ODOE must review applications for system approval. Systems must comply with OAR 330-070-0010 through 330-070-0097. Specific guidelines for each type of AED are provided in OAR 330-070-0060 through 330-070-0097.

(2) ODOE will return applications that are not complete. ODOE shall identify the additional information needed.

(3) ODOE must act on a complete application within 60 days after it is received. ODOE may require more details within 30 days of receipt of an initial application. In some cases another 60-day review period may be needed. If so, ODOE will explain to the applicant why more time is needed:

(a) If ODOE fails to meet these deadlines, the system is considered approved;

(b) If ODOE requests additional data, the review period will be extended until required data is received;

(c) During review, ODOE may ask for proof that the system complies with OAR 330-070-0010 through 330-070-0097. ODOE may also ask for changes to make the system and application comply with these same OARs.

(4) To get the information needed to review an application or to verify eligibility and first year energy yield, ODOE may, with the owner's consent, inspect an installed AED:

(a) ODOE may deny a system certification or request Department of Revenue (DOR) to initiate proceedings for the forfeiture of a tax credit if an owner refuses to allow ODOE to inspect the AED;

(b) ODOE may require corrections to make the AED comply with OAR 330-070-0010 through 330-070-0097 to be made within 30 days; and

(c) If such changes are not made within this time limit, ODOE may reject the application. ODOE may use the results of utility inspections in lieu of its own.

(5) ODOE may reject any application if the AED does not comply with ORS 469.160 through 469.180 and OAR 330-070-0010 through 330-070-0097. ODOE will explain all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include written reasons.

(6) If ODOE rejects an application for system certification, an applicant may appeal the rejection. If ODOE approves a system certification for lesser cost than claimed by the applicant, the applicant may also appeal the rejection of those costs. The appeal must be within 60 days of the mailing of the rejection notice by ODOE. Appeals must be conducted as per ORS 183.310 through 183.500.

(7) If ODOE receives an application(s) for a qualifying alternative fuel device accompanied by a letter from the applicant designating an IOU or other qualifying party as the recipient of the tax credit certificate, then ODOE may aggregate such applications and issue a single tax credit certificate to designated qualifying party quarterly for applications for projects to be completed in that calendar year.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.160

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 2-1987, f. & ef. 5-13-87; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0040

Other Rules and Regulations

(1) AEDs must comply with all state, federal and local laws and rules that apply. These OARs change no one's responsibility to comply with such laws.

(2) The policy of the Office is:

(a) To accept the findings of local, state and federal agencies which license or permit projects to be built or run;

(b) To avoid influencing any of those agencies to approve or deny a license or a permit; and

(c) To provide facts from tax credit files to such agencies when asked.

(3) Each applicant must:

(a) Obtain each local, state, and federal permit and license that applies to a project;

(b) Agree to comply with the express terms and conditions of each permit and license; and

(c) Agree to comply with all state rules and laws that apply to the project.

(4) System certification and tax credit contractor certifications are based on the applicant's promise that each needed local, state and federal license and permit has been or will be obtained. Failure to obtain those approvals will cause ODOE approval to be revoked.

(5) If any license or permit named in these rules does not apply to the project, the licensing or permitting agency must certify that the license or permit is not required. Exception: This does not apply to residential DHW, pool, spa and hot tub systems.

(6) AED contractors must install all systems in compliance with the system manufacturer's published specifications.

(7) ODOE must assign a yield for all solar domestic water heating systems. For systems approved by ODOE that are not SRCC OG-300 certified, ODOE must assign a yield based on requirements determined comparable to SRCC OG-300.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0045

Enforcement

(1) Applicant's actions that are cause for revocation of a residential alternate energy tax credit

(a) A system certification may be revoked pursuant to ORS 469.180 if the Director finds that:

(A) The applicant obtained the system certification by fraud or misrepresentation;

(B) The verification form was fraudulent or misrepresented by the taxpayer;

(C) The AED has not been installed or operated in substantial compliance with the plans, specifications or procedures specified in the application or certificate, such as:

(i) Failure to follow applicable standards;

(ii) Failure to comply with required codes or obtain required permits or inspections;

(iii) Return of the AED to the seller or installer for a refund;

(iv) Sale or removal of the device so that it no longer operates on the property of the applicant; or

(D) The applicant refuses to allow ODOE to inspect the AED after a reasonable written request by the Department. A reasonable request must allow applicant to choose a day within three weeks of the request from the Department.

(b) Following revocation, the applicant must forfeit the tax credit, and the Department of Revenue must proceed to collect any taxes not paid by the taxpayer because of this credit.

(2) Contractor's actions that are cause for revocation of contractor's tax credit certification:

(a) A contractor tax credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the system or contractor tax credit certification was obtained by fraud or misrepresentation by the contractor. The Director may find that fraud or misrepresentation occurred if:

(A) False statements were made regarding the contractor's licenses held, products or warranties carried, range of product cost, personnel employed in the business, or any other item in the application for contractor tax credit certification as defined in OAR 330-070-0026.

(b) A contractor tax credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the contractor's performance regarding sales or installation of the alternative energy device for which the contractor is issued a tax credit certificate under ORS 469.170 does not meet industry standards. The Director may find that the contractor's performance does not meet industry standards under the following conditions:

(A) The contractor is not registered with the Construction Contractors Board or does not carry the required level of insurance, licensure or bonding; or

(B) The contractor fails to obtain the required state, federal or local permits required to install the AED as defined in OAR 330-070-0040; or

(C) The contractor fails to install the AED system in compliance with standards adopted under OAR 330-070-0060 through 330-070-0097; or

(D) The contractor fails to install the AED system in a professional manner; or

ADMINISTRATIVE RULES

(E) The contractor fails to install the AED system to comply with manufacturers' published specifications; or

(F) The contractor fails to honor contract provisions when there is no legitimate excuse for nonperformance of the obligation; or

(G) The contractor fails to honor a warranty which the contractor is contractually obligated to perform; and

(H) The contractor fails to make corrections to remedy failure to comply with paragraphs (A) through (G) of this subsection requested by ODOE within 30 days of written notification from ODOE of the problem, unless a time extension is granted by ODOE.

(I) A tax credit for an AED sold or installed under the contractor tax credit certification is ordered revoked under subsection (2)(a) of this rule; or

(J) New information indicates that the AEDs installed under the contractor tax credit certification do not meet eligibility requirements.

(c) A contractor tax credit certification may be revoked pursuant to ORS 469.180 if the Director finds that the contractor has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device. The Director may find that the contractor has misrepresented the tax credit program or the AED under the following conditions:

(A) The contractor has provided false or misleading information to the customer regarding the availability of the tax credit, amount and nature of the tax credit, procedures for tax credit application, eligibility standards for credit, or any other misleading information about the program implemented under ORS 469.160 through 469.180; or

(B) The contractor has misrepresented the nature of the performance of the AED or claimed savings in excess of those on a yield chart without providing accurate calculations to the customer and to ODOE to substantiate the yield. For geothermal heat pumps, the contractor has claimed savings higher than other units of similar efficiency; or

(C) The contractor has misrepresented the cost of a system. For example, the contractor omits costs in the contract for features necessary for basic installation and/or operation of the system and/or costs to comply with the AED eligibility under ORS 469.160 through 469.180; or

(D) The contractor has misrepresented a competitor's product or service; and

(E) The contractor fails to make corrections requested in writing by ODOE to remedy violations of (A)-(D) of this subsection within 30 days, unless more time is allowed by ODOE; or

(F) The contractor fails to remedy the construction and/or warranty claim as directed by order of the Contractor's Board.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0048

Administrative Process for Review and Revocation of Contractor Tax Credit Certification

(1) If ODOE receives a complaint, the contractor must be notified and given an opportunity to respond.

(a) If the complaint relates to issues that the Construction Contractor's Board (CCB) has authority to resolve, the complaint must be referred to the CCB for resolution. The CCB generally has authority to address construction, warranty claims or complaints involving dishonest or fraudulent conduct. Failure to comply with the order of the CCB must be grounds for revocation of contractor tax credit certificate or civil penalty.

(b) In all other cases, ODOE must evaluate the contractor's response and determine whether a violation occurred. ODOE must notify the contractor of its determination and if appropriate, the necessary remedy. ODOE must give the contractor 30 days to remedy a violation. ODOE may grant the contractor additional time where appropriate.

(2) If the contractor does not take appropriate action within the time specified, ODOE must begin enforcement proceedings. An enforcement proceeding may be brought to revoke the contractor tax credit certification, or to impose a civil penalty or both.

(3) ODOE must commence an enforcement proceeding by sending the contractor a notice of violation. The notice must describe the violation(s) and notify the contractor of the proposed penalty (revocation and/or civil penalty).

(4) Civil Penalties: The contractor may be subject to a civil penalty if a system certification or contractor tax credit certification is revoked by the

Director. The amount of the penalty must be the total amount of tax relief estimated to have been provided to purchasers of the system for which a system or contractor tax credit certification is revoked under this rule.

(5) Before the Director imposes a penalty, the contractor must be given 21 days in which to request a hearing pursuant to ORS 183.310-183.550 and the **Attorney General's Uniform and Model Rules of Procedure, March 27, 2000 edition**. The hearing will be to contest the revocation of a system or contractor tax credit certification based on actions listed under OAR 330-070-0045.

(6) Re-application: To reapply after the revocation of a contractor tax credit certification, the contractor must prove to the satisfaction of ODOE that the problem causing revocation has been corrected. Revocation must be in effect for at least one year before that contractor or any other firm with any of the same shareholders may reapply for certification.

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0055

Guidelines for Consumer Information

(1) A tax credit certified contractor must inform each buyer in simple terms:

- How to tell if the device is running right. Who to call if it is not;
- How to tell if the freeze protection is in effect. Who to call if it is not;

(c) What maintenance is needed, annually and long term;

- Who will honor warranties; and
- What are the conditions of the warranties including but not limited to how to start and keep warranties in force.

(2) A tax credit certified contractor must provide all clients with a copy of materials deemed necessary by the Director prior to sale of the system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0059

Guidelines for Solar Pool and Spa AEDs

(1) Installations must be of professional quality, according to manufacturer's instructions and must comply with all applicable state, county, or local codes and regulations.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

- Clear instructions on how to monitor the system performance;
- Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices; and

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs;

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Any building insulation disturbed due to the system installation must be restored to previous condition;

(d) Spas and hot tubs must be equipped with insulated covers that have an R-value of no less than 5 hr/Btu-F; and

(e) Pool collectors must be equal to not less than 40 percent of the pool surface area if equipped with swimming pool blanket or not less than 60 percent if no pool blanket is present.

(4) Freeze protection must be provided for systems where the heat transfer fluid may freeze.

(5) A method to show that the system is operating correctly must be provided and shall:

- Be a permanent part of the system;
- Not require any special tools or equipment to monitor; and
- Be in an accessible location.

ADMINISTRATIVE RULES

(6) ODOE will provide a table of estimated annual energy savings or "yield chart" for most systems common to Oregon. For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent.

(7) The costs listed in subsection (8)(a) through (h) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified to ODOE's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(8) Eligible costs include:

- (a) The cost of solar collectors;
- (b) The cost of thermal storage devices;
- (c) The cost of monitors, meters and controls;
- (d) The cost of photovoltaic devices used to supply electricity to parts of the system;

(e) Installation charges;

(f) Fees paid for design or building;

(g) The cost of swimming pool blankets, if they are installed with a solar pool heating system; and

(h) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(9) The addition of more energy producing capacity to an existing AED may be eligible for an AED tax credit if:

(a) The system addition increases first year energy yield; and

(b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through 330-070-0097.

(10) ODOE will calculate first year energy yield of a system addition by subtracting the estimated savings of the original AED from the increased first year energy yield with the addition.

(a) ODOE will not recalculate the original AED's estimated energy savings, even if the AED produces less than estimated.

(b) Any AED which received an AED tax credit in a prior year shall be assumed to remain in place, for purposes of calculating a tax credit for a system addition.

(11) A tax credit for a system addition must count as a tax credit for the tax year in which the addition is placed in service.

[Publications: Publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0060

Guidelines for Solar Domestic Water Heating AEDs

(1) Installations must be of professional quality and must comply with all applicable state, county, or local codes and regulations.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must be plainly mounted/displayed on or near the solar storage or backup water-heating tank. These instructions must at a minimum include:

(a) Clear instructions on how to monitor the system performance;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices;

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs; and

(e) How to protect the system from overheating due to stagnation during periods when the system is not in use during the summer months.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads;

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system;

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions;

(d) Any building insulation disturbed due to the system installation must be restored to previous condition;

(e) For systems using pressurized anti-freeze fluids, a pressure gauge must be installed to indicate pressure in the system; and

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing

codes. A minimum number of fittings must be used in the attic, and the fittings shall be copper or brass. Piping must be protected from high temperatures at the collector connection.

(4) Freeze protection must be provided for systems where the heat transfer fluid may freeze. The freeze protection method shall follow these guidelines:

(a) The method must be clearly stated in the owner's manual.

(b) The method must work in the absence of utility electric power.

(c) Systems using tanks, piping, pumps and other components containing water in unheated spaces must be adequately protected from freezing.

(d) Recirculation is not an acceptable freeze protection measure, unless the collector used is a heat pipe type.

(e) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(f) Drain-down or manual drain systems for pools or spas must be designed for gravity draining of the collector and piping.

(5) The annual energy requirement for domestic water heating must be reduced by setting the water heater thermostat to 120 degrees F.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer on line between solar storage and backup tank.

(b) For an active system this must be a flow meter and a thermometer on the outlet port of the solar storage tank.

(c) Equipment meeting this requirement must:

(A) Be a permanent part of the system;

(B) Not require any special tools or equipment to monitor; and

(C) Be in an accessible location.

(7) The costs listed in subsection (8)(a) through (j) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified to ODOE's satisfaction as part of a solar water heating AED. Only total systems will qualify for the tax credit. All systems must comply with OAR 330-070-0010 through 330-070-0097.

(8) Eligible costs include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges;

(g) Fees paid for design or building;

(h) The cost of swimming pool blankets, if they are installed with a solar pool heating system;

(i) The cost of hot water conservation measures installed with a water heating AED; and

(j) Up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(9) ODOE will provide a table of estimated annual energy savings or "yield chart" for most OG-300 systems common to Oregon. Annual energy savings will be based on the annual performance simulations provided by the SRCC modified for conditions required under state law. For the purposes of determining the tax credit, the annual energy savings will be reduced by 25 percent if the total solar resource fraction for the site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent determined by either the ODOE or the Florida Solar Energy Center (FSEC) using TRNSYS computer simulations developed as part of the OG-300 standard. Yields must be developed for each of the three weather zones defined by ODOE. The yield chart may be amended, if necessary, by either ODOE or its contractor.

(10) All systems must meet the standards established by the SRCC OG-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

(a) Temporary authorization will be granted to non-OG-300 systems under a special "Research & Development" status. ODOE will extend this temporary authorization for up to 12 systems of a specific design. The solar contractor will need to submit a complete and thorough copy of the system design and operation documents provided to the consumer to ODOE for approval. ODOE shall determine that such system will perform well under the conditions it is designed for and will likely last in excess of 15 years without replacement of major components. Tax credit amounts under this

ADMINISTRATIVE RULES

status will be determined by ODOE based on 90 percent of the estimated annual energy output.

(b) Temporary authorization may be extended to non-OG-300 systems under an "OG-300 Applicant" status providing the system manufacturer is currently applying for OG-300 certification from SRCC. ODOE will extend an unlimited quantity of systems to be installed in a 12-month period, providing ODOE has reviewed a copy of the SRCC application and determined it to be reasonably likely to achieve OG-300 certification within the 12-month period.

(11) System yields shown in the yield charts may be increased by a certified contractor providing they sign a statement of compliance provided by ODOE and meet the following storage tank insulation levels:

(a) A one tank/aux. tanks adjustment of +100 kWh applies to the tank in a solar water heating system that has only one storage tank, such as a thermally stratified active system or ICS systems or the auxiliary tank in two tank systems. Such tanks generally have the ability to heat water by means other than solar energy. To qualify for this yield adjustment the tank must meet the insulation requirements as specified by ODOE.

(b) A solar tank adjustment of +100 kWh applies to the solar storage tank in a solar water heating system. Such a tank does not have a means of heating water other than solar energy and is almost always located upstream of the auxiliary tank. Because of their size and because they are usually not part of the original home design, they are generally located outside the conditioned space of the house. To qualify for this yield adjustment the tank must meet the insulation requirements as specified by ODOE.

(12) All contractor-installed systems must:

(a) Include an O&M manual which specifies installation instructions, operation instructions, maintenance plan, fluid quality, service and replacement parts, hazards, and warranty coverage;

(b) Provide clear labeling of on/off/bypass controls and safety issues;

(c) Have a means of indicating proper operation of the solar water heating system (flow indicators/meter or thermometers);

(d) Be installed to meet local building codes; and

(e) Have a tempering valve to prevent greater than 120 degree F. water downstream of the valve.

(13) Systems shall be installed with the OG-300 certification sticker located on the manual cover. The manual and any supporting documentation shall be placed in a waterproof, clear plastic bag located on or near the solar or domestic hot water heater.

(14) Owner-built and site-built domestic water heating systems are exempt from the testing requirements. ODOE will evaluate the system design and assign it a yield based on 50 percent of its estimated annual energy performance.

(15) The addition of more energy producing capacity to an existing AED may be eligible for an AED tax credit if:

(a) The system addition increases first year energy yield; and

(b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through 330-070-0097.

(16) ODOE will calculate first year energy yield of a system addition by subtracting the estimated savings of the original AED from the increased first year energy yield with the addition.

(a) ODOE will not recalculate the original AED's estimated energy savings, even if the AED produces less than estimated.

(b) Any AED which received an AED tax credit in a prior year shall be assumed to remain in place, for purposes of calculating a tax credit for a system addition.

(17) A tax credit for a system addition shall count as a tax credit for the tax year in which the addition is placed in service.

[Publications: Publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0062

Guidelines for Solar Space Heating AEDs

(1) Installations must be of professional quality, installed according to manufacturer instructions, and must comply with all applicable state, county or local codes and regulations.

(2) The estimated first year energy yield must be the net usable energy produced under average environmental conditions in one year.

(3) Passive solar space heating systems must produce energy savings equal to not less than 20 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit. Determination of annual performance based on energy savings estimates of reference designs as part of ODOE's prescriptive passive solar heating path. Such systems must:

(a) Have enough solar access;

(b) Provide usable heat for the heated space;

(c) Provide adequate thermal storage for solar heat gained;

(d) Prevent overheating of the heated space in summer and winter; and

(e) In addition, sunspaces must:

(A) Have no backup heating device; and

(B) Be able to be isolated from the heated space.

(4) Active solar space heating system must produce energy savings equal to not less than 15 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit. Determination of annual performance based annual utilization calculations approved by the Director. Active solar space heating systems must comply with all the requirements of OAR 330-070-0062 sections (1) through (7).

(5) Solar device costs eligible for the tax credit for active space heating systems include:

(a) The cost of solar collectors;

(b) The cost of thermal storage devices;

(c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;

(d) The cost of monitors, meters, and controls;

(e) The cost of photovoltaic devices used to supply electricity to parts of the system;

(f) Installation charges; and

(g) Fees paid for design or building.

(6) Solar device costs eligible for passive space heating systems include:

(a) The cost of mass or water walls for thermal storage;

(b) The cost of movable window insulation that is part of a passive system. It must tightly seal on all sides of the window. It must also have an R- value of at least three;

(c) The cost of south-facing windows, if the requirements of section (4) of this rule are met; and

(d) The cost of passive heat distribution components.

(7) ODOE will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

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

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0063

Guidelines for Photovoltaic AEDs

(1) Installations must be of professional quality, shall comply with all applicable Oregon Codes and shall comply with the requirements of the National Electric Code article 690.

(2) The energy savings must be based solely on the total STC rated output of the photovoltaic modules installed.

(3) The applicant must provide proof of purchase of the photovoltaic module used in the system and the rated DC output under STC.

(4) The minimum system size must be 200 watts DC output under STC.

(5) Photovoltaic AED costs eligible for the tax credit include the cost of:

(a) Photovoltaic modules;

(b) Inverters;

(c) Storage systems, and regulators;

(d) Monitors, meters and controls;

(e) Wiring, and framing materials;

(f) Trackers;

(g) Installation charges; and

(h) Permits and fees, including up to \$200 of the cost of solar access easements. A certified copy of the recorded easement and proof of the cost must be submitted with an application.

(6) Annual energy savings will be based on a statewide energy savings estimate that includes the inefficiency of utility generation and distribution of the displaced energy resource.

(a) For the purposes of determining the tax credit, the annual energy savings will be reduced by 25% if the total solar resource fraction for the

ADMINISTRATIVE RULES

site is less than 75 percent, and by 100 percent if the total solar resource fraction for the site is less than 50 percent

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0064

Guidelines for Combined Solar Space and Domestic Water Heating AEDs

(1) Systems must meet all requirements of section 330-070-0060 sections (1) through (17)

(2) The system will be evaluated as two separate tax credit applications. This is to allow the combined system receiving a tax credit for both domestic water heating and space heating energy savings produced.

(3) The system must provide a minimum non-coincident energy savings not less than 50 percent of the domestic water heating needs and 15 percent of the space heating needs of the dwelling. The amount of energy savings will be determined by a method approved by the Director.

(4) Solar device costs eligible for the tax credit for active space heating systems include:

- (a) The cost of solar collectors;
- (b) The cost of thermal storage devices;
- (c) The cost of ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings;
- (d) The cost of monitors, meters, and controls;
- (e) The cost of photovoltaic devices used to supply electricity to parts of the system;
- (f) Installation charges; and
- (g) Fees paid for design or building.

(5) ODOE will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

[Publications: Publications referenced in this rule are available from the agency.]
Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.170
Hist.: DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0070

Guidelines for Ground-Water Heat Pump and Ground Loop AEDs

(1) Only total systems will qualify for a tax credit. All systems must comply with OAR 330-070-0025 and 330-070-0040 and be of closed loop design and operation. See also OAR 330-070-0027.

- (2) Systems must limit waste of the resource.
- (3) Systems must not have adverse effects on:

- (a) Other systems; and
- (b) Water quality applying the standards of the Department of Environmental Quality.

(4) Systems must not create hazards such as:

- (a) Steam or water vapor;
 - (b) Vapors or odors;
 - (c) Noise; and
 - (d) Hazardous wellhead design.
- (5) System parts must have adequate:
- (a) Structural strength;
 - (b) Resistance to weather and fire;
 - (c) Ease of upkeep; and
 - (d) Durability.

(6) No system will cause harmful physical effects on people or unwanted tastes or odors.

(7) Some heat transfer fluids need special handling. These include toxic, corrosive, and explosive fluids. Such fluids shall only be used when the system is designed to safely handle them.

(8) Under normal operation, any part of a system that may be touched by people must be cooler than 141 degrees F. If this cannot be done, any part that reaches more than 140 degrees F. must have warning labels. Each system must include a device to limit water for domestic use to 140 degrees F.

(9) Each system and nearby structures must be protected against pressures, vacuums and temperatures.

(10) Systems must fully protect drinking water as specified in the Oregon Plumbing Specialty Code.

(11) Systems must use storage tanks built by accepted methods. Each tank must be tested for leaks.

(12) Expansion and contraction due to changing heat levels must not cause undue strain or distortion.

(13) Systems that use heat transfer fluids that may freeze must have freeze protection.

(14) Systems must use accepted methods to guard against the known corrosion/scaling level of the water.

(15) Systems must also be designed for the least effect on groundwater.

(16) Ground loop systems must cover enough ground to meet total annual heating requirements, as required by manufacturers' recommended design standards. Ground loops used for cooling must restore soil moisture.

(17) Downhole heat exchangers will be reviewed on a case by case basis.

(18) The system COP must be at least three, including energy used by pumps. COP shall be determined by the following methods:

(a) For water source heat pumps, the COP must be determined in accordance with ARI Standard 325-85, at an entering water temperature of 50 degrees F.

(b) For water source or ground loop heat pumps using ambient surface water as an energy source and for solar assisted heat pumps, the COP must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

(19) All other types of ground water heat pumps and ground loop AEDs must be reviewed on their COP.

(20) Bermed or earth covered buildings will not qualify for the geothermal tax credit.

(21) All ground water heat pumps and ground loop water heating AEDs must include setting the water heater thermostat to 120 degrees F as a hot water conservation measure.

(22) A ground source heat pump system may receive a supplemental tax credit amount, determined by ODOE, based on additional energy savings, if the duct system to which it is attached is tested and certified in accordance with the protocols specified in OAR 330-070-0073(9)(a) through 330-070-0073(9)(g). This amount is in addition to the tax credit amount for the ground source heat pump system itself, and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the ground source system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, at ODOE by April 1st of the tax year following the tax year for which the credits are being claimed.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0073

Guidelines for Energy Efficient Appliances and Alternative Fuel Devices

(1) Energy efficient appliances must meet or exceed the following energy efficiency ratings, as measured in accordance with current United States Department of Energy (USDOE) test procedures where applicable, and be currently listed with ODOE as qualifying premium efficiency appliances.

(2) Where USDOE test procedures do not exist, ODOE will designate a nationally recognized test procedure that will apply instead.

(3) Clothes washers

(a) For the purpose of this program, clothes washer efficiency performance is determined using the USDOE Appendix J1 test procedure for residential clothes washers in effect at the time the rules are adopted.

(b) Clothes washers with a tub volume greater than 2.0 cubic feet, as measured in accordance with the USDOE Appendix J1 clothes washer test procedure shall have a minimum Modified Energy Factor (MEF) of 1.42 and a maximum Water Factor (WF) of 9.50 gal/cubic foot/cycle.

(c) Clothes washers with a tub volume of 2.0 cubic feet or less, as measured in accordance with the USDOE Appendix J1 test procedure for clothes washers shall have a minimum Modified Energy Factor (MEF) of 1.42 and a maximum Water Factor (WF) of 10.25 gal/cubic foot/cycle.

(4) Refrigerator-Freezers

(a) Must have at least 15 percent lower energy consumption than that allowed by the July 1, 2001 USDOE standard for refrigerator/freezers;

(b) Must have a total net volume (sum of the fresh food compartment and freezer compartment volumes) of at least 12 cubic feet, but less than 30 cubic feet; and

ADMINISTRATIVE RULES

(a) Components for natural gas powered vehicles that meet EPA1-A requirements current at the time these rules are adopted; or

(b) Other components as recognized by ODOE as necessary for alternative fuel use.

(11) Alternative Fuel Fueling Systems must be installed to meet all state and local fire and life safety codes and be capable of re-fueling/recharging an alternative fuel vehicle within 14 hours.

(12) Energy Recovery Ventilators (ERVs) must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32°F when operating on the lowest fan speed;

(c) Have a maximum EUI_(HERV) of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(d) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed;

and

(C) 60 percent at -13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(13) Heat Recovery Ventilators must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.5 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 65 percent at 32°F/0°C when operating at the lowest fan speed;

(B) 60 percent at 32°F/0°C when operating at the highest fan speed;

and

(C) 60 percent at -13°F/-25°C when operating at the lowest fan speed, if rated at this condition.

(14) Very High Efficiency Air Conditioning Systems must:

(a) Be a central, split-system designed and installed to operate in conjunction with the air handling unit or furnace of a home's heating system;

(b) Be tested and rated in accordance with the DOE test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and certified by, and listed in the directory of the Air Conditioning and Refrigeration Institute (ARI) in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the ARI Directory;

(d) Have a minimum SEER rating at DOE B conditions of 14.5;

(e) Have a minimum EER rating at DOE A conditions of 12.5; and

(f) Be installed in accordance with the protocols specified in OAR 330-070-0073(10)(a) through 330-070-0073(10)(g) of these rules.

(15) Very High Efficiency Air Source Heat Pump Systems must:

(a) Be a central, split-system;

(b) Be tested and rated in accordance with the USDOE Appendix M test procedure for residential air-conditioning systems in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air Conditioning and Refrigeration Institute (ARI) that is in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the ARI Directory;

(d) Have a minimum DOE Region IV HSPF rating of 8.50;

(e) Have a minimum SEER rating at DOE "B" conditions of 13.0;

(f) Have a minimum EER rating at DOE "A" conditions of 11.0; and

(g) Be installed in accordance with the protocols specified in OAR 330-070-0073(9)(a) through 330-070-0073(9)(g) of these rules.

(16) Very High Efficiency Warm Air Furnace Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Gas Appliance Manufacturers Association (GAMA) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating of 0.90 (90 percent);

(c) Use outdoor air for combustion; and

(d) The air handler for the unit must have an electronically commutated, permanent magnet variable speed DC (ECPM) motor, or have an EUI_(FURNACE) of less than 0.02.

(17) Very High Efficiency Air Handlers must:

(a) Be installed as part of a hydronic space heating system; and

(b) Be equipped with an electronically commutated, permanent magnet variable speed DC (ECPM) motor.

(18) Very High Efficiency Hot Water Boiler Systems must:

(a) Be tested and rated in accordance with the USDOE Appendix N test procedure for furnaces in effect at the time these rules are adopted, and be certified by and listed in the directory of the Gas Appliance Manufacturers Association (GAMA) in effect at the time these rules are adopted; and

(b) Have a minimum AFUE rating of 0.88 (88 percent).

(19) A Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace system may receive a supplemental tax credit amount, determined by ODOE, based on additional energy savings if the duct system to which it is attached is tested and certified in accordance with the protocols specified in Section 330-070-0073(9)(a) through 330-070-0073(9)(g). This amount is in addition to the tax credit amount for the Very High Efficiency Air Conditioning, Air Source Heat Pump or Furnace system itself, and in addition to the tax credit amount provided for the duct testing and certification itself. In order to earn the supplemental tax credit amount, the air conditioning and/or heating system must be installed, the duct system must be tested and certified, and the applications for all tax credit amounts associated with the system must be received, as a single package, at ODOE by April 1st of the tax year following the tax year for which the credits are being claimed.

(20) Any other standards adopted by ODOE for energy efficient appliances and alternative fuel devices, their components, and/or systems as determined by the Director of the Oregon Department of Energy.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0085

Fuel Cell Systems

To be eligible for a tax credit under these rules, fuel cell systems must have a minimum rated stack capacity of 0.5 kW and a maximum rated system capacity of 10 kW.

Stat. Auth.: ORS 469.160 - ORS 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0089

Guidelines for Wind AEDs

(1) To qualify for a tax credit, a wind AED system must:

(a) Have been tested in accord with industry standards published by the AWEA. The customer and ODOE must be given a copy of these test results. The test and test results must apply to the correct make, model and version of the wind AED for which the applicant seeks the credit.

(b) Include a one-year written guarantee from the dealer or maker assuring the buyer a full refund or no-cost replacement of the system if the system does not meet AWEA power curve standard or breaks down. The guarantee shall provide that, in the event the system does not meet the AWEA power curve standard, the refund or no-cost replacement shall be at the buyer's option.

(2) Systems must be designed and located to reduce the potential for hazards and unpleasant living conditions. Systems must be designed and located taking into account:

(a) The proximity of the system to buildings, power lines, antennae or other similar hazards;

(b) The effect of high winds on the system and on any building connected to the system by guy wires;

(c) Whether the system blocks fire lanes, obstructs dwelling access, or otherwise increases fire danger;

(d) Whether the operation of the system significantly increases background noise; and

(e) Whether connecting the system to other buildings by guy wires creates vibration and tension in other buildings.

(3) Materials used will assure that the wind AED has adequate:

(a) Strength;

(b) Resistance to wind, lightning, ice, moisture, corrosion and fire;

(c) Durability; and

(d) Low maintenance cost.

(4) The wind AED must withstand all natural forces it may be expected to experience.

ADMINISTRATIVE RULES

(5) No part of a wind AED project must put toxic substances into the environment in amounts that will cause disease or harmful physical effects to humans, animals or plants.

(6) Wind AED parts must be serviceable without the need to trespass.

(7) Maximum Design Wind Speed: All parts of a Wind AED project must withstand the highest wind speed expected at its location. All parts must withstand this wind without damage. To meet this requirement, wind AED'S may be shut down during highest expected winds.

(8) Manual Shutdown: All wind AEDs must have a manual way to stop the rotor from turning. This method must work safely during high winds and routine service.

(9) Overspeed Control: Rotor overspeeds shall be prevented by the wind AED's design.

(10) Tower safety: All parts of a wind AED project shall meet accepted engineering standards. Tower design must include consideration of:

(a) Gravity load; and

(b) Peak thrust on the rotor, nacelle, tail and tower over the full wind speed operating range.

(11) Electric: All wind AED electrical parts must adhere to all standards and codes in force at the time they are installed.

(12) Lightning: Wind AEDs must withstand lightning strikes.

(13) The Director may waive part or all of section (1) of this rule if production of the wind AED model stopped prior to 1990, or it is an owner-built system or a mechanical wind AED.

(14) These rules and OAR 330-70-0091 are written to conform to AWEA Performance Testing, Terminology and Installation standards.

(15) The first year energy yield of wind AEDs must be at least 350 kWh or deliver 200 watts with an annual average capacity factor of 20 percent.

(a) The first year energy yield must be estimated using the measured wind data and the wind AED power curve.

(A) The provided wind data must cover at least a one-year period.

(B) Wind data may be used from three nearby wind monitoring stations, the wind AED site itself, or, in the event of less than one year's measurements at the wind AED site, the application shall include the months of on-site measurements and one year's worth of data from two nearby locations.

(b) The first year energy yield of wind AEDs which make electricity or pump water must be based on the electric load of the dwelling as determined by a procedure established by ODOE.

(c) ODOE will use data supplied by the applicant to verify the first year energy yield.

Stat. Auth.: ORS 469.160 - ORS 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0091

Eligible Costs for a Wind AED

(1) The costs listed in subsections (2)(a) through (m) of this rule are guidelines. They do not include all eligible costs. Other costs will qualify if justified as AEDs to ODOE's satisfaction. Only total working systems will qualify for a tax credit. All systems must comply with OAR 330-70-0021 and 330-070-0040.

(2) Eligible costs include:

(a) The cost of wind turbine generators;

(b) The cost of DC/AC converters, inverters and synchronous inverters;

(c) The cost of wind and system instruments and controls when part of a total wind AED;

(d) The cost of energy storage (batteries or other methods);

(e) The cost of tower, foundation and guys;

(f) Fees paid for design and building;

(g) Fee to install;

(h) The cost of electric meters, switches and electrical safety equipment;

(i) The cost of electric transformers and lines and supports;

(j) The cost of safety equipment;

(k) Up to \$200 of wind easement cost;

(l) The cost of windmills; and

(m) The cost of pumps, linkage, pump heads, and vacuum chambers.

Stat. Auth.: ORS 469.160 - ORS 469.180

Stats. Implemented:

Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04

330-070-0097

Guidelines for Electricity Producing AEDs

(1) Generating AEDs linked with an electric utility must be installed in accordance with local utility interconnect guidelines and be UL listed and installed per the state electrical code.

(2) Applications for utility connected AEDs must include:

(a) An estimate of the first-year's energy value. This is the estimated value, whether by displacement of load or sale of output to the utility, of the first year's net generation;

(b) Permission for ODOE to obtain the utility's data for electric purchases and sales.

(3) All applications must include the nominal rated electric capacity of the AED.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.170

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 1-2004, f. & cert. ef. 1-21-04

Adm. Order No.: DOE 2-2004

Filed with Sec. of State: 1-21-2004

Certified to be Effective: 1-21-04

Notice Publication Date: 11-1-03

Rules Amended: 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0135, 330-090-0140, 330-090-0150

Subject: These rule changes accomplish the following: Adopts optional prescriptive measures for Rental Dwelling Weatherization projects. Updates and revises eligibility standards in the areas of transportation, sustainability, and photovoltaics. Refines procedures and definitions for the Pass-Through option process. Modifies the precert process for hybrid vehicles. Modifies and updates Business Energy Tax Credit minimum efficiency standards. Extends scope of qualifying research, development, and demonstration projects. Modifies application procedure for energy projects to gather data on mercury recycling.

Rules Coordinator: Kathy Stuttaford—(503) 378-4128

330-090-0105

What a BETC Is

A Business Energy Tax Credit may be received against owed Oregon income taxes for up to 35 percent of the cost of qualifying energy or conservation projects. An Oregon business or non-profit entity qualifying for the tax credit may transfer the credit through the Pass-through Option in return for a cash payment. The Oregon Department of Energy (ODOE) must approve the credit before it can be claimed. The credit is an incentive for Oregonians to invest in qualifying energy or conservation projects. Oregon Administrative Rules chapter 330, division 90 applies to all Business Energy Tax Credit applications received by ODOE on or after January 1, 2004.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04

330-090-0110

Definitions

(1) "Administrator": The Administrator of the Oregon Department of Energy or designees.

(2) "Alternative Fuel": A motor vehicle fuel, other than gasoline or diesel, that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, ethanol, biodiesel, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), and other fuels the Administrator allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(3) "Alternative Fuel Fueling Station": A fueling facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and

ADMINISTRATIVE RULES

any other necessary and reasonable equipment. It can be a facility for either public or private use.

(4) "Alternative Fuel Vehicle (AFV)": A vehicle designed to operate on an alternative fuel. This includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. This does not include vehicles owned or leased by the State of Oregon. This does not include vehicles leased by an investor-owned utility (IOU) to others.

(5) "Applicant": A person who applies for a business energy tax credit under this section.

(a) It includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies that file an Oregon income tax return.

(b) It includes any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a pass-through partner that files an Oregon income tax return, or commit to select such a partner prior to final certification.

(c) It includes a contractor installing an alternative fueled vehicle fueling station in a dwelling.

(d) It does not include any business or non-profit corporation or cooperative that restricts membership, sales, or services on the basis of race, color, creed, religion, national origin, sexual preference, or gender.

(6) "Building Code": Applicable state and local building codes in effect the date ODOE receives the application for preliminary certification.

(7) "Business Energy Tax Credits Technical Requirements (BETC Technical Requirements)": A manual produced by and available from ODOE describing specific technical requirements that must be met to comply with these rules, based on the version of the manual in effect the date the application for preliminary certification is received by ODOE.

(8) "Car Sharing Program" means a program in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(9) "Commercial New Construction": A new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(10) "Commissioning": The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

(11) "Commercial Process": An energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(12) "Commuter Parking Space" means a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee's use:

(i) Separate from the lease for the business premises.

(ii) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

(13) "Completed Application": Contains all of the information detailed in OAR 330-090-0130(4). All questions on the application form must be answered. An incomplete application will be returned to the applicant for completion. Only completed applications will be considered on a first-come-first-served basis.

(14) "Completed Project": An energy or conservation project for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or which the Administrator decides

the applicant has made all reasonable efforts to operate, including making changes suggested by ODOE.

(15) "Cooperative Agreement Organization": ODOE may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by ODOE based on the qualifications of the organization and subject to conditions specified in the agreement.

(16) "Cost": The capital costs and expenses the Administrator finds are needed to acquire, erect, build, or install an energy or conservation project under these rules. Cost for necessary features are not eligible. Costs financed with federal funds, other than costs financed by grants or tax credits excluded by ORS 315.356(1), may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses. Costs incurred by entities that are not taxpayers, including but not limited to, cooperatives, non-profit corporations, state or local governments including school districts, water districts, or any other special districts, may be eligible costs irrespective of their funding sources.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the project;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150(2), and shipping;

(C) All materials and supplies needed for the project; and

(D) Work performed by employees of the applicant based on the following conditions:

(i) Employees must be certified, accredited, licensed, or otherwise qualified to do the work; and

(ii) Costs for employee's work must be detailed and documented as to specific tasks, hours worked, and compensation costs.

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a project; or

(E) Other costs the Administrator excludes.

(c) If an energy or conservation project is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the project is the value paid for the project. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the project is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If an energy or conservation project serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. ODOE may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar project without energy efficient features.

(A) In commercial new construction, it is the difference between building to code and building to meet or exceed the standards for substantial energy savings.

(B) In other projects, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Excluding Research, Development & Demonstration, Sustainable Building Projects, recycling market development, and transportation projects, eligible project costs are limited by the following:

(A) All other projects must have fifteen-year simple payback period, except rental dwelling weatherization projects and solar photovoltaic projects that are limited to a 30-year simple payback. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) All other projects must have a simple payback of more than one year and less than the service life of the project,

(g) Costs for a Research, Development & Demonstration project also include costs of instruments, controls, and other equipment needed to monitor or audit the project. This equipment does not need to save or produce energy.

(h) Costs for space conditioning or individual metering energy or conservation project(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be the total eligible project costs. Incremental costs are limited to 40 percent of the cost to

ADMINISTRATIVE RULES

install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(i) Costs for space and water heating equipment as defined in OAR 330-090-0110(18)(d) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(j) Eligible costs for Transportation Projects include, but are not limited to, telecommuting, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, and parking cash out.

(i) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer may establish the value by documenting the cost of leasing the commuter parking space.

(ii) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(k) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. When incremental cost values are not available the incremental cost will be deemed to be 40 percent of the purchase cost.

(l) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by ODOE prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to ODOE, however, payments in OAR 330-090-0150(2) do apply.

(m) Sustainable Building Projects are exempt from the previous requirements of this definition, as the eligible cost for these projects is calculated using the schedule in OAR 330-090-0135.

(n) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization and the business energy tax credit may not exceed eligible costs.

(17) "Energy Department": The Department of Energy of the State of Oregon (ODOE).

(18) "Energy or Conservation Project": A renewable resource, recycling, recycling market development, conservation, transportation, alternative fuel vehicle, alternative fuel fueling station, a sustainable building project, or Research, Development & Demonstration project that complies with these rules and any applicable BETC Technical Requirements. It must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such project, except as allowed for a Research Development & Demonstration project, transportation or recycling market development or recycling project.

(a) An energy conservation measure (ECM), is an energy or conservation project if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Each unit or group of units of an energy or conservation project is an energy project by itself if:

(A) Each unit or group of units can save or produce a substantial amount of energy by itself; and

(B) The application and all licenses and permits for the project show it will consist of smaller units or groups of units; and

(C) The entire project complies with these rules; and

(D) It is connected to a load or end use or it displaces a connected load.

(c) Costs for an energy project needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(d) A space conditioning system(s) is an energy project if it provides substantial energy savings and complies with the BETC Technical Requirements, including reporting whether any replaced mercury-switch thermostats will be or have been recycled and, if so, how. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(16)(e), of a fuel switching project will be allowed if the upgrade complies with these rules.

(e) A new electric motor that complies with the BETC Technical Requirements.

(f) For a state owned building, including buildings owned by the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.

(g) Except as noted in (18)(d), an energy project does not include:

(A) Swimming pools and hot tubs used to store heat.

(B) Wood stoves.

(C) Conventional space conditioning systems and back-up heating systems, including but not limited to:

(i) Air to air heat pumps for a new use or to replace an existing heating system. A waste heat recovery project that uses air-to-air heat pumps is an energy project.

(ii) Gas or oil-fired boilers, except that part of a boiler that improves its energy efficiency. Permitted improvements include oxygen trim controls, heat recovery devices, turbulators, and other devices approved by ODOE. Also permitted are small boilers or water heaters that allow a larger heating plant to shut down part of the year.

(D) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(E) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(F) Devices or materials which are standard practice.

(G) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(H) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and (B), which were issued an occupancy permit on or after January 1, 1996.

(I) Other items the Administrator finds are not allowed under ORS 469.185 to 469.225, 317.104, and 316.140 to 316.142.

(19) "Final Certification": Final certificate issued upon completion of an approved BETC project.

(20) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines.

(b) Steam and gases, hot water and brine caused by injecting substances into the earth.

(c) Heat or other related energy in the earth.

(d) By-products of (a) through (c).

(21) "Industrial Process Energy Project": Energy project that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, and:

(a) Provides substantial energy savings from conservation, or;

(b) Provides substantial energy savings through the use of renewable resources; or

(c) Provides substantial energy savings by recovering waste heat from cogeneration systems; or

(d) Prepares or conditions alternative fuels for distribution or dispensing; or

(e) Increases industrial process efficiency through recycling market development; or

(f) Provides emergency replacement inventory of electric motors as defined in (18)(e) of this rule; but

(g) Does not include space conditioning for human comfort or general illumination.

(22) "Lease Contract": A contract between a lessor and a lessee of an energy or conservation project.

(a) In a lease-purchase contract the lessee owns the project at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the project through the life of the contract and is eligible for the BETC.

(23) "Least Cost Plan": A least cost plan filed by an Investor Owned Utility (IOU) as defined in ORS 757.005 and acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

(24) "Lighting Project": Means a project that will reduce the affected lighting system energy use by at least 25 percent and complies with BETC Technical Requirements, including reporting for non-residential structures

ADMINISTRATIVE RULES

whether any lamps replaced in the project or that will be subsequently replaced will be recycled and, if so, how.

(25) "Low Interest Loan":

(a) For an electric utility, a loan with interest that is not more than 6-1/2 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentive as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(26) "Mass Transit District": A mass transit district included in ORS 184.675(7).

(27) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).

(28) "Necessary Feature": A feature for which its primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes energy or conservation projects to comply with the Building Code;

(b) Complying with specific state or federal statutes or requirements for pollution control or recycling project equipment. Recycling projects are necessary features except as noted in OAR 330-090-0110(43); or

(c) Routine maintenance or repair, such as replacing water damaged insulation or a broken window.

(29) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b).

(30) "Organization": A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(31) "Parking Cash Out" means a cash allowance or a transit pass to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle.

(32) "Pass-through Option": A project owner receiving a preliminary certification on or after October 8, 2001 and who has not yet received the BETC may transfer the tax credit certificate to persons or businesses with an Oregon income tax liability in return for a cash payment equivalent to the net present value.

(33) "Pass-through Partner": A person or business or persons or businesses with an Oregon income tax liability accepting a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(34) "Preliminary certification": Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(35) "Premium Efficient Appliance": An appliance that has been certified by ODOE to have premium energy efficiency characteristics. Residential appliances are listed in ODOE's Alternative Energy Devices Systems Directory. Commercial appliances are listed in ODOE's Premium Efficient Commercial Appliances Directory.

(36) "Project Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Project, project eligible square footage includes all temperature-conditioned floor areas, and the ground-level footprint area of parking structures or parking structure elements of the project. It does not include exterior square footage beneath overhangs, awnings, canopies, walkways or unconditioned plaza areas beneath conditioned portions of the building.

(37) "Project Operator": The person or people to whom the applicant gives authority to manage a project. Such person or people will be the applicant's agent for all reasons related to the project once its development begins.

(38) "Project Owner": An applicant who purchases and owns a qualified project.

(39) "Project Start": The date the applicant chooses to write on the preliminary certificate application that meets one or more of the following criteria:

(a) A non-refundable deposit is placed on the energy or conservation project equipment;

(b) A purchase order is placed for the energy or conservation project equipment;

(c) A contract is executed for the design of the energy or conservation project;

(d) A document is executed that obligates the applicant to proceed with an energy or conservation project; or

(e) The date energy or conservation project information for a preliminary certification application is received by a cooperative agreement organization.

(40) "Public Purpose Organization": The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(41) "Qualified Transit Pass Contract": A purchase agreement entered into between a transportation provider and an organization, the terms of which obligate the organization to purchase transit passes on behalf or for the benefit of riders over a specified period of time.

(42) "Recycling": A process to change a waste product into a useable product or material. It includes refining used oil, chlorofluorocarbons, and halons. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream, although these waste remediation processes may be a part of an "Energy Project" where they include characteristics required to meet that definition.

(43) "Recycling Project": Equipment used in a business for recycling in communities not subject to OAR 340-090-0030(2), or equipment used in recycling non-principal recyclable materials for specific wastesheds, as noted in OAR 330-090-0110(18)(h). It does not include any projects which are standard practice or for the purchase and installation of equipment that is specifically required by state or federal statute or rule. It includes:

(a) Equipment used for re-refining used oil, chlorofluorocarbons (CFC), and halons.

(b) Newly purchased vehicles with integrated recycling material sortation/collection features or changes to vehicles with integrated recycling material sortation/collection features used to transport recyclable products that cannot be used further as is. This includes but is not limited to trailers, racks, or bins that attach to such vehicles.

(c) Equipment used to process recyclable products. This includes but is not limited to balers, flatteners, crushers, separators, drop boxes, and scales.

(44) "Recycling Market Development Project": Projects that stimulate demand for recycled materials. It includes projects that meet one of the following criteria:

(a) The project uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(45) "Renewable Energy Resource": A renewable energy resource:

(a) Does include, but is not limited to:

(A) Straw, forest slash, wood waste, or other wastes from forestland.

(B) Industrial waste, solar energy, wind power, water power, geothermal resources, or waste heat recovery.

(b) Does not include:

(A) A hydroelectric or geothermal project with more than one megawatt of installed capacity unless it is a Research, Development, and Demonstration project as defined in this section.

(B) Whole, living trees harvested for use as a fuel unless those trees have a growth cycle that will enable the trees to be replaced for use as a fuel during the service life of the project.

(46) "Renewable Resource Project": Development that uses a renewable energy resource in a business or other eligible entity to make electricity, bio-gas, alcohol, or other fuel for sale; or, to replace a substantial amount of other fuels now used or that otherwise would be used.

(47) "Research, Development, and Demonstration Project (RD&D)": A project that complies with (a) and (b):

(a) A project that is not standard practice, is likely to produce or produces products or technologies that are likely to qualify as an energy or conservation project in Oregon when commercialized, and complies with one or more of the following criteria:

(A) Research projects that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development projects that include the new manufacture or initiation of the capability to produce or deliver energy or conservation projects

ADMINISTRATIVE RULES

in Oregon, excluding development projects that increase established manufacturing or production capacity in Oregon;

(C) Demonstration projects that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology through pilot or production scale applications of technology;

(D) Innovative travel reduction projects that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. Examples include but are not limited to Travel Smart, Fareless Square, walking campaigns, Bike Commute Challenge, and Carpool Match NW. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs.

(E) Projects that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment.

(F) Manufacturing facilities that produce renewable energy components such as wind, solar, geothermal, and other technologies.

(G) Projects in the Administrator's determination are likely to achieve Energy Office goals.

(b) A project that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(48) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation projects for travel.

(49) "Service Life": Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by ODOE or as determined by the Administrator for equipment not rated by ASHRAE. If the baseline system has exceeded its service life, only an incremental project will be considered eligible for a tax credit.

(50) "Simple Payback": The total eligible cost of an energy or conservation project divided by the expected yearly energy cost savings, stated in years.

(51) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy projects it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Administrator.

(52) "Substantial Energy Savings": Means that ODOE has determined that:

(a) An energy or conservation project, other than a lighting retrofit or sustainable building project and excluding Research Development & Demonstration, transportation, recycling market development, recycling project, will save at least 10 percent of the energy used in a given system or process;

(b) A lighting retrofit project will reduce the affected lighting system energy use by at least 25 percent;

(c) The project is a sustainable building project; or

(d) The project measures are defined in the BETC Technical Requirements as measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(53) "Sustainable Building Project": Means a building project as defined in section 8 of this rule that is rated and certified under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council. For a Sustainable Building Project to be eligible for a tax credit it must comply with the requirements set forth in OAR 330-090-0135 and any applicable BETC Technical Requirements.

(54) "Transportation District": A transportation district included in ORS 184.675(7).

(55) "Transportation Facility": A transportation project that reduces energy used for traveling, including but not limited to traveling to and from work or school work-related travel or travel to obtain medical or other services. This includes, for purposes of this rule, commuting to and from class. Transportation facility includes, but is not limited to, a qualified transit pass contract or a transportation services contract, a car sharing program, and a parking cash out project.

(56) "Transportation Project": An energy or conservation project that reduces energy used for traveling, including but not limited to traveling to and from work or school work-related travel or travel to obtain medical or other services. A transportation project must meet one or more of the following criteria:

(a) Telecommuting/telework defined as working from home or from an office near home instead of commuting longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telecommuting equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per calendar year. Eligible costs include purchase and installation of new or used equipment at the telecommuting site. Telecommuting equipment may include computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Administrator. Eligible cost for telecommuting projects does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telecommute site. Eligible cost for telecommuting does not include fees for maintenance and operation of any equipment; cost for equipment other than a modem at the principal place of business; office furniture and office supplies or training costs.

(b) Telecommuting for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting two or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per calendar year. Eligible cost includes purchase of vehicle(s). The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible.

(d) Transit passes used by an applicant's riders to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass project.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 days per calendar year. Eligible cost includes purchase of bicycles and equipment used to store bicycles.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or non-profit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation project and cannot exceed the cost of the transportation project. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 days per calendar year. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Parking cash out defined as a cash allowance or a transit pass given to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle. Eligible cost for parking cash out includes the cost of providing a commuter parking space. The employer may establish the value of the commuter parking space in either of the following ways:

(A) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer may establish the value by documenting the cost of leasing the commuter parking space.

ADMINISTRATIVE RULES

(B) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(57) "Transportation Provider" means a public, private, or non-profit entity that provides transportation services to members of the public.

(58) "Transportation Services Contract": A written contract or agreement that is related to a transportation facility.

(59) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(60) "Year": Calendar year.

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

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04

330-090-0120

What Qualifies for a BETC

Both the party asking for a BETC and an energy or conservation project must comply with these standards.

(1) Standards for an Applicant — An applicant must:

(a) Be an applicant as defined by these rules; and

(b) File, have a pass-through partner that files, or commit to select such a partner prior to final certification, an Oregon income tax return; and

(c) Own or contract to buy an energy or conservation project; or

(d) Own or contract to buy or lease an Oregon firm that will use or lease the project or sell power from the project.

(2) Standards for an Energy or Conservation project — An energy or conservation project must:

(a) Be an energy or conservation project as defined by these rules;

(b) Comply with or have a variance from the land use laws of the city or county where the project will be;

(c) Comply with all other local, federal, and state laws, including but not limited to the following:

(A) A water power energy project that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Also, if the project uses water from the Columbia River basin, it must comply with the Northwest Power Planning Council's Fish and Wildlife Program.

(B) A geothermal energy project must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(C) A biomass energy project must have required permits from the Oregon Department of Environmental Quality (DEQ).

(d) Include only costs allowed by these rules.

(3) Standards for Leased Energy or Conservation projects: A BETC may be granted to the owner of an energy or conservation project which leases the project for use in connection with a private or public sector building or activity. The lessee may operate the facility in conjunction with its own building or activity, or the building or activity of another as part of an energy service contract or other contractual agreement.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04

330-090-0130

How ODOE Handles a BETC

(1) General:

(a) The Administrator reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification.

(b) To begin the review process for each stage, or to change the project during the review process, an applicant must notify ODOE in writing.

(c) A project owner planning to use a Pass-through Partner will complete and file the Pass-through Option application form as provided in OAR 330-090-0130(8).

(2) Preliminary Certification Preapproval: The Administrator may preapprove a preliminary certification for projects that ODOE has reviewed and determined to be otherwise qualified under these rules. Such projects may include but are not limited to:

(a) Alternate energy devices qualifying for a tax credit under OAR 330-070-0010 through 330-070-0097 for which ODOE has determined qualified costs, energy savings, and eligible tax credits. This does not preclude a project owner from filing for preliminary certification to present for review and approval documentation supporting different determinations.

(b) Projects that have qualified for a tax credit based on review of a cooperative agreement organization, subject to the terms and conditions of the agreement.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(2), a completed application for preliminary certification shall be filed before work on an energy or conservation project begins.

(a) Within 60 days after an application for preliminary certification is filed, the Administrator will decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a completed application.

(b) Within 120 days after a completed application is filed, the Administrator will notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(A) If it complies, the Administrator will approve the preliminary certification. The preliminary certification will state the amount of the tax credit approved. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Administrator will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Administrator will deny the application. No later than 60 days after the Administrator issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) An applicant can re-submit an application that is denied if features of the project change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the applicant before the Administrator issues a final certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) A Completed Preliminary Certification Application Must Contain:

(a) The name, address, and phone number of the applicant and other parties involved in the project.

(b) The applicant's federal tax identification number or social security number for use as an identification number in maintaining internal records. The applicant's federal identification number or social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) Facts that show the party that applies for the credit is an applicant under these rules and is in accord with OAR 330-090-0120(1).

(d) Facts that show the proposed use is an energy or conservation project under these rules.

(e) Project start and finish dates.

(f) Facts that describe the project, its costs, its expected life, and its simple payback in the detail required by ODOE.

(g) The facts documenting substantial energy savings or a description of products that will result from the project.

(h) The applicant's signature on the application attesting that it is correct.

(i) A written final order permit, license, or waiver by all applicable federal, state, and local agencies.

(A) Such final written actions show without doubt that the use complies with federal, state, and local laws as provided and subject to any conditions in the actions.

(B) If such an order, permit, license or waiver is not provided, the applicant must list all actions that are needed. The applicant must list what he or she has done or will do to achieve those actions.

(C) Preliminary certification may be approved without such order, permit, license, or waiver. In that event, the preliminary certification will require the applicant to file a copy of such final action before project development begins. The Administrator may not grant final certification until all

ADMINISTRATIVE RULES

needed orders, permits, licenses or waivers as defined by these rules and the BETC Technical Requirements Manual are filed with ODOE.

(j) For a renewable resource project, proof the resource level is adequate for a feasible project. Such proof includes data listed in (A) through (F). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for R&D projects.

(A) For a solar energy project: A sun chart and solar insolation data for the site.

(B) For a wind energy project: The average monthly wind speed for 12 consecutive months. Measure wind speed at the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or, measure wind speed at two heights, one at least 10 meters above ground.

(C) For a geothermal energy project (except a heat pump system): A plot of well heat temperature versus time at the design flow rate at steady state temperature.

(D) For a water power project: One year of real or predicted average monthly stream flows. If flows are predicted, describe how.

(E) For a biomass energy project: Data that show the resource is available in an amount that meets the project's energy needs.

(F) For a waste heat recovery project: A table showing how much waste heat is available and from what sources.

(k) The payment required by OAR 330-090-0150(2).

(l) For wind projects with turbines of 100 kW or less: A Test Report for each version of the turbine. The Test Report must be in a form specified by American Wind Energy Association standards.

(m) For alternative fuel vehicles: proof that the vehicle or conversion equipment is on DEQ's approved list, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

(n) For alternative fuel vehicles: the number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(o) For alternative fuel fueling stations: description of fueling systems, the estimated number of alternative fuel vehicles that will use the station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(p) Other data the Administrator requires to assure a project complies with these rules.

(5) Preliminary Certification After Start of an Energy or Conservation Project:

(a) If an energy or conservation project has been started an applicant may file a written request with the Administrator for preliminary certification after project start. Such a request must contain information in accord with OAR 330-090-0130(4) and (5)(c).

(b) Within 60 days after such a request is filed, the Administrator will approve, deny, or postpone preliminary certification. No later than 60 days after the Administrator issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The Administrator may approve preliminary certification after project start if:

(A) The request is in accord with OAR 330-090-0120;

(B) Special circumstances make application for preliminary certification before project start up a hardship. Such circumstances include process delays beyond the applicant's control, project funding and energy supplies or markets; and

(C) The Administrator receives the waiver request within 90 days of project start date. Under extraordinary circumstances the Administrator may extend the waiver period provided the project serves the aims of the program.

(6) How Preliminary Certification Can be Revoked: The Administrator may revoke a preliminary certification for a reason listed in subsection (a) through (c) of this section. No later than 60 days after the Administrator issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(a) A project is not started before 1,095 days (3 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved.

(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with ODOE before project development starts.

(c) The project undergoes changes without the changes being approved under OAR 330-090-0130(7).

(7) Changes Between Preliminary Certification and Final Certification: To change a project that has a preliminary certification, the applicant must file a written request with the Administrator. The preliminary certification will not be amended unless the Administrator determines that the amendment is consistent with these rules.

(a) The request must describe the change and reasons for it. It must include changes in cost, tax credit amount, project design, and materials. The change also must include the amount of energy saved or produced, financing changes, the applicant, or other matters.

(b) Within 60 days after the applicant files the change request, the Administrator will decide if the changed project complies with these rules. The Administrator will provide written reasons for the decision.

(A) If it complies, the Administrator will issue an amended preliminary certification.

(B) If it does not comply, the Administrator will issue an order that denies the change. No later than 60 days after the Administrator issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The applicant must inform the Administrator in writing if it does not proceed with the project or proceeds without the tax credit. In that case, the Administrator will cancel the preliminary certification.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant planning to transfer the tax credit certificate to a Pass-through Partner will complete and file the Pass-through Option Application form supplied by ODOE.

(b) If the Pass-through Partner is not yet secured, the project owner will complete that section of the application by inserting "Not Identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The tax credit may not be transferred until the project owner has received the net present value in full and supplied ODOE with documentation of the payment, such as a copy of the front and back of the cancelled check.

(9) Final Certification Review Process and Application: An application for final certification must be filed after the project is complete.

(a) Within 30 days after a final certification application is filed, the Administrator will decide if it is complete. If it is not complete, the Administrator will inform the applicant in writing what is needed to make it complete. If it is complete, the Administrator will process the application.

(b) Within 60 days after a completed final certification application is filed, the Administrator will issue an order that explains how the application does or does not comply with subsection (9)(c) of this rule.

(A) If it complies, the Administrator will approve final certification. Final certification will state the amount of the tax credit approved. This contingency does not include any costs determined ineligible under OAR 330-090-0110(16). It may be up to 10 percent more than the amount approved in the preliminary certification. For a Research, Development & Demonstration project, final certification may be up to 10 percent more than the amount approved in the preliminary certification if those costs were incurred within 6 months after the project begins to operate; and, if needed to make the project work better.

(B) If it does not comply, the Administrator will deny the final certification. No later than 60 days after the Administrator issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(D) If the Administrator does not issue a final certification within 60 days after an application is filed, the application is denied. No sooner than 61 days or later than 120 days after a complete application for final certification is filed, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) A final certification application must include:

(A) A statement that:

(i) The project complies with conditions of the preliminary certification or with the provisions of OAR 330-090-0130(2); and

(ii) A statement that the project remains in accord with local, state, and federal laws. This includes local land use laws.

(B) An account of the project costs, including prorated costs.

(i) If project costs are less than \$50,000, the account may be records of project costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by

ADMINISTRATIVE RULES

OAR 330-090-0110(16) unless required by the Administrator to supply verification from a certified public accountant, who is not otherwise employed by the project owner or pass-through partner;

(ii) If the project costs are \$50,000 or more, a certified public accountant, who is not otherwise employed by the project owner or pass-through partner, must complete a written review and summary of costs paid based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(16); or

(iii) For a sustainable building project, a copy of the project U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, ASHRAE Energy Cost Budget Comparison Form (or other Energy Office approved Energy Performance Documentation), USGBC Energy Modeling Table of Comparative Assumptions, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the BETC Technical Requirements and method of calculation will be accepted in lieu of project cost receipts.

(C) Proof the project is completed.

(D) If the project is leased, a copy of the lease.

(E) For Alternative Fuel Vehicles, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(F) Other data the Administrator finds are needed to assure a project complies with these rules.

(10) Changes After Final Certification:

(a) The applicant must inform the Administrator in writing if a project that has a final certification is sold, traded, or disposed in some other way, or if the term of a leased project has ended. In that case, the Administrator will revoke the final certification. No later than 60 days after the Administrator issues an order revoking the preliminary certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(b) The new owner or new or renewed lessee of a project may apply for final certification. The request must comply with OAR 330-090-0130(8). If it complies, the Administrator will issue a new final certification that credits the amount approved in the old final certification not already claimed by the former owner or lessee.

(11) Basis for Revoking Tax Credit Benefits: For any reason listed in (a) through (d), the Administrator may order revocation of a final certification that has not been transferred to a pass-through partner or of the tax credit benefits received by a project owner who has transferred the final certification to a pass-through partner. A final certification transferred to a pass-through partner may be revoked.

(a) The applicant does not send the Administrator written notice that:

(A) The project has been moved;

(B) Title to the project has been conveyed;

(C) The project is not operating; or

(D) The term of a leased project has ended.

(b) The applicant committed fraud or did not provide correct or complete facts in an application.

(c) The applicant does not provide information about the project in a reasonable time after the Administrator requests it.

(d) Other changes in the project or its owner or lessor that violate these rules in the years for which the credit is claimed.

(12) Loss of Tax Credit Benefits: If the Administrator finds under OAR 330-090-0130(11) that the tax credit benefits shall be revoked, the loss of the tax credit benefits will depend on whether the final certification has been transferred to a pass-through partner and the Administrator's findings under OAR 330-090-0130(11).

(a) If a final certification that had not been transferred to a pass-through partner is revoked, the project owner may not claim tax credits for the years remaining as of the date of the revocation. The Administrator may also order payment to the State of Oregon by the project owner of up to an amount equivalent to the full tax credit benefits, if the Administrator determines such action is warranted by the findings under OAR 330-090-0130(11).

(b) If a final certification had been transferred to a pass-through partner, the Administrator may order the project owner to pay to the State of Oregon an amount equivalent to the net present value of tax credits for the years remaining as of the date the benefits were revoked. However, the Administrator may also order payment to the State of Oregon by the project owner of up to an amount equivalent to the full net present value, if the Administrator determines such action is warranted by the findings under OAR 330-090-0130(11).

(13) Request for Reconsideration: An applicant may request review of a decision under these rules by notifying the Administrator in writing no

later than 60 days after the decision that is being reviewed. In addition to the written notification the applicant may request a meeting to further explain issues.

(14) Inspections: After an application is filed or a tax credit is claimed under these rules, ODOE may inspect the project. ODOE will schedule the inspection during normal working hours, following reasonable notice to the project operator.

(15) Public Access to Program Records:

(a) ODOE will not disclose data about a project, unless allowed by an applicant or required to do so by ORS 192.410 to 192.500.

(b) ODOE will provide program records in a reasonable time to a person who requests them in writing, except as provided in subsection (a) of this section.

(c) ODOE may charge in advance not more than forty dollars per hour for research, and fifteen cents per page of photocopies of requested records.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04

330-090-0135

Business Energy Tax Credit Sustainable Building Project Rules

(1) To be eligible for a tax credit, sustainable building projects must achieve a minimum rating of "Silver" using one of the U.S. Green Building Council's rating systems, listed in the BETC Technical Requirements, in effect as of the project registration date. Projects receiving a "Gold" or "Platinum" rating will be awarded proportionally larger tax credits, as calculated by ODOE. Sustainable building projects must also comply with all applicable BETC Technical Requirements.

(2) All Sustainable Building Projects must acquire a preliminary certification from ODOE in accordance with OAR 330-090-0130(3). For these projects, the project owner must submit a certified copy of the Project Registration Certificate issued by the U.S. Green Building Council, before the completion of Design Development. If an owner elects not to continue the LEED™ rating program to completion and the issuance of a rating certificate, the owner must, within 30 days, so notify ODOE in writing, and provide a statement of intent to apply for a tax credit as an energy project, if desired. Within 60 days of the statement of such intent, the owner must submit a preliminary certification application in accordance with OAR 330-090-0130(3).

(3) ODOE may, at its discretion, convert a preliminary certification for an Energy Project to a preliminary certification as a Sustainable Building Project, or accept a statement of intent to register as a Sustainable Building Project, provided that a certified copy of the U.S. Green Building Council project registration certificate is provided to ODOE within 30 days of the new preliminary certification date.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04

330-090-0140

Pass-through Option Projects

(1) Accepting a Business Energy Tax Credit Certificate in Return for a Cash Payment Equivalent to Net Present Value of the Tax Credit.

(a) A Pass-through Partner may accept a Business Energy Tax Credit certificate on behalf of an applicant with a project that is otherwise eligible for the tax credit in return for a cash payment equivalent to the net present value of the tax credit.

(b) Net Present Value: The minimum tax credit required to be passed through, known as the net present value, to an otherwise eligible applicant who purchases and owns a qualified project.

(A) The net present value will be determined and published at least each year and may be periodically revised by the Administrator.

(B) The Administrator may establish different net present value amounts for projects with final certifications of more than \$20,000 and for projects with final certifications of \$20,000 or less.

(C) In making a determination of the pass-through amounts, the Administrator may consider the inflation rates, opportunity costs, and tax consequences among other factors.

(D) The net present value for the project is the amount in effect when ODOE receives the pass-through option agreement declaring a pass-through partner, without regard to when the final certification is issued.

(2) An Investor-Owned Utility May Choose to Become a Utility Pass-Through Partner under the Provisions of this Section or Participate as a

ADMINISTRATIVE RULES

Pass-Through Partner under Other Provisions of These Rules that Would Apply to Any Other Pass-Through Partner.

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-Through Partner.

(b) Preliminary certification standards and process:

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Administrator shall decide if it is complete. If it is not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.

(C) Within 120 days after a completed application is filed, the Administrator shall notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(D) The application for preliminary certification of the pass-through must include a supplemental work plan, which includes a copy, or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered. The applicant and ODOE must mutually agree upon the work plan and program.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each project's owner, site address, project description or type, number of dwelling units for multifamily projects, total project cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each project including all of the information required in 110-090-0130(4) of these rules.

(A) By the last working day of each month but not more than once per month, an applicant may apply to the Administrator for final certification. An application must contain:

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, solar or other renewable resource and the total project costs made that period for which the applicant is applying for credit.

(ii) The nominal value of credits for which the applicant applies.

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i).

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is defined in the BETC Technical Requirements as a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s),

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.

(vii) If the project costs are \$50,000 or more or if required by the Administrator, a written review and summary completed by a certified public accountant, who is not otherwise employed by the project owner or pass-through partner, of costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(16).

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.

(ix) The last final certification application filed each year must include complete evaluation(s) as defined in the applicant approved preliminary certification(s).

(B) Within 30 days after a final certification application is filed, the Administrator will approve or deny final certification, with reasons for the action. The Administrator will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Administrator issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13). The Administrator will approve final certification if:

(i) The applicant provides the owners of existing rental dwelling units listed in OAR 330-090-0140(2)(c)(A)(i) with:

(I) A low-interest loan, as defined by these rules, up to \$5,000 per dwelling unit for ECMs included in OAR 330-090-0140(2)(c)(A)(iv); or

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment will be the lesser of 25 percent of the cost-

effective portion of the energy conservation measures, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; or \$350 per rental dwelling unit, plus the present value of the tax credit accrued the IOU may claim; or,

(III) Such other payments approved by the Administrator to pay for ECMs in rental dwellings. This includes a payment for the present value of the tax credit that exceeds the amount of the low-interest loan. This payment will apply first to reduce the amount of the loan with the balance paid to the owner of the rental dwelling unit.

(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04

330-090-0150

Budget Limits and Payments for BETC

(1) Amount of Credits Allowed:

(a) A BETC preliminary or final certification for an energy or conservation project will not be issued for more than \$10 million.

(2) Cost of Reviews: ORS 469.217 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement ODOE has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to ODOE, except for projects qualifying under OAR 330-090-0130(2), for which a fee must be paid with the application for final certification. For all projects except Sustainable Building Projects or qualifying under OAR 330-090-0130(2), the payment will be 0.0075 multiplied by the project eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, or 30 dollars whichever is greater. For Sustainable Building Projects, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules and as reported in the preliminary certification application, or a request to amend a preliminary certification. For projects that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.

(b) A refund of 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification was approved by ODOE. Under no circumstances will an amount over 75 percent be refunded. Conditions for which a refund may be granted are:

(A) Denial of an application for preliminary certification or for projects that qualify under OAR 330-090-0130(2) of final certification; or

(B) Denial of a portion of costs requested in an application for preliminary certification or for projects that qualify under OAR 330-090-0130(2) of final certification; or,

(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) If a request to amend a preliminary certification results in project re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (2)(a) of this rule.

(d) No projects will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.

(e) The payment is a required part of a completed preliminary certification application per OAR 330-090-0130(4)(j), except for projects that qualify under OAR 330-090-0130(2). Preliminary certifications will only be issued if the application is complete.

(f) In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which the administrator of ODOE determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

Stat. Auth.: ORS 469.040 & ORS 469.165

Stats. Implemented: ORS 469.185 - ORS 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04

ADMINISTRATIVE RULES

Oregon Economic and Community Development Department Chapter 123

Adm. Order No.: EDD 1-2004(Temp)

Filed with Sec. of State: 2-3-2004

Certified to be Effective: 2-3-04 thru 8-1-04

Notice Publication Date:

Rules Amended: 123-030-0004, 123-030-0010, 123-030-0020, 123-030-0030, 123-030-0040, 123-030-0050

Subject: This division of administrative rules describes the procedures, standards and criteria for operating the Port Revolving Fund program. The 2003 Legislature made changes to this program. The Oregon Port Revolving Fund provides long-term loans to ports at below-market interest rates. The 23 legally formed Port Districts are the only entities eligible for Port Revolving Fund loans. The variety of projects eligible is very broad. These include, but are not limited to, water-oriented facilities, industrial parks, airports and eligible commercial or industrial developments. Projects must be located within port district boundaries.

Rules Coordinator: Lynn Beaton—(503) 986-0201

123-030-0004

Definitions

For the purposes of these rules the following terms have the following definitions unless the context clearly indicates otherwise:

(1) "Commission" means the Economic and Community Development Commission.

(2) Department means the State of Oregon Economic and Community Development Department.

(3) "Director" means the Director of the Department.

(4) "Finance Committee" means the Finance Committee appointed by the Oregon Economic and Community Development Commission.

(5) "Flexible manufacturing space project" means a project for the acquisition, construction, improvement or rehabilitation, in whole or in part, of any building suitable for the conduct of manufacturing processes and, by design, able to be readily modified when necessary to accommodate the operations of the tenants of the building. The term includes any pre-project planning activities for a flexible manufacturing space project.

(6) "Fund" means the Oregon Port Revolving Fund.

(7) Port means a municipal corporation organized under ORS chapter 777 or 778, that may be known as a "port authority" or "port district".

(8) "Project means any activity that is eligible for assistance from the Port Revolving Fund.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.666-ORS 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-030-0010

Need for the Port Revolving Fund Project

(1) Applications must include sufficient information that will demonstrate the need for the project. The information must include, but not be limited to, the following:

(a) Whether reasonable alternatives to the proposed project have been considered;

(b) Whether economic benefits and opportunities such as increased employment, increased personal income, and cost savings are evident;

(c) Whether the applicant has a prospective user or other near-term use of the proposed project; and

(d) That the project satisfies the applicable requirements of OAR chapter 123, division 8.

(2) In the event the loan is primarily for a proposed project to facilitate the location or expansion of an industry pursuant to ORS 285A.666-285A.732, the industry expansion to be induced by the loan must include one or more of the following activities:

(a) Manufacturing or other industrial production;

(b) Agricultural development or food processing;

(c) Aquaculture development or seafood processing;

(d) Development or improved utilization of natural resources;

(e) Research and development;

(f) Medical, clinical, engineering, or other scientific testing;

(g) Corporation headquarters facilities;

(h) Destination resort and recreational development;

(i) Storage and warehousing facilities;

(j) Product distribution facilities;

(k) Transportation or freight facilities including, but not limited to, airports;

(l) Introduction of new technology or new types of economic development to broaden an area's economic base; or

(m) Other activities consistent with the target industries or reverse investment programs of the Oregon Economic and Community Development Department.

(3) Need for the project will not be considered established for the purpose of these rules for in-state plant relocation unless the following conditions are met:

(a) The firm engaging in in-state plant relocation has demonstrated that the relocation is necessary for reasons beyond its control;

(b) The relocation will provide a substantial increase or prevent a substantial direct reduction in total Oregon employment.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.666-ORS 285A.732

Hist.: EDD 9, f. & ef. 10-14-77; EDD 17-1990, f. & cert. ef. 6-28-90; EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-030-0020

Application Requirements

An eligible port district may submit an application after consulting with Department staff on a preliminary determination of eligibility and otherwise following the Department's procedures for submitting applications.

(1) The application must be in the form provided by the Department and must contain or be accompanied by such information as the Department may require. The Department will process only completed applications.

(2) A fee of \$100 will be charged for each loan application submitted to the Department. All application fees will be made by check or money order and made payable to the Oregon Port Revolving Fund.

(3) All applications for loans from the Oregon Port Revolving Fund must indicate the proposed collateral to secure the loan and must include the following information:

(a) If the port's taxing authority is proposed to be pledged as collateral, a statement certified by the county assessor's office that sets forth the current millage rate, the projected new millage rate, if required, to pay off the loan, the port's maximum current limitation, and a statement indicating whether the proposed pledge is within the port's current maximum millage limitation;

(b) If any of the port's personal or real property is proposed to be pledged as collateral, the Department may require a formal appraisal, certified by an appropriate licensed authority, attesting to the value of all collateral proposed to be held as security.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.666-ORS 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-030-0030

Application Review and Approval

(1) To approve an application for assistance from the fund, the Finance Committee must make the determinations as follows:

(a) The project is consistent with the requirements governing assistance from the Fund. If the Department determines that the applicant and/or the proposed project do not meet the requirements of this section, the Department may reject an application or require further documentation from the applicant;

(b) The requisite need for the project has been demonstrated in the application or the local planning process;

(c) The port has certified to the Department that there will be adequate funds available to repay any loans made;

(d) The loan security includes the pledge of revenues and/or other funds, and are sufficient, when considered with other security, to assure repayment;

(e) The applicant is willing and able to enter into a contract with the Department for repayment of the loan;

(f) The applicant has received all necessary permits required by federal, state and local agencies;

(g) The project activities constitute an eligible project;

(h) Moneys in the fund are or will be available for the project;

(i) The requirements under ORS 285A.055 for approval have been satisfied;

(j) The applicant will not owe more than \$3 million to the Port Revolving Fund if the loan is approved.

ADMINISTRATIVE RULES

(2) The Finance Committee may provide preliminary approval of a loan application at any time and identify all necessary requirements for final approval.

(3) If the application is denied, the matter will be set aside unless the applicant requests further action under ORS Chapter 183.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.666-ORS 285A.732
Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-030-0040

Loan Contract Terms and Conditions

(1) Interest rates will be set by the Department at market rates, but not less than Treasury Notes of a similar term minus 1 percent.

(2) The term of the loan will not exceed 20 years from the date of the contract or the useful life of the project, whichever is less.

(3) For a flexible manufacturing space project, the loan contract may provide that no interest accrue until the building is 25 percent occupied, or until three years after the date of the loan contract, whichever is earlier.

(4) The loan contract will:

(a) Be in a form as provided by the Department; and

(b) Provide that the Finance Committee may institute appropriate action to prevent use of project facilities financed by the fund if the port is delinquent in its repayments.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.666-ORS 285A.732
Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-030-0050

Sanctions, Exceptions and Appeals

(1) The Department may invoke sanctions against Ports that fail to comply with the requirements governing the Fund. The Department will not impose sanctions until the Recipient has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) State statutory requirements have not been met; or

(b) There is a deviation from the contract.

(2) One or more of the following sanctions may be imposed by the Department: bar a Recipient from applying for future assistance; revoke an existing award; withhold undisbursed funds; require return of unexpended funds or repayment of expended funds; withhold other state funds such as state-shared revenues; and, other remedies that may be incorporated into Grant contracts.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

(4) Appeals of local government decisions regarding a Project must be made at the local level.

(5) The Director will consider appeals of the Department's funding decisions. Only the Applicant may appeal. **Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed.** An application that would have been funded but for a technical error in the Department's review will be funded as soon as sufficient funds become available, provided the Project is still viable and eligible under these rules. The Director's decision is final.

(6) The Director 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.075(5)
Stats. Implemented: ORS 285A.666-ORS 285A.732
Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

Adm. Order No.: EDD 2-2004(Temp)

Filed with Sec. of State: 2-3-2004

Certified to be Effective: 2-3-04 thru 8-1-04

Notice Publication Date:

Rules Adopted: 123-035-0000, 123-035-0005, 123-035-0010

Subject: This division of administrative rules describes procedures, standards for the Ports Representative Group as authorized by the 2003 legislature in HB2300.

Rules Coordinator: Lynn Beaton—(503) 986-0201

123-035-0000

Purpose

The purpose of these rules is to provide procedures and standards for the Ports Representation Group authorized by ORS.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.666-285A.732
Hist.: EDD 2-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-035-0005

Definitions

For the purposes of these rules, the following terms will have the following definitions, unless the context clearly indicates otherwise:

(1) Department means the State of Oregon Economic and Community Development Department.

(2) "Director" means the Director of the Department.

(3) "Commission" means the Economic and Community Development Commission.

(4) "Port" means a municipal corporation organized under ORS chapter 777 or 778 that may be known as a "port authority" or "port district."

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.666-285A.732
Hist.: EDD 2-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-035-0010

Purpose and Duties

(1) The Oregon Ports Representation Group will consist of the general manager and one commissioner, or their designees, from each Oregon port.

(2) The Group will meet annually.

(3) Decisions require a quorum.

(4) The purpose of the Group is to serve as a body to advise the Economic and Community Development Department, the Economic Development Commission and the Governor and the Legislative Assembly on matters relating to the development and implementation of state policies and programs related to ports and to assist in the coordination of such activities.

(5) The Group will evaluate and develop recommendations for a statewide policy agenda to help guide this state's efforts to facilitate port development. The agenda will be in the form of:

(a) Analysis;

(b) Conclusions;

(c) Recommendations.

(6) This agenda will help set state and federal policies that affect ports. Such policies include but are not limited to:

(a) Policies related to dredging by the United States Army Corps of Engineers;

(b) Developing multimodal transportation facilities for the movement of goods through ports;

(c) Converting facilities to productive economic use;

(d) Resolving natural resource and habitat issues that affect ports; and

(e) Promoting local economic development efforts in port districts.

(7) The Group will submit a report to the Oregon Economic and Community Development Commission to be included in its biennial report to the Legislative Assembly. The report will include:

(a) The findings of the Group on the effectiveness of state efforts to promote port development and maritime commerce;

(b) An analysis of conditions that impede increased port development and maritime commerce;

(c) Identification of conditions that impede competitiveness of the ports in Oregon; and

(d) Recommendations for the removal of those conditions.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.666-285A.732
Hist.: EDD 2-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

Adm. Order No.: EDD 3-2004(Temp)

Filed with Sec. of State: 2-3-2004

Certified to be Effective: 2-21-04 thru 8-1-04

Notice Publication Date:

Rules Adopted: 123-020-0000

Rules Amended: 123-020-0005, 123-020-0010, 123-020-0015, 123-020-0020, 123-020-0025, 123-020-0030, 123-020-0035, 123-020-0040

Rules Suspended: 123-020-0050

ADMINISTRATIVE RULES

Subject: This division of administrative rules describes the steps and necessary elements for the Commission to approve the formation of a port.

Rules Coordinator: Lynn Beaton—(503) 986-0201

123-020-0000

Purpose and Scope

This division of administrative rules describes the steps and necessary elements for the Commission to approve the formation of a port, as required under ORS 285A.627(2).

Stat. Auth.: ORS 285.075(5) & ORS 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04

123-020-0005

Definitions

As used in this division of administrative rules, unless the context requires otherwise:

(1) "Applicant" means an entity that may legitimately seek and propose the formation of a new port, and that submits a request for the Commission's approval.

(2) "Commission" means the State of Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(3) "Department" means the State of Oregon Economic and Community Development Department.

(4) "Director" means the Director of the Economic and Community Development Department

(5) "Port" means a municipal corporation organized under ORS chapter 777 or 778 that may be known as a "port authority" or "port district."

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04

123-020-0010

Application

An Applicant for the formation of a port must:

(1) Send the following, prior to any official filing with the appropriate county, to Attn: Port Formation Application, Oregon Economic and Community Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem, OR 97301-1280:

(a) A sample of the petition or order to be used for purposes of ORS 198.705 to 198.955, as applicable;

(b) A letter formally requesting formation of the proposed port;

(c) A legal description and map of the port boundaries; and

(2) The Department may assess and collect an application fee to help cover some or all the costs of reviewing an application. The costs to be covered, the amount of the fee and when it will be assessed will be an adopted Department policy. The Applicant should request the current Department policy on application fees prior to submitting its application.

(3) Materials requested in OAR 123-020-0015 to 123-020-0035.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04

123-020-0015

Criteria

In carrying out its function as statewide coordinating, planning, and research agency for all ports in the State of Oregon, and to insure the most orderly, efficient, and economical development of the state port system, the Commission, through the Department, will take into consideration and may request information from the Applicant regarding the following:

(1) The need for port services in the territory to be included within the proposed port;

(2) The adequacy of funding for the proposed port; and

(3) The orderly development of the proposed port and its effects upon the development of a state port system.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04

123-020-0020

Need for Port Services

In evaluating the need for port services, the Commission, will take the following into account:

(1) That reasonable alternatives to the formation of a port have been considered;

(2) That significant adverse effects on other public or private agencies offering similar services within the proposed service area have been considered;

(3) That economic benefits and opportunities such as increased employment, income, and cost savings have been considered; and

(4) That proposed port boundaries are reasonable in terms of tax assessment and property ownership.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04

123-020-0025

Adequacy of Funding

In reviewing the viability and merits of a proposed port, the Department will review the latest economic feasibility study for the district formation that at a minimum must include the following:

(1) A proposed budget of the proposed port showing, among other things, capital improvements, staffing, and other sums and expenses required to implement and operate the proposed port for a reasonable period;

(2) Schedule showing adequacy of the existing tax base and proposed tax rate and the source and amounts of any other revenues estimated to be required; and

(3) Other financial information requested.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04

123-020-0030

Orderly Development of Port and State Port System

The Department encourages and seeks public views on the following issues as they relate to the formation of a specific port district:

(1) Relationship of the proposed port activities to locally approved land use plans and the provision of other local public services or utilities;

(2) Coordination with affected environmental, economic, and social agencies, including the impact on affected taxing jurisdictions; and

(3) Effects of the proposed activities on transportation facilities and services.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04

123-020-0035

Commission Request for Additional Information

In addition to what is described in this division of administrative rules, the Commission or the Department may request such other relevant facts or information, as is deemed appropriate in considering the formation of a new port.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04

123-020-0040

Review and Commission Approval or Denial

(1) An Applicant will not seek, nor will any agency of a county government do either of the following, until such time as the Commission approves the formation of the port:

(a) Conduct a deciding vote on port formation by the governing body of the county; or

(b) Place the question of the port's formation on the ballot of a special or general election.

(2) Upon receipt of a request under OAR 123-020-0010, the Department will review the submitted materials and may request additional information that the Department believes necessary for the Commission's deliberation.

(3) Following its review and receipt of any additional information, the Department will assemble materials and information along with a summary of the proposed port's advantages and disadvantages relative to OAR 123-020-0015 to 123-020-0030 that may include a recommendation of action.

ADMINISTRATIVE RULES

(4) The Department, through its Director will submit proposal summary and recommendation to the Commission.

(5) The Commission schedules a meeting to consider final approval of the requested port formation. The agenda for this meeting must be publicly available and be sent to the Applicant and other interested parties at least 21 days prior to such meeting. The meeting must afford an opportunity for public commentary.

(6) At the meeting described in this rule or a subsequent meeting, the Commission will formally approve or deny the proposed port's formation, as it deems appropriate.

(7) If the Commission denies a port formation request, it will indicate in writing the reasons and the remedies, if any, that would allow the applicant to be reconsidered, (8) If formation of the port is approved by the Commission:

(a) The Commission will issue a formal declaration of its approval that the Department will provide to the Applicant and to the Chair of the Board of County Commissioners for the respective county or counties; and

(b) The Applicant will proceed with and abide by all applicable procedures and requirements under ORS chapters 198 and 777.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)
Stats. Implemented: ORS 285A.627
Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04

123-020-0050

Port Division Cooperation

Nothing in these rules should be construed as a hindrance toward port district formations, and any qualified applicant may request and expect full assistance and cooperation of the Ports Division in complying with these requirements.

Stat. Auth.: ORS 777
Stats. Implemented: ORS 198.705 - ORS 198.955
Hist.: EDD 6, f. & ef. 4-30-76; Suspended by EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; Suspended by EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; Suspended by EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04

Adm. Order No.: EDD 4-2004(Temp)

Filed with Sec. of State: 2-3-2004

Certified to be Effective: 2-3-04 thru 8-1-04

Notice Publication Date:

Rules Adopted: 123-025-0012

Rules Amended: 123-025-0005, 123-025-0010, 123-025-0015, 123-025-0017, 123-025-0021, 123-025-0023, 123-025-0025, 123-025-0030

Subject: This division of administrative rules describes the procedures, standards and criteria for operating the Port Planning and Marketing Fund program. The 2003 Legislature repealed the June 30, 2003 sunset for this program. The Department is amending this division of administrative rules to incorporate the new legislation, to bring them in line with current procedures and to clean up the text.

Rules Coordinator: Lynn Beaton—(503) 986-0201

123-025-0005

Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Port Planning and Marketing Fund program authorized by ORS 285A.654 through 285A.660.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-025-0010

Definitions

For the purposes of these rules, the following terms will have the following definitions, unless the context clearly indicates otherwise:

(1) Department means the State of Oregon Economic and Community Development Department.

(2) "Director" means the Director of the Department.

(3) Port means a municipal corporation organized under ORS Chapter 777 or 778, that may be known as a "port authority" or "port district."

(4) "Fund" means Port Planning and Marketing Fund.

(5) "Project" means any activity that is eligible for assistance from the Port Planning and Marketing Fund.

(6) "Peer Review Committee" means a committee of representatives from Oregon Ports that sets standards for typical Port Planning and Marketing Fund projects and reviews products of funded projects prior to disbursement of final payment.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-025-0012

Annual Funding of Program

The Department will transfer 2.25% of the assets of the Port Revolving Fund, not to exceed the annual accrued net income from the Port Revolving Fund into the Port Planning and Marketing Fund annually as calculated on July 1 of each year.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-025-0015

Application Requirements

(1) An eligible port district may submit an application after consulting with Department staff on a preliminary determination of eligibility and otherwise following the Department's procedures for submitting applications.

(2) The application must be in the form provided by the Department and must contain or be accompanied by such information as the Department may require. The Department will process only completed applications.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-025-0017

Application Review and Approval

(1) Upon receipt of a completed application the Department will determine whether the Project is eligible for funding. Projects that meet the following criteria are eligible:

(a) The Project will enhance the Port's ability to conduct trade and commerce;

(b) The Project is not an unnecessary duplication of marketing efforts among Ports. However it is recognized that regional or cooperative projects may require Ports to simultaneously perform similar tasks;

(c) The Project does not subsidize regular Port operating expenses; and

(d) The Project will not require or rely upon continuing subsidies from the Department.

(2) If the Project is not eligible, the Department will, within 60 days:

(a) Reject the application; or

(b) Require the applicant to submit additional information as may be necessary.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-025-0021

Project Funding Priorities

At the beginning of each state fiscal year the Department and the Ports will make reasonable efforts to identify and initiate high priority projects. Funding of up to 50% of the that year's transfer of funds will be reserved exclusively for high priority projects for the first four months of the state fiscal year, after which it will become available for any eligible project. High priority projects are:

(1) Regional or cooperative projects that benefit more than one Port.

(2) Projects that leverage other marketing and development efforts by the state or other government units.

(3) Projects to develop strategic business, marketing or financial plans for Ports or updates to such plans that are required to keep the plans current for a period of five years.

(4) Projects must meet the standards set by the Peer Review Committee.

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.654 - 285A.660
Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

ADMINISTRATIVE RULES

123-025-0023

Grant Awards and Match

(1) Grant awards must be the lesser of \$25,000 or 75% of the total Project cost.

(2) The required local share of the Project cost can be cash or a combination of cash and in-kind services. If both cash and in-kind services are used for the required 25% match, cash must be 75% or more of the total and in-kind services must be 25% or less of the total match.

(3) Grants will be awarded only when there are sufficient funds available in the Fund.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-025-0025

Project Administration

(1) The Department and the Port must execute a grant contract prior to disbursement of grant funds.

(2) Documentation of Project costs incurred by a Port must be submitted to the Department prior to disbursement of funds.

(3) Disbursement of grant funds to a Port will not exceed one disbursement per month. Ten percent of the grant funds will be withheld until the Peer Review Committee signs off on the appropriate deliverables of the project.

(4) Upon request the Port must provide the Department with a copy of documents, studies, reports, and materials developed during the Project, including written report on activities or results of the Project, or any other information that may reasonably be requested by the Department.

(5) Prior to final disbursement, the Peer Review Committee will review all documents produced as a result of the project. The Committee will evaluate and make recommendations to the Department on value of resulting document(s) and how closely the project delivered the outcome anticipated in the application.

(6) Any monies disbursed but not used for an approved project, must be returned to the Department.

Stat. Auth.: ORS 285A

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 5-2001(Temp), f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-025-0030

Sanctions, Exceptions and Appeals

(1) The Department may invoke sanctions against Ports that fail to comply with the requirements governing the Fund. The Department will not impose sanctions until the Port has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) State statutory requirements have not been met; or

(b) There is a significant deviation from the contract; or

(c) The Department finds that significant corrective actions are necessary to protect the integrity of the Project funds, and those corrective actions are not, or will not be, made within a reasonable time.

(2) One or more of the following sanctions may be imposed by the Department:

(a) Bar a Port from applying for future assistance;

(b) Revoke an existing award;

(c) Withhold undisbursed funds;

(d) Require return of unexpended funds or repayment of expended funds;

(e) Withhold other state funds such as state-shared revenues; and

(f) Other remedies that may be incorporated into grant contracts.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

(4) Appeals of local government decisions regarding a project must be made at the local level.

(5) The Director will consider appeals of the Department's funding decisions. Only the Port may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. An application that would have been funded but for a technical error in the Department's review will be funded as soon as sufficient funds become available, provided the Project is still viable and eligible under these rules. The Director's decision is final.

(6) The Director 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.075(5)

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

Adm. Order No.: EDD 5-2004(Temp)

Filed with Sec. of State: 2-3-2004

Certified to be Effective: 2-3-04 thru 8-1-04

Notice Publication Date:

Rules Amended: 123-042-0010, 123-042-0020, 123-042-0030, 123-042-0040, 123-042-0070, 123-042-0080, 123-042-0150, 123-042-0160, 123-042-0180, 123-042-0190

Rules Suspended: 123-042-0050, 123-042-0060, 123-042-0075, 123-042-0140, 123-042-0170

Subject: This amendment affects the administration of the Special Public Works Fund. This division of administrative rules describes the process for administering and distribution of funds under Technical Assistance, Community Facilities/Essential Community Facilities Emergency, and Infrastructure. This division of rules reflects the separation of Community Facilities projects from Infrastructure projects. The temporary rule is necessary because the old rule is more restrictive and not in compliance with the statute as amended by House Bills 2300 and 2011.

Rules Coordinator: Lynn Beaton—(503) 986-0201

123-042-0010

Purpose and Objectives

Pursuant to ORS 285B.419, the Oregon Economic and Community Development Department is required to adopt rules that implement the Special Public Works Fund Program. These rules are promulgated under authority granted by ORS 285B.419(1) and 285A.075(5).

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: IRD 1-1986(Temp), f. & ef. 1-14-86; IRD 9-1986, f. 6-30-86, ef. 7-1-86; EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; Renumbered from 120-050-0010; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 14-1991(Temp), f. & cert. ef. 10-17-91; EDD 9-1992, f. & cert. ef. 4-29-92; ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0020

Definitions

As used in this division of administrative rules, all capitalized terms have the meanings set forth below, unless the context clearly indicates otherwise.

(1) "Applicant" means a Municipality as defined in ORS 285B.410 that is eligible for, and has submitted a completed application for, financial assistance from the Department.

(2) "Business Commitment" means a project in response to a specific business development, expansion or retention proposal where assistance is necessary to enable the proposal to proceed and where permanent, full-time equivalent jobs will be created or retained.

(3) "Brownfield" has the meaning given in ORS 285B.410(4)(a).

(4) "Capacity Building" means a project that supports industrial and/or commercial development consistent with local comprehensive plans and implementing ordinances.

(5) "Debt Service Reserve" means unobligated moneys set aside in an account in the Fund, to be used as debt service for State Revenue Bonds, in the event that Recipients do not meet debt service.

(6) "Department" means the State of Oregon Economic and Community Development Department.

(7) "Designated Disaster Area" means any county, city or special district in the state identified with emergency or major disaster affected areas that has been determined eligible for federal assistance.

(8) "Direct Project Management Costs" means new expenses incurred by a municipality solely to support, plan for and manage an Infrastructure or Community Facilities Project funded in whole or in part through financial assistance under ORS 285B.410 to 285B.482, during the planning and construction phases of the project.

(9) "Director" means the Director of the Department.

(10) "Distressed Area" means a county, city, community or other geographical area that is designated in accordance with Division 042 of this chapter of administrative rules.

(11) "Eligible Commercial Uses" means non-industrial activities that assist businesses selling goods or services in markets for which national or international competition exist or the promotion of downtown revitalization through improvements to municipally owned property that clearly serve to

ADMINISTRATIVE RULES

render a downtown area or main street more competitive or improve its economic vitality.

(11) "Emergency Project" means a project that will restore municipally owned Essential Community Facilities to their pre-disaster design, function, and capacity as determined by Oregon Emergency Management and the Federal Emergency Management Administration, resulting from an emergency as defined by ORS 401.025(4). Emergency projects shall be located in a Designated Disaster Area and to which federal disaster relief assistance is committed.

(12) "Environmental Action" has the meaning given in ORS 285A.188.

(13) "Fund" means the Special Public Works Fund created by ORS 285B.455. The Fund is capitalized through a biennial limitation of Oregon Lottery resources, the sale of State Revenue Bonds and interest earnings on Fund balances and Loan repayments.

(14) "Grants" means awards from the Fund to a Recipient to reimburse or pay eligible project expenses without the expectation to repay a loan. When there is otherwise no specific reference to Cash, Conditional, or Non-cash Grants, the reference shall include all Grant types:

(a) "Cash Grants" means awards from the Fund that are available to pay eligible project costs.

(b) "Conditional Grants" means awards from the Fund that are repaid as specified conditions are met.

(c) "Non cash Grants" means moneys paid from the fund on behalf of a municipality to pay financing, bond issuance and Debt Service Reserve costs, as needed.

(15) "Industrial Land" means sites of suitable sizes, types, locations, and service levels for a variety of industrial uses consistent with local comprehensive planning and zoning.

(16) "Industrial Land Development" means activities undertaken for properly zoned parcels of land to make the sites certifiable for development or to make the land ready for use.

(17) "Industrial Land Environmental Assessment" means investigation, identification and assessment of environmental conditions and impacts upon industrial and commercially zoned land.

(18) "Issuance Costs" means costs associated with the issuance of State Revenue Bonds.

(19) "Loans" means debt financing offered through the Fund. When there is otherwise no specific reference to Direct or Bond Funded Loans, the reference shall include both Loan types:

(a) "Direct Loans" means loans funded with unobligated moneys from the Fund.

(b) "Bond Funded Loans" means loans funded in whole or part through the sale of State Revenue Bonds and pledged to secure the bonded debt.

(20) "Mitigation of Environmental Conditions" as it relates to industrial land development means the activities as allowed in OAR 123-042-0030(2) and 123-042-0040(2) and meets requirements under these rules.

(21) "Municipality" means an entity as defined in ORS 285B.410(5).

(22) "Needs and Issues Inventory" means an on-going collection and prioritization of local community and regional concepts for economic and community development projects. The Inventory is managed by the Department.

(23) "Project" means an eligible activity or group of activities as defined in these rules that an applicant has identified to be funded with financial assistance from the Fund and other activities that will be financed from other sources. When there is no specific reference to Community Facility, Essential Community Facility, Infrastructure, or Technical Assistance, the reference shall include all Project types.

(a) "Community Facilities Project" means A project for the acquisition, construction or development of community facilities, including the acquisition of land, the mitigation of environmental conditions on industrial lands, the construction, acquisition, renovation or reconstruction of buildings.

(b) "Essential Community Facilities" means those community facilities that are identified in these rules as Essential Community Facilities that have been determined essential for supporting continuing and expanded economic activity.

(c) "Infrastructure Project" means all types of projects as defined in ORS 285B.410(4).

(d) "Technical Assistance Project" means a project for economic or engineering or architectural feasibility that may be done in preparation for a Community Facilities or Infrastructure construction project, this type of project also includes activities as defined in ORS 285B.416(1).

(e) "Planning Project" as allowed in ORS 285B.416(2) means a project to conduct engineering and architecture activities and direct project management necessary in the construction of an infrastructure or community facilities project.

(24) "Public Assistance Program" means the program administered by the Oregon Emergency Management for federally declared disasters where federal funds from the Federal Emergency Management Agency are used to mitigate impact from a disaster as described in ORS 401.025(4).

(25) "Recipient" means an applicant that has received financing from the fund.

(26) "State Revenue Bonds" means bonds issued by the State of Oregon. The bonds are payable from specific revenue sources and are not a pledge of the full faith and credit of the State of Oregon.

(27) "Telecommunications Infrastructure" means real or personal property, structures or equipment constructed, used or configured for the electronic transmission or receipt of voice, data, images or video between sites and facilities.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0030

Infrastructure Projects

(1) Eligible Applicant as defined in ORS 285B.410.

(2) Eligible Activities:

(a) Construction projects include construction, improvement or expansion of the following municipally owned infrastructure facilities:

(A) Public Transportation facilities as defined in ORS 285B.410(7).

(i) Can also include abandoned rail roads as per OAR 123-042-0070.

(B) Roads as defined in ORS 285B.410(8).

(C) Sewage treatment as defined in ORS 285B.410(9).

(D) Solid waste disposal sites as defined in ORS 285B.410(10).

(E) Storm drainage systems as defined in ORS 285B.410(11).

(F) Telecommunications infrastructure as defined in ORS 285B.410(12).

(G) Water supply works as defined in ORS 285B.410(14).

(b) Project development and financing activities including but not limited to:

(A) Support activities necessary to the construction phase of an eligible Project including:

(i) Contingencies for construction activities and additionally required engineering/architectural services when approved by the department;

(ii) Costs of financing such as issuance costs, debt service reserves, interest on construction loans or bond anticipation notes when incurred in funding a Project;

(iii) Direct Project Management such as work performed by recipient's staff specifically for the direct benefit of the project such as data gathering, oversight of construction in sensitive areas, inspections, testing; personal service agreements for specialized inspections, testing, or providing technical advice.

(iii) Activities listed in ORS 285B.416(2)

(B) Environmental Assessment on Brownfield as per ORS 285A.185 and 188.

(C) Mitigation of environmental conditions on Industrial land as per ORS 285B.410(2).

(c) Reimbursement of Project expenditures made prior to the funding of the project, only if such reimbursement is allowed pursuant to 26 C.F.R. §1.150-2, under one of the following four categories:

(A) Preliminary expenditures such as architectural, engineering, surveying, soil testing, bond issuance and other support activities necessary to construction of an eligible project that, in the aggregate, are not in excess of 20% of the proceeds of the Loan. Costs of land acquisition, site preparation and similar costs incident to commencement of construction are not preliminary expenditures.

(B) Expenditures for issuance costs.

(C) Expenditures that are described in a reimbursement resolution and paid no earlier than 60 days prior to the adoption of such resolution.

(D) Expenditures paid within 60 days prior to the date the Loan or Grant that are funded.

(d) Planning Project includes the following:

(A) Planning Project as a stand alone project that includes activities such as but not limited to Phase I Environmental Assessment, planning for water, sewer, and road improvements required for industrial land development and those pre-construction activities as found in ORS 285B.416(2), or

ADMINISTRATIVE RULES

(B) As a part of a phased project such as found in an infrastructure construction project that includes those activities defined ORS 285B.416(2).

(C) A Planning Project must be in preparation for an Infrastructure construction project that is eligible under these rules.

(D) The application must meet the requirements listed in section (7) of this rule.

(e) Activities for eligible commercial and downtown revitalization as defined in these rules. Activities include but are not limited to construction or improvements to curbs, sidewalks, streetlights, landscaping, utilities, streets, access, or parking, when included in a downtown revitalization plan or activities to assist businesses selling goods or services in markets for which national or international competition exist.

(3) Ineligible Activities:

(a) Expenses and costs expressly allowed by this rule are eligible for reimbursement from the Fund. All other costs are ineligible for reimbursement. The exception to this rule is when an activity not listed in these rules is requested at the time of application for funding and determined by the department to be an allowable activity and costs are directly related to the proposed project.

(4) Project Criteria and Limitations:

(a) All Infrastructure Projects must principally benefit industrial (manufacturing) or eligible commercial uses and must meet the definition of either a Business Commitment Project or a Capacity Building Project. Infrastructure Projects that primarily focus on relocating business or economic activity from one part of the state to another are not eligible for assistance.

(b) Projects in counties, cities, or other geographic areas designated as distressed by the Department shall be given priority for program funding.

(c) Infrastructure projects must meet one or more of the criteria for project priority specified in ORS 285B.419(1)(a) through (j).

(d) Projects primarily benefiting Commercial activities must assist businesses selling goods or services in markets for which national or international competition exist.

(5) Loan:

(a) Projects that are not financially feasible shall not be funded. The Department will award financing in a manner that maximizes the use of available resources and maintains credit standards. The Department shall determine the amount and type of funding, interest rate and terms; it may offer an alternate mix or lower amount of funding than requested; the amount of the award must be the minimum amount necessary to enable the project to proceed, and the Department may investigate and recommend other sources of funds for all or part of a proposed Project.

(b) The Loan shall be payable from the general fund and any other allowable resources of the borrower and shall be a full faith and credit obligation which is payable from any taxes which the borrower may levy within the limitations of Article XI of the Oregon Constitution.

(c) For Bond Funded Loans, the Department will pass through the final interest rate of the bond to the borrower. Until a bond is sold, the borrower will pay interest on loan funds drawn down, at the direct loan rate, as set by the Department.

(d) The term of a construction loan is limited to the usable life of the infrastructure financed or 25 years whichever is less. Interest rates of Direct Loans are based on market rates for similar debt and are set at the time of the award.

(e) Infrastructure Project Loans are subject to the following:

(A) The maximum amount will be based upon the Department's determination of the ability of the applicant to repay a loan, but in no case will exceed \$15,000,000 per project for any combination of Bond Funded and Direct Loans.

(B) Recipient must agree to comply with ORS 285B.443.

(f) Planning Projects in preparation for an infrastructure construction project may receive loans subject to the following: the maximum amount will be based upon the Department's determination of the ability of the applicant to repay a loan, but in no case will exceed \$15,000,000 per project for any combination of Bond Funded and Direct Loans.

(6) Grants:

(a) Infrastructure projects may receive grants as follows:

(A) As Cash, Conditional Grants, or both after a financial analysis by the Department determines a loan is not feasible.

(B) Infrastructure projects receiving Loans are also eligible to receive Non cash Grants.

(b) A project based upon a firm business commitment to create or retain jobs, can receive grant funds only after the department has determined that the following conditions exist:

(A) The department has receive as part of the application a confirmation from a business that the development or expansion of their business will not occur if the municipality does not receive a grant as part of the award for construction funding.

(B) If this condition exist and the department determines that it is in the best interest of the State, the analysis for a loan will only consider the portion of the total project cost after the eligible grant as stipulated in section (b) paragraph (A) above and section (c) below has been deducted from the total project funding request.

(C) The Department has received evidence that the business will enter into a First Source Hiring Agreement.

(c) For projects subject to (b) above, the Department may grant up to \$5,000 per job created or retained. The maximum grant assistance is \$500,000 per project.

(d) In addition to the Firm Business Commitment grant award, recipients may receive additional grant funding based on the following:

(A) There is a gap remaining between the grant and loan award and the total project cost.

(B) If (A) exist then additional grant will be based on the \$500,000 limit or an amount to make the loan affordable but not more than the current Real Market Value of the property as shown on the certified Tax Roll, which ever is less.

(e) Capacity Building Projects in Distressed Areas are eligible for a Cash Grant up to \$250,000 per project. Capacity Building Projects in other than Distressed Areas are not eligible for Cash Grants.

(f) Capacity Building projects must demonstrate on going marketing efforts, recent industrial/commercial development interest, and the existing advantages of the area that will promote future economic development.

(g) Both Business Commitment Projects and Capacity Building Projects are eligible for Non-cash Grants and Conditional Grants.

(7) Application Requirements:

(a) An eligible Municipality may submit an application to the Department upon invitation from the Department and otherwise following the Department's procedures.

(b) Project applications with overlapping municipal boundaries must be accompanied by an intergovernmental cooperation agreement setting out the duties and obligations of each entity.

(c) The Department will process only completed applications. Applications submitted shall comply with ORS 285B.428. The Department may waive a feasibility report at its determination that such a report is not required. That determination will be conveyed with the invitation to submit an application.

(d) Applicants requesting assistance for Telecommunications Infrastructure projects must comply with ORS 285B.428(2)(b).

(e) Applicants will submit with the application an Operation, Maintenance, and Replacement Plan that will cover the constructed improvements. The Applicant is responsible for maintaining the accounting records that document the operation and maintenance expenditures. If the Applicant can demonstrate why the project should not require an Operation, Maintenance, and Replacement plan the Department may determine that a plan is not required. Acceptable justification may include such reasons as the project will not require expenditures for operation and maintenance over the long term.

(8) Application Review and Approval:

(a) The Department shall determine whether the application and accompanying materials are sufficient to determine eligibility requirements under these rules.

(b) If the submitted application and accompanying materials are not satisfactory the department may do one or all of the following:

(A) Reject the application or accompanying materials;

(B) Require additional information as may be necessary;

(C) Require revisions to the feasibility study or report that provide documentation the proposed construction project will meet program requirements.

(c) After all eligibility requirements under ORS 285B.410 thru 285B.461 and these rules have been satisfied, in so far as practicable, the Department shall give priority for assistance to Projects that meet criteria under ORS 285B.419(1).

(9) Funding Award:

(a) The Department shall make a loan award based upon the Municipality's ability to repay a loan.

(b) To award assistance the Department must make the determinations as follows:

(A) The Applicant, submitted application, and accompanied materials are in compliance with ORS 285B.434 and these rules;

ADMINISTRATIVE RULES

(B) Other funds needed to complete the project are available and committed to the project. If a portion of the other funds needed to complete the project is not available at the time an award is made, the award shall be conditional on securing the other needed funds.

(c) Disbursements for eligible expenditures will be from loans then grant funds. Exceptions may be made under special circumstances with advanced written approval of the Department.

(d) Construction Projects and Planning Projects, in counties, cities, or other geographic areas designated as distressed by the Department shall be given priority for program funding.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: IRD 1-1986(Temp), f. & ef. 1-14-86; IRD 9-1986, f. 6-30-86, ef. 7-1-86; EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; Renumbered from 120-050-0030; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92; EDD 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0040

Community Facilities and Essential Community Facilities Emergency Projects

(1) Community Facilities:

(a) Eligible Applicant as defined in ORS 285B.410.

(b) Eligible Activities:

(A) The acquisition, construction, or development of municipally owned Community Facilities. The project may include activities to achieve at least one of the following: acquisition of land, mitigation of environmental conditions on industrial lands, the construction, acquisition, renovation or reconstruction of buildings, structures and other real property, and the acquisition or construction of related equipment and fixtures.

(B) Project development and financing activities including but not limited to:

(i) Support activities necessary to the construction of an eligible Project including but not limited to contingencies for construction activities and additionally required engineering/architectural services when approved by the Department;

(ii) Costs of financing such as issuance costs, debt service reserves, interest on construction loans or bond anticipation notes when incurred in funding a Project;

(iii) Direct Project Management such as work performed by Recipient's staff specifically for the direct benefit of the project such as data gathering, oversight of construction in sensitive areas, inspections, testing; personal service agreements for specialized inspections, testing, or providing technical advice.

(C) Planning Project includes the following:

(i) Planning Project as a stand alone project that includes activities such as but not limited to Phase I Environmental Assessment, planning for water, sewer, and road improvements required for industrial land development and those pre-construction activities as found in ORS 285B.416(2); or

(ii) As a part of a phased project such as found in a construction project that includes those activities defined ORS 285B.416(2).

(iii) A Planning Project must be in preparation for a Community Facilities construction project that is eligible under these rules.

(iv) The application must meet the requirements listed in section (7) of this rule.

(c) Ineligible Activities: Expenses and costs expressly allowed by this rule are eligible for reimbursement from the Fund. All other costs are ineligible for reimbursement. The exception to this rule is when an activity not listed in these rules is requested at the time of application for funding and determined by the Department to be an allowable activity and costs are directly related to the proposed construction project.

(d) Project Criteria and Limitations:

(A) Projects in counties, cities, or other geographic areas designated as distressed by the Department shall be given priority for program funding.

(B) The following criteria are used to determine if a Community Facilities Project is eligible for assistance from the Fund:

(i) The Community Facility shall be owned by a municipality, and may be operated either by the municipality or by a person under a management contract or operating agreement with the municipality.

(ii) The Applicant must document that it has adequate financial resources and that there is a substantial local commitment to ensure the project success, and that the benefits of the project will be preserved over the long-term.

(iii) The Applicant must document the need for the project and that the project will benefit a broad cross-section of the community or improve the local economy. Local need for the project and the project benefits can

be demonstrated when a project is included in a local or regional plan, or an approved municipal budget, an adopted ordinance, resolution, or order authorizing debt for the project, or is included in the Needs and Issues Inventory. Demonstration of need can occur at the application stage.

(C) At its discretion, the Department may require an engineering or architectural review study prior to making an award for a Community Facilities Project.

(D) Assistance to municipalities must be in accordance with ORS 285B.422.

(e) Loan:

(A) Projects that are not financially feasible shall not be funded. The Department will award financing in a manner that maximizes the use of available resources and maintains credit standards. The Department shall determine the amount and type of funding, interest rate and terms; it may offer an alternate mix or lower amount of funding than requested; the amount of the award must be the minimum amount necessary to enable the project to proceed, and the Department may investigate and recommend other sources of funds for all or part of a proposed Project.

(B) The Loan shall be payable from the general fund and any other allowable resources of the borrower and shall be a full faith and credit obligation which is payable from any taxes which the borrower may levy within the limitations of Article XI of the Oregon Constitution.

(C) For Bond Funded Loans, the Department will pass through the final interest rate of the bond to the borrower. Until a bond is sold, the borrower will pay interest on loan funds drawn down, at the direct loan rate, as set by the Department.

(D) The term of a construction loan is limited to the usable life of the infrastructure financed or 25 years whichever is less. Interest rates of Direct Loans are based on market rates for similar debt and are set at the time of the award.

(E) Community Facilities Project for construction can receive loans in a maximum amount based upon the Department's determination of the ability of the applicant to repay a loan, but in no case will the maximum exceed \$15,000,000 per project for any combination of Bond Funded and Direct Loans.

(F) Planning Projects in preparation for a Community Facilities construction project may receive loans subject to the following: the maximum amount will be based upon the Department's determination of the ability of the applicant to repay a loan, but in no case will exceed \$15,000,000 per project for any combination of Bond Funded and Direct Loans.

(G) In order to receive a loan, recipient must agree to comply with ORS 285B.443 except (1)(b).

(f) Grant: Community Facilities planning and construction projects are not eligible for Grants.

(g) Application Requirements:

(A) An eligible Municipality may submit an application to the Department upon invitation from the Department and otherwise following the Department's procedures.

(B) Project applications with overlapping municipal boundaries must be accompanied by an intergovernmental cooperation agreement setting out the duties and obligations of each entity.

(C) The Department will process only completed applications. Applications submitted shall comply with ORS 285B.428. The Department may waive a feasibility report at its determination that such a report is not required. That determination will be conveyed with the invitation to submit an application.

(D) Applicants will submit with the application an Operation, Maintenance, and Replacement Plan that will identify the anticipated revenues by source and the minimum annual amount that will be spent for the first five years of the facility life and includes the constructed improvements. The Applicant is responsible for maintaining the accounting records that document the operation and maintenance expenditures. If the Applicant can demonstrate why the project should not require an Operation, Maintenance, and Replacement plan the Department may determine that a plan is not required. Acceptable justification may include such reasons as the project will not require expenditures for operation and maintenance over the long term.

(h) Application Review and Approval:

(A) The Department shall determine whether the application and accompanying materials are sufficient to determine eligibility requirements under these rules.

(B) If the submitted application and accompanying materials are not satisfactory the department may do one or all of the following:

(i) Reject the application or accompanying materials;

(ii) Require additional information as may be necessary;

ADMINISTRATIVE RULES

(iii) Require revisions to the feasibility study or report that provide documentation the proposed construction project will meet program requirements.

(C) Construction Projects and Planning Projects, in counties, cities, or other geographic areas designated as distressed by the Department shall be given priority for program funding.

(i) Funding Award:

(A) To award assistance the Department must make the following determinations:

(i) The proposed project is feasible, and the municipality has certified to the Department that there will be adequate funds available to repay any loans made from the Fund; and

(ii) The security for the loan includes the pledge of the municipality's full faith and credit and any other available funds that are sufficient, when considered with other security, to assure repayment; and

(iii) Eligible moneys in the Fund are or will be available for the Project; and

(iv) The Project is consistent with the requirements governing assistance from the Fund and ORS 285B.434; and

(v) Other funds needed to complete the project are available and committed to the project. If a portion of the other funds needed to complete the project is not available at the time an award is made, the award shall be conditional on securing the other needed funds.

(B) Construction Projects and Planning Projects, in counties, cities, or other geographic areas designated as distressed by the Department shall be given priority for program funding.

(C) The application for funding does not include a request for grant financing.

(2) Essential Community Facilities Emergency Projects:

(a)(A) Eligible Applicant as defined in ORS 285B.410; and

(B) An entity can meet the requirements established for Federal Disaster Assistance as administered by Oregon Emergency Management.

(b) Eligible Activities:

(A)(i) Activities required to return an Essential Community facility to its pre-disaster condition as a result of an "Emergency" as defined in ORS 401.025(4) and these rules. Activities will be consistent with those allowed under these rules and the Public Assistance Program. Essential Community facilities include the following:

(ii) City halls; city and county courts; county courthouses; community centers, including senior centers, youth centers, boys and girls clubs, head start facilities and day care centers; domestic violence centers; emergency services buildings, including 911 facilities, ambulance facilities and fire stations; emergency shelters, including homeless shelters and shelters for people with disabilities; facilities for abused children; facilities for migrant farm workers; food banks; police stations; jails; juvenile justice centers; libraries; medical facilities, including public health clinics, drug and alcohol treatment facilities, mental health treatment facilities, and transitional housing for mentally ill.

(B) Project activities are not a duplication of eligible activities under the Public Assistance Program for which those costs will be reimbursed from federal funds.

(C) Costs of financing such as issuance costs, debt service reserves, interest on construction loans or bond anticipation notes when incurred in funding a Project.

(D) Planning Project includes the following:

(i) Planning Project as a stand alone project that includes activities such as but not limited to Phase I Environmental Assessment, planning for water, sewer, and road improvements required for industrial land development and those pre-construction activities as found in ORS 285B.416(2), or

(ii) As a part of a phased project such as found in a construction project that includes those activities defined ORS 285B.416(2).

(iii) A Planning Project must be in preparation for a Community Facilities construction project that is eligible under these rules.

(iv) The application must meet the requirements listed in section (7) of this rule.

(c) Ineligible Activities: As described in "Community Facilities" (3) above.

(d) Project Criteria and Limitations:

(A) The following criteria are used to determine if an Essential Community Facilities Emergency Project is eligible for assistance from the Fund:

(i) The project must result from an emergency as defined in ORS 401.025(4);

(ii) The project must be for a federal declared emergency or major disaster;

(iii) The benefited area must be included in the Designated Disaster Area;

(iv) Project activity costs are not a duplication of eligible costs under the Public Assistance Program for which those costs will be reimbursed from this fund;

(v) Emergency Project Funding is limited to Essential Community Facilities impacted by the disaster described in (2)(a) above; and

(vi) The Essential Community Facility will be owned by a municipality, and be operated either by the municipality or by a person under a management contract or operating agreement with the municipality.

(vii) The funding requested is in the amount of the local matching funds required for the federal disaster relief assistance committed to the project.

(viii) The amount of grant funding for the project is within the limitation as per ORS 285B.440(2).

(ix) The amount of funds awarded from the fund for Essential Community Facilities Projects do not exceed limit as per ORS 285B.422(3)(c) and 285B.455(5)(b).

(B) The application must meet the requirements listed in section (7) of this rule.

(e) Loan:

(A) Projects that are not financially feasible shall not be funded. The Department will award financing in a manner that maximizes the use of available resources and maintains desired credit standards. The Department shall determine the amount, type, interest rate, and other terms. It may offer an alternate mix or lower amount of assistance than requested, the amount of the award must be the minimum amount necessary to enable the project to proceed. The Department may investigate and recommend other sources of funds for all or part of a proposed Project.

(B) The Loan shall be payable from the general fund and any allowable enterprise funds of the borrower and shall be a full faith and credit obligation which is payable from any taxes which the borrower may levy within the limitations of Article XI of the Oregon Constitution.

(C) For Bond Funded Loans, the Department will pass through the final interest rate of the bond to the borrower. Until a bond is sold, the borrower will pay interest on loan funds drawn down, at the direct loan rate, as set by the Department.

(D) Direct Loans: The term of a construction loan is limited to the usable life of the infrastructure financed or 25 years, whichever is less. Interest rates of Direct Loans are based on market conditions for similar debt and are set at the time of the award.

(E) Emergency Projects are eligible for Loans as follows:

(i) Any combination of Bond Funded Loan or Direct Loan, up to \$15,000,000 per project. The maximum amount awarded under these rules will be based upon the ability of the applicant to repay a loan.

(ii) For projects eligible for federal assistance, recipient may receive a loan, the maximum award shall not be greater than the amount required to provide the local match for federal funds.

(iii) In order to receive a loan, recipient must agree to comply with ORS 285B.443.

(iv)(I) Planning Projects in preparation for an Essential Community Facility Emergency construction project may receive loans subject to the following:

(II) The maximum amount will be based upon the Department's determination of the ability of the applicant to repay a loan, but in not case will exceed \$15,000,000 per project for any combination of Bond Funded and Direct Loans.

(f) Grant:

(A) Essential Community Facility Emergency Projects can receive grants as follows:

(i) The award complies with ORS 285B.419(3)(b) and 455(5)(b);

(ii) The Municipality may receive only one grant per biennium for an Essential Community Facilities Project, and the grant cannot be combined with any other Department grant award(s) for the same project.

(iii) Grant awards must be in compliance with ORS 285B.440(2); and

(iv) Grant limitations as per ORS 285B.438(1) and 285B.455(5)(b).

(v) Cash or Conditional Grants, or both after a financial analysis by the Department determines a loan is not feasible.

(vi) An award of a non cash Grant to pay the debt issuance costs and the debt service reserve on Bond Funded Loans, if a Bond Funded Loan is used to finance the project.

(vii) The maximum grant award is \$150,000 per project including any grant awarded for a Planning Project.

(B) Planning Project undertaken in preparation for an Essential Community Facility Emergency Project may receive grants as follows:

ADMINISTRATIVE RULES

- (i) A grant award cannot exceed 85% of the total project cost.
- (ii) Maximum grant to any municipality from this fund is limited by ORS 285B.440; and
- (iii) The maximum grants awarded from this fund cannot exceed \$2.5 million in a biennium, and
- (iv) The maximum grant per project cannot exceed \$150,000 including any grant awarded for a construction project.

(g) Application Requirements:

(A) An eligible Municipality may submit an application to the Department upon invitation from the Department and otherwise following the Department's procedures.

(B) Project applications with overlapping municipal boundaries must be accompanied by an intergovernmental cooperation agreement setting out the duties and obligations of each entity.

(C) The Department will process only completed applications. Applications submitted shall comply with ORS 285B.428. The Department may waive a feasibility report at its determination that such a report is not required. That determination will be conveyed with the invitation to submit an application.

(h) Application Review and Approval:

(A) The Department shall determine whether the application and accompanying materials are sufficient to determine eligibility requirements under these rules.

(B) If the submitted application and accompanying materials are not satisfactory the department may do one or all of the following:

- (i) Reject the application or accompanying materials;
- (ii) Require additional information as may be necessary;
- (iii) Require revisions to the feasibility study or report that provide documentation the proposed construction project will meet program requirements.

(C) Applications for emergency restoration of Essential Community Facilities under these rules will receive priority for processing.

(i) Funding Award:

(A) To award assistance the Department must make the determinations as follows:

(i) The proposed Essential Community Facilities Project is feasible, and the municipality has certified to the Department that there will be adequate funds available to repay any loan made to the municipality from the Fund;

(ii) The security for the loan includes the pledge of the municipality's full faith and credit and any other available funds that are sufficient, when considered with other security, to assure repayment;

(iii) Eligible moneys in the Fund are or will be available for the Project; and

(iv) Other funds needed to complete the project are available and committed to the project. If a portion of the other funds needed to complete the project is not available at the time an award is made, the award shall be conditional on securing the other needed funds.

(B) Construction Projects and Planning Projects, in counties, cities, or other geographic areas designated as distressed by the Department shall be given priority for program funding.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92; ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0050

Criteria for Infrastructure Project Funding

(1) All Infrastructure Projects must principally benefit industrial (manufacturing) or eligible commercial uses and must meet the definition of either a Business Commitment Project or a Capacity Building Project. Infrastructure Projects that primarily focus on relocating business or economic activity from one part of the state to another are not eligible for assistance. Infrastructure Projects (not including Community Facilities and Technical Assistance) must meet one or more of the following objectives:

(a) Assist in creating or developing economically viable industries, with reasonable long term growth prospects, including opportunities for innovative new industries or for continuance of existing basic industries;

(b) Result in a net benefit to the state in the long term and not require continuing state subsidies and are funded and otherwise supported to the maximum extent possible by private resources;

(c) Utilize existing public and private assets, including infrastructure, human resources, and plant and equipment;

(d) Improve the conditions of the economically disadvantaged and increase average incomes;

(e) Support the development of businesses owned by women and members of minority groups;

(f) Harness Oregon's comparative advantage with emphasis on the growth and development of existing, in-state businesses, especially small businesses;

(g) Result in the economic revitalization of small cities and distressed areas; or

(h) Result in business growth or expansion which would not occur in Oregon without an investment from the Special Public Works Fund;

(2) Infrastructure Projects that will primarily benefit non-industrial (commercial) activities must:

(a) Assist businesses or developments selling goods and services in markets for which national or international competition exists or;

(b) Promote downtown revitalization through improvements to municipally owned property that clearly serve to render a downtown area or main street more competitive or improve the economic vitality. Such projects can include construction or improvements to curbs, sidewalks, streetlights, landscaping, utilities, streets, access, or parking, when included in a downtown revitalization plan.

(3) Infrastructure Projects are eligible for Cash and/or Conditional Grants as follows:

(a) Business Commitment Projects can receive up to \$10,000 per job created or retained. The maximum grant assistance is \$500,000 per project, or 85 percent of the total project cost, whichever is less.

(b) Capacity Building Projects in Distressed Areas are eligible for a Cash Grant of up to \$250,000 per project. Capacity Building Projects in other than Distressed areas are not eligible for Cash Grants.

(c) Both Business Commitment Projects and Capacity Building Projects are eligible for Non-cash Grants and Conditional Grants.

(4) Infrastructure Projects are eligible for Loans as follows:

(a) Any combination of Bond Funded Loan or Direct Loan, up to \$11,000,000 per project. The maximum Direct Loan is \$1,000,000 per project.

(b) Projects receiving Loans are also eligible to receive Non-cash Grants.

(5) At its discretion and when project circumstances warrants, the Department may make grant awards to municipalities located in a Distressed Area for up to \$20,000, but not more than 75 percent of the total project cost, to finance the following costs incurred in developing an Infrastructure Project: legal, fiscal and economic investigations, reports and studies to determine the economic and engineering feasibility of the project, including but not limited to value engineering studies. When awarding grants under this subsection, the Department will make the award without first considering an applicant's ability to repay a Loan.

(a) Applications for assistance under this subsection must be in preparation for an Infrastructure Project that is eligible under these rules.

(b) The proposed project must be internally reviewed prior to an offer of a grant under this subsection.

(6) At its discretion, the Department may require a value engineering study prior to making an award for an Infrastructure Project.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92; ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 4-2002, f. & cert. ef. 2-26-02; Suspended by EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0060

Criteria and Limitations for Community Facilities Project Funding

The following criteria are used to determine if a Community Facilities project is eligible for assistance from the Fund:

(1) A Community Facilities project requires that the Applicant document that it has adequate financial resources and that there is a substantial local commitment to ensure the project success, and that the long-term benefits of the project will be preserved. Applicants can meet this criteria by establishing an operations and maintenance budget for the facility. The Applicant must identify the minimum annual amount that will be spent on operation and maintenance for the first five years of the facility life. The amounts proposed must be adequate to preserve the long-term public benefits. The Applicant is responsible for maintaining the accounting records that document the operation and maintenance expenditures.

(2) The Applicant must document the need for the project and that the project will benefit a broad cross section of the community. Local need for the project and the project benefits can be demonstrated when a project is included in a local or regional plan or an approved municipal budget, or is included in the Needs and Issues Inventory. Demonstration of need can occur at the application stage.

ADMINISTRATIVE RULES

(3) Community Facilities projects are not eligible for Cash Grants except as provided in sections (3) through (6) of this rule. Community Facility Projects are eligible for Non cash Grants. Non cash Grants are used to pay the debt issuance costs and the debt service reserve on Bond Funded Loans, if a Bond Funded Loan is used to finance the project.

(4) Community Facility Projects are eligible for any combination of Bond Funded Loan or Direct Loan, up to \$11,000,000 per project. The maximum Direct Loan is \$1,000,000 per project.

(5) Community Facility projects can be eligible for Technical Assistance awards.

(6) Essential Community Facilities, as defined in this chapter of Administrative Rules, are eligible for grants up to \$150,000 per project, or 85 percent of the project cost, whichever is less. The Department will determine whether to award a grant subject to the processes described in OAR 123-042-0080.

(7) For Community Facility grants only, a municipality may receive only one Community Facilities grant per biennium, and the grant award cannot be combined with any other Department grant award(s) for the same project.

(8) Very limited funds are available for essential community facility grants, up to \$1,000,000 per biennium, until fiscal year 2005, at which time this program will be re-evaluated. The actual amount of funds available for essential community facilities grants shall not cause the Department to exceed a level of sustainable investment from the following funds: the Special Public Works Fund, the Water Fund, the Ports Revolving Fund, and the Safe Drinking Water Fund. This is defined to mean that loan and interest earnings are sufficient to support a continuing, non-declining annual investment in new loans and grants. Community Facility grants will be awarded by the Department only after it determines that such grants will not impair the sustainability of the four funds cited in this sub-section.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - ORS 285B.464

Hist.: EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92; ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; Suspended by EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0070

Rail Road Projects

(1) Eligible Applicant as defined in ORS 285B.410.

(2) Eligible Activities:

(a) For abandoned railroad lines or railroad lines that have been so designated by the owner and operator, eligible activities must be in accordance with ORS 285B.410(4)(b).

(i) The project may include operation or maintenance costs if the project also includes acquisition, reconstruction, or rehabilitation.

(b) For existing or new rail lines eligible activities are as follows:

(A) Activities are limited to those that are not considered to be a maintenance function for the operation of the rail line;

(B) Eligible activities such as but not limited to activities required for reconstruction of rails, ballast, and bridges;

(C) Activities required for new construction or extension of industrial spurs or sidings.

(c) Planning Project includes the following:

(A) A stand alone project that includes activities such as but not limited to Phase I Environmental Assessment, planning for water, sewer, and road improvements required for industrial land development and those pre-construction activities as found in ORS 285B.416(2); or

(B) As a part of a phased project such as found in a Design-Build project that includes those activities defined ORS 285B.416(2).

(C) A Planning Project must be in preparation for a Rail Road Infrastructure construction project that is eligible under these rules.

(D) The application must meet the requirements listed in section (7) of this rule.

(3) Ineligible Activities:

(a) Expenses and costs expressly allowed by this rule are eligible for reimbursement from the Fund. All other costs are ineligible for reimbursement. The exception to this rule is when an activity not listed in these rules is requested at the time of application for funding and determined by the department to be reasonable activities and costs are directly related to the proposed construction project.

(4) Project Criteria and Limitations:

(a) The provisions of this section shall only apply to abandoned railroad lines as defined in ORS 285B.410(4)(b) as follows:

(A) The line is abandoned or designated by the owner and operator for abandonment;

(B) The applicant must be in consultation with the Oregon Department of Transportation and other affected agencies regarding the project.

(C) If the line is acquired by the applicant, potential new rail traffic must be documented;

(D) The applicant must be able to negotiate a preliminary acquisition contract with the owner and operator of the line at the time of submission of an application for financial assistance.

(E) At the time of submission of an application for financial assistance the applicant must provide a contract with a short line operator or document that the applicant is able to operate the line itself.

(b) The provision of this section shall only apply to applications for financial assistance for industrial spurs or sidings as follows:

(A) Applicant must document financial commitment from shippers that applicant will receive revenues sufficient to operate the line for 5 years on a break even basis, and

(B) The project must include the creation or retention of jobs based on rail freight service; or

(C) Applicant must be able to document that shippers expect job losses without rail freight service and the lack of economic alternative.

(D) Applicant must be in consultation with the Oregon Department of Transportation and other affected agencies regarding the project.

(c) Projects in counties, cities, or other geographic areas designated as distressed by the Department shall be given priority for program funding.

(5) Loan:

(a) Projects that are not financially feasible shall not be funded. The Department will award financing in a manner that maximizes the use of available resources and maintains the desired credit standards. The Department shall determine the amount, type, interest rate and terms; it may offer an alternate mix or lower amount of assistance than requested, the amount of the award must be the minimum amount necessary to enable the project to proceed, and it may investigate and recommend other sources of funds for all or part of a proposed Project.

(b) The Loan shall be payable from the general fund and any allowable enterprise funds of the borrower and shall be a full faith and credit obligation which is payable from any taxes which the borrower may levy within the limitations of Article XI of the Oregon Constitution.

(c) For Bond Funded Loans, the Department will pass through the final interest rate of the bond to the borrower. Until a bond is sold, the borrower will pay interest on loan funds drawn down, at the direct loan rate, as set by the Department.

(d) Direct Loans: The term of a construction loan is limited to the usable life of the infrastructure financed or 25 years, whichever is less. Interest rates of Direct Loans are based on market rates for similar debt and are set at the time of the award.

(e) Rail Road Infrastructure Projects are eligible for Loans as follows:

(A) Any combination of Bond Funded Loan or Direct Loan, up to \$15,000,000 per project.

(B) In order to receive a loan, recipient must agree to comply with ORS 285B.443.

(C) The maximum amount awarded under these rules will be based upon the ability of the applicant to repay a loan.

(D) Abandoned rail roads may receive loans as in (5)(f)(A) above for Operation & Maintenance if project also includes acquisition, reconstruction, and rehabilitation.

(f) Planning Project in preparation for a rail road infrastructure construction project may receive loans subject to the following:

(i) The maximum amount will be based upon the Department's determination of the ability of the applicant to repay a loan, but in not case will exceed \$15,000,000 per project for any combination of Bond Funded and Direct Loans.

(6) Grant:

(a) Infrastructure projects can receive grants as follows:

(A) Cash or Conditional Grants, or both after a financial analysis by the Department determines a loan is not feasible.

(B) Rail Road Infrastructure Projects receiving Loans are also eligible to receive Non cash Grants.

(b) A project based upon a firm business commitment to create or retain jobs, can receive grant funds only after the department has determined that the following conditions exist:

(A) The department has received as part of the application submitted by the applicant a confirmation from a business that the development or expansion of their business will not occur and why if the municipality does not receive a grant as part of the award for construction funding.

ADMINISTRATIVE RULES

(B) If this condition exist and the department determines that it is in the best interest of the municipality, the analysis for a loan will only cover the portion of the total project cost after the eligible grant as stipulated in section (b) paragraph (A) above and (c) below, has been deducted from the total project funding request.

(C) Evidence that the business will enter into a First Source Hiring Agreement.

(c) Business Commitment projects can receive up to \$5,000 per job created or retained. The maximum grant assistance is \$500,000 per project. No financial analysis will be performed; the awarding of a grant will be determined by the findings under (A) above.

(d) Capacity Building Projects in Distressed Areas are eligible for a Cash Grant up to \$250,000 per project. Capacity Building Projects in other than Distressed Areas are not eligible for Cash Grants.

(e) Capacity Building projects must demonstrate on going marketing efforts, recent industrial/commercial development interest, and the existing advantages to the area that will promote future economic development.

(f) Both Business Commitment Projects and Capacity Building Projects are eligible for Non-cash Grants and Conditional Grants.

(g) Abandoned rail roads may receive grants as in (5)(f)(A) above for Operation & Maintenance if project also includes acquisition, reconstruction, and rehabilitation.

(h) A grant award cannot exceed 85% of the total project cost.

(i) Maximum grant to any municipality from this fund is limited by ORS 285B.440(1).

(7) Application Requirements:

(a) An eligible Municipality may submit an application to the Department upon invitation from the Department and otherwise following the Department's procedures.

(b) Project applications with overlapping municipal boundaries must be accompanied by an intergovernmental cooperation agreement setting out the duties and obligations of each entity.

(c) The Department will process only completed applications. Applications submitted shall comply with ORS 285B.428. The Department may waive a feasibility report at its determination that such a report is not required. That determination will be conveyed with the invitation to submit an application.

(d) For projects as defined in ORS 285B.410(4)(b), a feasibility study including a pro forma and operating statements covering a period to positive cash flow.

(e) Applicants will submit with the application an Operation, Maintenance, and Replacement Plan that will cover the constructed improvements. The Applicant is responsible for maintaining the accounting records that document the operation and maintenance expenditures. If the Applicant can demonstrate why the project should not require an Operation, Maintenance, and Replacement plan the Department may determine that a plan is not required. Acceptable justification may include such reasons as the project will not require expenditures for operation and maintenance over the long term.

(f) Applicants will provide copies of any First Source Hiring Agreements signed in connection with the job creation commitments from businesses benefiting from the project.

(8) Application Review and Approval:

(a) The Department shall determine whether the application and accompanying materials are satisfactory in order for the department to determine eligibility requirements under these rules.

(b) If the submitted application and accompanying materials are not satisfactory the department may do one or all of the following:

(A) Reject the application or accompanying materials;

(B) Require additional information as may be necessary;

(C) Require revisions to the feasibility study or report that provide documentation the proposed construction project will meet program requirements.

(c) After all eligibility requirements under ORS 285B.410 thru 285B.467 and these rules have been satisfied, in so far as practicable, the Department shall give priority for assistance to projects that can meet criteria under ORS 285B.419(1).

(9) Funding Award:

(a) The Department shall make a maximum loan award based upon a reasonable and prudent expectation of the municipality's ability to repay.

(b) To award assistance the Department must make the determinations as follows:

(A) The proposed project is feasible, and the municipality has certified to the Department that there will be adequate funds available to repay any loans made to the municipality from the Fund;

(B) The existing infrastructure is inadequate to support the projected demand (future capacity) or now prevents industrial or commercial development, or both, from occurring;

(C) The proposed project is situated in a city or county with a comprehensive land use plan that allows industrial and commercial development of a type and scale that is sufficient to repay the costs of the project;

(D) A high probability exists for industrial or commercial development, or both, of the properties served by the project;

(E) The loan security including pledges of utility and other revenues, or payments from any owners of specially benefited properties, are sufficient, when considered with other security, to assure repayment;

(F) Moneys in the appropriate accounts of the Fund are or will be available for the project;

(G) The project is consistent with the rules governing assistance from the Fund;

(H) Other funds needed to complete the project are available and committed to the project. If a portion of the other funds needed to complete the project is not available at the time an award is made, the award shall be conditional on securing the other needed funds.

(I) An award to a municipality shall not contain a grant in excess of 85% of the total project costs.

(c) For Abandoned Rail Lines the following requirements will be a part of the award and made a special condition in the contract:

(A) A final acquisition contract within 60 days of Department award of funding; and

(B) A final contact with a short line operator.

(C) Evidence that within 5 years the rail project will be sustainable from revenues derived from operation of the rail line.

(d) Construction Projects and Planning Projects, in counties, cities, or other geographic areas designated as distressed by the Department shall be given priority for program funding.

(e) Disbursements for eligible expenditures will be from loans then grant funds. Exceptions may be made under special circumstances with advanced written approval of the Department.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0075

Criteria and Limitations for Emergency Project Funding

The following criteria are used to determine if an Emergency Project is eligible for assistance from the Fund:

(1) The project must result from an emergency as defined in ORS 401.025.

(2) The project must have federal disaster relief assistance funds committed.

(3) Emergency Projects are eligible for grants and loans as follows:

(a) Grant awards for infrastructure projects described in OAR 123-042-0030(1) shall be limited to \$500,000 per project;

(b) Only Essential Community facilities shall be eligible for grant awards and the per project limit of \$150,000 shall apply;

(c) No more than \$2,500,000 in grants shall be expended from the Fund on Emergency Projects in any biennium. For the purposes of grant awards made under this section, eligible project costs shall be those eligible for federal assistance, unless those costs are not allowable under state law;

(d) Any combination of Bond Funded Loan or Direct Loan may be awarded, up to \$11,000,000 per project. The maximum Direct Loan is \$1,000,000 per project;

(e) The maximum award for an Emergency Project shall not exceed the required local match requirement for the federal disaster relief assistance committed to the project.

(4) The application must meet the requirements listed in OAR 123-042-0140(4).

Statutory Authority: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: EDD 4-2002, f. & cert. ef. 2-26-02; Suspended by EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0080

Technical Assistance Projects

(1) Eligible Applicant as defined in ORS 285B.410.

(2) Eligible Activities:

(a) The following are allowable costs for a technical assistance project where a construction project has not yet been determined:

ADMINISTRATIVE RULES

(A) Activities listed in ORS 285B.416(1) as related to industrial land development.

(B) Site assessment for Environmental mitigation of industrial site as per ORS 285A.188.

(C) Planning activities such as but not limited to Wetlands Delineation, Phase I Environmental Assessment, Archaeological Investigations, planning for water, sewer, road improvements required for industrial land development.

(3) Ineligible Activities:

(a) Expenses and costs expressly allowed by this rule are eligible for reimbursement from the Fund. All other costs are ineligible for reimbursement. The exception to this rule is when an activity not listed in these rules is requested at the time of application for funding and determined by the Department to be an allowable activity and costs are directly related to the proposed project.

(4) Project Criteria and Limitations:

(a) The facility or site does not have to be owned by the applicant at the time of the project.

(b) The documents from this project must become the sole property of the applicant at the end of the Technical Assistance project.

(c) The project can be conducted for industrial land development.

(5) Grant:

(a) The Director has determined that the preliminary status of Technical Assistance Projects creates special circumstances where grant funding is warranted and that any loan feasibility determination will be based on the recipient's certification at time of application for funding subject to these rules.

(b) Technical Assistance Projects can receive grants subject to the following:

(A) Industrial land must be already zoned appropriately and not converted from industrial use within 5 years or grant must be paid back.

(B) Limit of one grant per industrial site.

(C) Limit of one grant per recipient/owner per year.

(D) Maximum of \$40,000 per site for land zoned as industrial and based on \$200/acre.

(E) A grant award cannot exceed limits as per ORS285B.440(1).

(b) Subject to these rules the Department may not expend more than \$900,00 of the Special Public Works Fund for Technical Assistance grants and loans to municipalities in a biennium.

(c) A grant award cannot exceed 85% of the total project cost.

(6) Loan:

(a) Paragraph (c)(A) from this section will be the basis of the financial analysis.

(b) The Loan shall be payable from the general fund and any allowable enterprise funds of the borrower and shall be a full faith and credit obligation which is payable from any taxes which the borrower may levy within the limitations of Article XI of the Oregon Constitution.

(c) Technical Assistance projects are eligible for Loans as follows:

(A) The Departments determination of repayment ability will be based on the applicants certification of the ability to repay a loan;

(B) Interest shall be 75 percent of the rate for other Direct Loans consistent with these rules. The loan term shall not exceed seven years;

(C) Recipient must agree to comply with ORS 285B.443(1).

(D) Maximum of \$20,000 per site for land zoned as industrial and based on \$200/acre.

(b) Subject to these rules the Department may not expend more than \$900,00 of the Special Public Works Fund for Technical Assistance grants and loans to municipalities in a biennium.

(7) Application Requirements:

(a) An eligible Municipality may submit an application to the Department upon invitation from the Department and otherwise following the Department's procedures.

(b) The Department will process only completed applications. Applications submitted shall comply with ORS 285B.428. The Department may waive a feasibility report at its determination that such a report is not required. That determination will be conveyed with the invitation to submit an application.

(c) Applicant shall certify that if any loan was to be awarded for the proposed project that there would be adequate funding available to the applicant to repay the loan.

(8) Application Review and Approval:

(a) The Department shall determine whether the application and accompanying materials are sufficient to determine eligibility requirements under these rules.

(b) If the submitted application and accompanying materials are not satisfactory the department may do one or all of the following:

(A) Reject the application or accompanying materials;

(B) Require additional information as may be necessary.

(9) Funding Award:

(a) The Department shall make a maximum award of \$60,000 per site for land zoned as industrial and based on \$200/acre.

(b) To award assistance the Department must make the determinations as follows:

(A) The applicant and the submitted application and accompanied materials are in compliance with ORS 285B.434;

(B) Other funds needed to complete the project are available and committed to the project. If a portion of the other funds needed to complete the project is not available at the time an award is made, the award shall be conditional on securing the other needed funds;

(C) An award to a municipality shall not contain a grant in excess of 85% of the total project costs;

(D) Moneys in the appropriate accounts of the Fund are or will be available for the project;

(E) The project is consistent with the rules governing assistance from the Fund.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92; ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0140

Application Review and Approval

(1) To award assistance from the Fund for Infrastructure Projects, the Department must make the determinations as follows:

(a) The proposed infrastructure project is feasible, and the municipality has certified to the Department that there will be adequate funds available to repay any loans made to the municipality from the Fund;

(b) The existing infrastructure is inadequate to support the projected demand (future capacity) or now prevents industrial and/or commercial development from occurring;

(c) The proposed infrastructure project is situated in a city or county with a comprehensive land use plan that allows industrial and commercial development of a type and scale that is sufficient to repay the costs of the project;

(d) A high probability exists for industrial or commercial development, or both, of the properties served by the infrastructure project;

(e) The loan security includes the pledge of utility revenues and/or other revenue funds or payments from any owners of specially benefited properties, and are sufficient, when considered with other security, to assure repayment;

(f) Moneys in the appropriate accounts of the Fund are or will be available for the project;

(g) The municipality is willing and able to enter into a contract with the Department for repayment as provided in this chapter of administrative rules;

(h) The project is consistent with the requirements governing assistance from the Fund. If the Department determines that the applicant and/or the proposed project do not meet the requirements of this section, the Department may reject an application or require further documentation from the applicant; and

(i) Other funds that may be needed to complete the project are available and committed to the project. If a portion of the other funds needed to complete the project is not available at the time an award is made, the award shall be conditional on securing the other needed funds.

(2) To award assistance from the Fund for Community Facilities Projects, the Department must make the determinations as follows:

(a) The proposed project is feasible, and the municipality has certified to the Department that there will be adequate funds available to repay any loans made to the municipality from the Fund;

(b) The loan security includes the pledge of revenues and/or other funds, and are sufficient, when considered with other security, to assure repayment;

(c) Moneys in the appropriate accounts of the Fund are or will be available for the project;

(d) The municipality is willing and able to enter into a contract with the Department for repayment as provided in this chapter of administrative rules;

(e) The project is consistent with the requirements governing assistance from the Fund. If the Department determines that the applicant and/or

ADMINISTRATIVE RULES

the proposed project do not meet the requirements of this section, the Department may reject an application or require further documentation from the applicant; and

(f) Other funds that may be needed to complete the project are available and committed to the project. If a portion of the other funds needed to complete the project is not available at the time an award is made, the award shall be conditional on securing the other needed funds.

(3) To award assistance from the Fund for Technical Assistance Projects, the Department must find:

(a) The Technical Assistance planning activities must be in preparation for a Project that is eligible under these rules and meets the criteria listed in 123-042-0070;

(b) The Applicant has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the Technical Assistance project;

(c) The Technical Assistance project is ready to proceed upon execution of a contract between the state and the Applicant.

(4) To award assistance from the Fund for Emergency Projects, the Department must find:

(a) The award is not more than the required local matching funds for available federal disaster relief assistance committed to an Emergency Project;

(b) Moneys in the appropriate accounts of the Fund are or will be available for the project; and

(c) The municipality is willing and able to enter into a contract with the Department for repayment as provided in this chapter of administrative rules.

Stat. Auth.: ORS 285B.419
Stats. Implemented: ORS 285B.410 - ORS 285B.464
Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; Suspended by EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0150

Contract Administration and Disbursements of Funds

(1) The Department may enter into a contract with the Municipality after determining compliance with eligibility criteria as set forth in these rules and ORS 285B.437.

(2) Disbursements will be in accordance with the terms and conditions as stipulated in the contract documents.

Stat. Auth.: ORS 285B.419
Stats. Implemented: ORS 285B.410 - 285B.464
Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0160

Recipient Responsibilities

(1) For Business Commitment projects:

(a) All job creation will be documented with payroll records submitted to the Department at time of award and after the jobs are created, or at closeout. All new jobs are to be created within one year from the completion of construction.

(b) Businesses that benefit substantially from an infrastructure project financed through the Fund, and typically are identified in the application or contract, must sign a First Source Hiring Agreement with an agency for new job hires, pursuant to Division 070 of this chapter of administrative rules.

(2) The Department shall provide each Recipient with information which guides local record keeping and project reporting activities. The recipient shall maintain accounts and records for all activities associated with the project and shall provide the Department reasonable access to such records. If applicable, the Recipient shall submit periodic reports on the project to the Department on job creation/retention results and other economic benefits as requested by the Department.

(3) Recipients shall ensure that a registered professional engineer or a licensed architect will be responsible for the design and construction of the project.

(4) As applicable, the Recipient shall comply with ORS 285B.467(2) and (8).

Stat. Auth.: ORS 285B.419
Stats. Implemented: ORS 285B.410 - 285B.464
Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0170

Railroad Lines

(1) The provisions of this section shall apply to railroad lines. If these rules conflict with other administrative rules of the Fund, the rules of this section shall apply.

(2) An award may be made by the Department to an Applicant for retaining jobs based on continuing railroad freight service to existing businesses.

(3) An application for a railroad line Infrastructure Project shall include:

(a) Documentation that the line is abandoned or designated by the owner and operator for abandonment as provided in ORS 285B.410(2)(b);

(b) Documentation of consultation with the Oregon Department of Transportation, the Public Utility Commission and other affected agencies; and

(c) Documentation of the Applicant's ability to acquire the railroad line and pay the costs of operation, maintenance and rehabilitation in accordance with state and federal laws if assistance from the Fund is approved.

(4) Where applicable, an application for a railroad line Infrastructure Project also shall include:

(a) A preliminary acquisition contract between the Applicant and the owner and operator of the line;

(b) A preliminary contract between the Applicant and a short line operator or documentation of the Applicant's ability to operate the line itself;

(c) Letters from existing shippers documenting expected job losses without continued railroad freight service and the lack of economic alternatives thereto;

(d) Letters of commitment from shippers documenting the level of support for the proposed Project;

(e) Documentation of any potential new rail traffic if the line is acquired by the Applicant.

(5) If applicable, the award will be contingent on receipt, within 60 days of award approval or other period specified by the Department, of:

(a) A final acquisition contract;

(b) A final contract with a short line operator; and

(c) Letters of financial commitment from shippers documenting that the Applicant will receive revenues sufficient to operate the line for a period of five years on a break even basis.

Stat. Auth.: ORS 285B.419
Stats. Implemented: ORS 285B.410 - ORS 285B.464
Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; Suspended by EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0180

Sanctions

(1) The Department may invoke sanctions for an "Event of Default" as described in the contract with the Recipient.

(2) Sanctions will be imposed as stipulated in the contract under "Remedies upon Event of Default".

Stat. Auth.: ORS 285B.419
Stats. Implemented: ORS 285B.410 - 285B.464
Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-042-0190

Appeals and Exceptions

(1) Appeals of local government decisions regarding a Project must be made at the local level.

(2) The Director will consider appeals of the Department's funding decisions. Only the Applicant may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. An application that would have been funded but for a technical error in the Department's review will be funded as soon as sufficient funds become available, provided the Project is still viable. The Director's decision is final.

(3) The Director 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 285B.419
Stats. Implemented: ORS 285B.410 - 285B.464
Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

Adm. Order No.: EDD 6-2004(Temp)

Filed with Sec. of State: 2-3-2004

Certified to be Effective: 2-3-04 thru 8-1-04

ADMINISTRATIVE RULES

Notice Publication Date:

Rules Amended: 123-055-0100, 123-055-0120, 123-055-0200, 123-055-0240, 123-055-0300, 123-055-0340, 123-055-0400, 123-055-0420, 123-055-0440, 123-055-0460, 123-055-0525, 123-055-0600, 123-055-0620, 123-055-0900, 123-057-0110, 123-057-0130, 123-057-0170, 123-057-0190, 123-057-0210, 123-057-0230, 123-057-0310, 123-057-0330, 123-057-0350, 123-057-0410, 123-057-0430, 123-057-0450, 123-057-0470, 123-057-0510, 123-057-0530, 123-057-0710

Subject: In accordance with HB 2300, modifies Regional Investment Plan to become Regional Investment Strategy with expanded purposes to leverage and attract capital investment. Directs Oregon Economic and Community Development Department Commission and Regional Investment Board to establish Regional Performance Measures. Establishes criteria for Regional Investment Boards to evaluate effectiveness of activities funded with Regional and Rural Investment funds. The rules govern the use of Regional and Rural Investment funds and outline the required planning and distribution, including specific performance criteria for the use of those funds as authorized by law.

Rules Coordinator: Lynn Beaton—(503) 986-0201

123-055-0100

Purpose and Scope

In implementing the Regional Economic Development Act under ORS 285B.230 to 285B.251 and 285B.269, pursuant to amendments by chapter 773, Oregon Laws 2003, this division of administrative rules is intended to clarify, facilitate and establish the following key pieces in the successful design, deliberation, execution and updating of a long-term planning framework for achieving economic development results:

- (1) Regional associations and consensus among counties of this state;
- (2) Boards of citizens for strategic planning and oversight of funded activities;
- (3) Special, broad-based partnership arrangements to augment and, in some cases, to act as an umbrella for county-appointed boards;
- (4) Processes for public development and approval of the locally determined investment Strategies; and

(5) Statewide interaction and support.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.251 & 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0120

Definitions

For purposes of this division of administrative rules, unless the context demands otherwise:

(1) **Commission** means the State of Oregon Economic and Community Development Commission established by ORS 285A.040.

(2) **County-based Region** means a Region established by formal recognition of the Department on the basis of county government initiative, without a Regional Partnership.

(3) **Department** means the State of Oregon Economic and Community Development Department

(4) **Director** means the director of the Department.

(5) **Fiscal Entity** means a unit of local government, intergovernmental entity or nonprofit corporation jointly designated by the governing bodies of the counties comprising the Region and responsible for assisting the Regional Board in developing, implementing and administering the Investment Strategy, such that:

(a) If the governing bodies of the counties comprising the Region establish the Regional Board as an intergovernmental entity, the Regional Board may be the Region's Fiscal Entity; and

(b) The Fiscal Entity must in all cases have the authority and legal power to enter into a contract with the Department for receipt of Regionally Controlled Funds and with other entities receiving such funds as authorized by the Regional Board pursuant to and for purposes of the Investment Strategy.

(6) **Investment Strategy** means the document described under ORS 285B.239 and 285B.257 outlining the Rural Action Plan and prepared by the Regional Board under ORS 285B.242 and 285B.257, in accordance with 123-055-0300 to 123-055-0399.

(7) **Partnership-based Region** means a Region for which:

(a) A Regional Partnership is associated with the Regional Board through and with agreement of the county partners; and

(b) Its specific geographic area essentially coincides with that of the Regional Partnership. (This definition in no way limits the types or purposes of Regional Partnerships)

(8) **Region** means a geographic area under ORS 285B.230(1), as described in 123-055-0200, and represented by a Regional Board that prepares and submits an Investment Strategy. It may be either a County-based Region or a Partnership-based Region.

(9) **Regional Board** means a group of individuals appointed by county courts and boards of county commissioners under ORS 285B.230(2) and 285B.242(1), as described in 123-055-0200 to 123-055-0299.

(10) **Regional Partnership** means an association under ORS 285B.230(4), formed by agreement of local and regional partners with the requisite agencies of the state government. It includes but is not limited to a Partnership-based Region.

(11) **Regionally Controlled Funds** means the Regional Investment Fund and Rural Investment Fund, as described in division 057 of this chapter of administrative rules, and the moneys allocated, disbursed or expended there-under for the projects of a particular Region, and all interest earned on such money by or for the Region. *This term shall in no way be interpreted as affecting resources from any other fund or program under state law or associated with the Department.*

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.251, 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0200

Formation and Reconfiguration

(1) Prior to designating a County-based Region, the Department shall do the following:

(a) Communicate with and assist representatives of county governments with considerations in forming a Region, which may include special meetings, fora, etc.; and

(b) Receive materials and advice from the counties' governing bodies, describing the Region's geographic area and the historical, cultural and economic linkages that underpin and justify its creation, including regional planning activities that already exist.

(2) The geographic area of a County-based Region may not include any area in another Region and shall consist of the following:

(a) Two or more counties;

(b) The entire area of the counties comprising the Region, unless the remaining portion of a county is contained in a Partnership-based Region; and

(c) A common border between at least two member counties, although any other county in the Region need not be contiguous to any or all of the other counties.

(2) Each Regional Board and its members, as well as the associated Fiscal Entity, operate in the public trust and shall comply (inrelevant part or in entirety) with state and local statutes, laws and regulations for the following, and are solely responsible for legal adherence

(3) A Partnership-based Region is not bound by section (1) or (2) of this rule, and may encompass any geographic area consistent with the participation/involvement of relevant sub-county partners. The Department shall recognize it, insofar as it:

(a) Contains no area of another Region;

(b) Includes area in at least two counties; and

(c) Is clearly described in or as part of the Regional Partnership memorandum of understanding or associated information as provided to the Department.

(4) In order for any county area to be divided among two or more Regions:

(a) At least part of the county must be in a Partnership-based Region;

(b) The county's governing body must be a party to each applicable agreement in OAR 123-055-0240 and must appoint one or more members to the respective Regional Boards; and

(c) No such constituent part of the county may be attached to a Region as established or recognized by the Department, until all such parts are associated with an acknowledged Region.

(5) Regions may be reconfigured pursuant to the mutual consent of all affected counties (and partners of an ongoing Regional Partnership), and subject to the preparation, modification or amendment and approval of an Investment Strategy or Strategies for the new/reconfigured Region(s).

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.230, 285B.236, 285B.242

ADMINISTRATIVE RULES

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0240

Regional Accords and Fiscal Entities

(1) The governing bodies of the counties comprising a Region shall jointly enter into a written agreement forming the Region and specifying applicable elements as follows:

(a) The size, makeup and organization of the Regional Board and the methods for nominating and appointing its members by the governing bodies;

(b) Indication of a Regional Partnership in the case of a Partnership-based Region;

(c) Any special name to be used in reference to the Region;

(d) Procedures, policies, duties and authority for the activities of the Regional Board and for the preparation and implementation of the Investment Strategy;

(e) If desired by the governing bodies of the counties comprising the Region, establishment of the Regional Board as an intergovernmental entity under ORS 190.010(5), 190.080 and 190.085 and designation of the Regional Board as the Region's Fiscal Entity; or

(f) Any other matters deemed appropriate by the governing bodies.

(2) If the agreement described in section (1) of this rule establishes the Regional Board as an intergovernmental entity and designates the Regional Board as the Region's Fiscal Entity, that agreement shall also specify the following:

(a) The authority, duties and functions of the Regional Board in its capacity as the Fiscal Entity for Region;

(b) The Regional Board's financial responsibility and budgetary processes with respect to Regionally Controlled Funds; and

(c) Contractual terms and other relevant administrative or fiduciary issues.

(3) If the Regional Board is not established as an intergovernmental entity that acts as the Region's Fiscal Entity, then the governing bodies of the counties comprising the Region shall jointly designate the Fiscal Entity for the Regional Board and enter into an agreement with that Fiscal Entity (preferably, one that is subsequent to and separate from the agreement described in section (1) of this rule) that specifies the following:

(a) The corporate/legal identity, role, function and duties of the Fiscal Entity for purposes of assisting the Regional Board in developing, implementing and administering the Investment Strategy;

(b) Powers and responsibilities of the Regional Board over the Fiscal Entity;

(c) The authority, financial responsibility and budgetary processes of the Fiscal Entity with respect to decisions by the Regional Board and with respect to the receipt and use of Regionally Controlled Funds; and

(d) Contractual terms and other relevant administrative or fiduciary issues.

(4) The governing bodies of the counties comprising the Region shall jointly notify the Department in writing, as soon as reasonably possible, of the following:

(a) The identity of the Fiscal Entity; and

(b) Any actual or formally contemplated change in the designated Fiscal Entity.

(5) Alternatively for sections (3) and (4) of this rule, the Regional Board may directly designate and contract with the Fiscal Entity, and notify the Department accordingly, if it is established as an intergovernmental entity but not as the Region's Fiscal Entity.

(6) Other agreements that supplement or incorporate what is described in this rule may be executed as necessary and appropriate, especially for a Partnership-based Region.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.251, 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0300

Statutory Priorities

The regional investment program is intended to identify, address and coordinate economic development priorities, as well as coordinate public and private resources, in accordance with ORS 285B.233. Therefore, an Investment Strategy shall explicitly do the following:

(1) Focus on priorities identified by the Regional Board, along with the following priorities, as taken from ORS 285B.230(3):

(a) Supporting communities and populations that have been left out of Oregon's economic expansion and diversification;

(b) Helping companies that are starting up or are already in business in Oregon to compete globally;

(c) Ensuring that economic strategies will reinforce Oregon's long-term prosperity and livability; and

(d) Coordinating regional efforts for economic development, education, workforce development; and

(2) Demonstrate in measurable terms the extent to which, as well as how, the priorities in section (1) of this rule will be accomplished, as required under ORS 285B.236(2), by relating these to the regional performance measurements and regional benchmarks in the Investment Strategy under ORS 285B.239(7) and to Regional Performance Measures as described in 123-055-0620.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.230, 285B.233, 285B.236 & 285B.239

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0340

Using Other Planning Exercises

Regions are encouraged to take advantage of other planning activities or sources of helpful guidance that exist in association with federal programs or resources, at the local level and in other circumstances, such that:

(1) In preparing and developing an Investment Strategy, a Region may borrow and rely on technical resources, methods and format for strategic or economic planning, or the Region may integrate and make reference to recently completed planning work, including those associated with but not limited to the following:

(a) U.S. Economic Development Administration;

(b) U.S. Empowerment Zone/Enterprise Community Initiative; or

(c) Local comprehensive land use plans.

(2) In using models or relevant work as indicated in section (1) of this rule, the Region shall ensure that all of the elements required under ORS 285B.230 to 285B.269 for a complete Investment Strategy are still included therein and are easily identified or identifiable through use of a key or other instructions in the primary document that the Region adopts.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.251, 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0400

Strategy Preparation, Local Input, Refinement with Department and Regional Adoption

For purposes of developing Investment Strategies:

(1) The Department shall extend reasonable assistance to each Regional Board, its members and its Fiscal Entity, which may include provision of program guidance, attendance at local meetings or contact information for relevant organizations or government agencies, as the Department's time and resources permit. The Department shall neither guide nor lead counties in the development of Investment Strategies and is not responsible for performing in-depth research or information gathering for any Region.

(2) For all Regions:

(a) In addressing the general preparation and substance of the Investment Strategy, the Regional Board shall provide opportunity for consultation with applicable representatives in the Region from the following:

(A) Private industries, the for-profit business community, the non-profit sector and workforce committees;

(B) Local/city governments and public service providers, including ports and other special districts;

(C) Tribal governments or councils; and

(D) State and federal agency partners, especially those listed under ORS 285B.230(4).

(b) In devising the two-year Implementation Strategy that shall describe projects and activities to be undertaken and funded, the Regional Board shall consult with and seek input from the parties described in subsection (a) of this section, either as a convened body or through liaison work by individual board members or the Fiscal Entity.

(c) The Regional Board may work with the Department in the refinement of the Investment Strategy through drafting stages and to ensure compliance with applicable statutes.

(d) Public hearings shall be scheduled and conducted, as follows:

(A) A public hearing shall be held in each county of the Region, no less than two weeks after published notice inviting public comments on the proposed Investment Strategy; and

(B) The Investment Strategy shall be made available to the public for inspection during the two-week period preceding the public hearing.

ADMINISTRATIVE RULES

(e) The Regional Board shall submit the Investment Strategy to the county governing bodies of the Region after the public hearing in that county, so that the governing bodies may take formal action on the Investment Strategy.

(f) In order for the final Investment Strategy to be regionally adopted, it must be approved by motion or resolution of the following:

(A) All of the counties in the Region (by a majority vote of each county governing body, as specified in the county charter); and

(B) The Regional Board (pursuant to its own procedures or bylaws).

(3) In response to a recommendation from the Department, Commission, Governor or Regional Partnership, a final, adopted Investment Strategy may be modified, amended or appended by the Regional Board subject to formal consideration by the county governing bodies, which may at their discretion delegate authority for so changing the Investment Strategy.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0420

Review/Approval by Commission and Governor or Through Regional Partnership

The Regional Board shall provide a complete copy of the final Investment Strategy, as developed and adopted consistent with OAR 123-055-0400, to the Department, at which point the Investment Strategy may be handled according to either section (1) or (2) of this rule:

(1) Review and approval shall be done through a Regional Partnership, such that:

(a) These functions have been delegated to the Regional Partnership either by communication from the Governor's Office to the Director or by a joint recommendation of the state agency directors under ORS 285B.230(4) (or their regional designees);

(b) The review and approval of the Investment Strategy proceeds according to the Regional Partnership's discretion and criteria, including but not limited to compliance with all applicable statutes; and

(c) Final approval of the Investment Strategy is formally submitted to the Governor or the state agency directors under ORS 285B.230(4) (or their regional designees) for recognition by the Department.

(2) Without delegation under subsection (1)(a) of this rule, review and approval shall proceed as follows:

(a) The Department examines the Investment Strategy to ensure compliance with applicable statutes and may seek and obtain missing or corrected information, as necessary, from the Regional Board;

(b) The Department submits the Investment Strategy to the Commission with summaries or assessments, as are appropriate or requested by the Commission;

(c) The Commission considers the submission by the Department; and

(d) Pursuant to any consultation that it chooses to have with the Regional Board, the Commission takes action either by returning the Investment Strategy to the Regional Board with instructions for modification or by endorsing it, such that (A) Once endorsed by the Commission, the Investment Strategy is recommended to the Governor, and the Governor shall either finally approve the Investment Strategy or return it to the Commission or the Regional Board with appropriate indications; or

(B) If the Governor has officially granted approval for the Region's Investment Strategy to the Commission, the Commission's endorsement shall thereby effect the Governor's final approval.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.242, 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0440

Plan Implementation and Biennial Update

Once approved as described in OAR 123-055-0420:

(1) An Investment Strategy shall be implemented at the direction and by authority of the Regional Board, in cooperation with a Regional Partnership as applicable, such that:

(a) The Department shall assist with implementation, as staff resources and time permit, especially for purposes of coordination with resources at the Department's disposal;

(b) Leverage of resources and opportunities other than Regionally Controlled Funds are to be continually considered for effectively and efficiently achieving economic development results; and

(c) Measuring and reporting progress, spending and so forth under the Investment Strategy shall be integral to implementation.

(2) An Investment Strategy is a living document, and every two years, the Regional Board shall revise it as necessary and improve it wherever suitable, including but not limited to updating the rural action plan and the requisite preparation of a new implementation strategy. The revised and updated Investment strategy and the new two-year implementation Strategy shall be developed and approved consistent with OAR 123-055-0400 and 123-055-0420, such that: delegation or the lack thereof by the Governor in the prior biennium, as described OAR 123-055-0420(1), may be changed.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.242, 285B.245

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0460

Relationship of Plan to Regionally Based Funding

For purposes of disbursing Regionally Controlled Funds to a Region, in accordance with division 057 of this chapter of administrative rules:

(1) All disbursements of Regionally Controlled Funds will be made to the Region's Fiscal Entity, as designated in accordance with OAR 123-055-0240.

(2) Except for moneys described in OAR 123-057-0330 or 123-057-0430, the Department may make such disbursements only pursuant to final approval of the Investment Strategy and the two-year implementation strategy corresponding to that biennium.

(3) Such disbursements further depend on an effective and enforceable contract between the Department and the Fiscal Entity, as described in OAR 123-057-0170 and will not be made without such a contract.

(4) If a Region fails to adopt, submit or have an Investment Strategy finally approved, it may not receive its counties' Regionally Controlled Fund allocations, and such moneys may be proportionally reallocated to other Regions by the Department at the end of the biennium.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.251, 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0525

Relationship of Local Entities to Partnership

For purposes of Regional Partnerships under ORS 285B.230(4):

(1) The memorandum of understanding among local partners and the directors of the seven state agencies may take the form of two or more agreements or memoranda for purposes of establishing certain structures, objectives and efforts of the Regional Partnership.

(2) The local partners may join together under separate arrangements to form a mutual agreement as a unit, in order to achieve the following or comparable purposes:

(a) Simplify and more efficiently execute an agreement or memorandum between such unit and the directors of the seven state agencies; and

(b) Allow for designation of one or more representatives of the local partners to do the following:

(A) Act on behalf of that unit (or the union between that unit and the seven state agencies);

(B) Interface with a fiscal agent for handling moneys (though not Regionally Controlled Funds) on behalf of that unit, regardless of whether this fiscal agent is the same as the Fiscal Entity for a corresponding Partnership-based Region.

(3) Not all of the local partners as indicated in ORS 285B.230(4) need to be included in a Regional Partnership, but shall participate only as interested. However:

(a) The county governments, as well as the major cities that are central to the regional economy, are expected to be part of the Regional Partnership; and

(b) No local partner that has a significant and applicable presence in the Regional Partnership's area shall be excluded if expressing a clear desire to actively participate in the general business of the Regional Partnership, prior to its formation. A Regional Partnership may make accommodations for revising its composition, whenever it redefines its basic objectives.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.230

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

ADMINISTRATIVE RULES

123-055-0600

Agency Efforts

The following are matters for the Department in coordinating Regions and Investment Strategies under ORS 285B.230 to 285B.269 to achieve desirable economic development results across the state:

(1) Investment Strategies provide an opportunity by which the Department can:

(a) Identify commonality among the priorities and objectives of various Regions;

(b) Pursue methods and organized efforts to take advantage of strategic regional investment projects or activities consistent with ORS 285B.263(2); and

(c) Coordinate regional priorities and resources with existing state and local efforts and strategies, especially so that various types of resources may be used (or leveraged) in the most effective, efficient and appropriate way possible, including in cooperation with federal programs and other state agencies.

(2) In response to the quality of a Region's investment planning, the Department shall strive to complement the Region's resources and the flexibility of Regionally Controlled Funds through special consideration in the use of programs and funding sources within the Department's authority.

(3) The Department shall strive to include all parts of the state in this program, by:

(a) Ensuring that every county is included in a Region (and if necessary, may delay Investment Strategy approval or disbursement of Regionally Controlled Funds, pending a county's inclusion in a Region); and

(b) Taking appropriate action to see that each Region's Investment Strategy is approved.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)
Stats. Implemented: ORS 285B.239, 285B.242, 25B.245 & 285B.248
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0620

Regional Performance Measures and Periodic Performance Reports by Region

In direct relation to the regional benchmarks established in the Investment Strategy under ORS 285B.239(7):

(1) Every Regional Board shall propose regional performance measures for measuring and evaluating the accomplishment of the Region's identified priorities measuring at a minimum the following.

(a) Projects long-term and short-term job creation and retention activities, including the number of jobs created and retained and wage levels.

(b) Leverage of long-term investments;

(c) Maximize moneys leveraged with short-term investments;

(2) Every regional Board shall propose criteria for the use, distribution and evaluation of its investment funds consistent with its adopted and approved Implementation strategy.

(3) The proposed regional performance measures and distribution criteria shall be submitted to the Department for review by the Commission, which may recommend changes to the Regional Board, such that the Regional Board may adopt the recommendation or make counter-proposals to the Commission, and so forth, or other procedures may be arranged for negotiating regional performance measures and distribution criteria between the Commission and the Region or Regions, in order to finalize regional performance measures and distribution criteria, which the Commission may ultimately resolve as necessary.

(4) In addition to sections (1) to (3) of this rule, the Commission and the Department may develop models or methods to coordinate and facilitate the adoption and use of regional performance measures and distribution criteria by Regions at their discretion, and as the time and resources of the Commission or Department allow.

(5) Each report under section (4) of this rule shall be submitted to the governing bodies of the counties comprising the Region, the Commission, the Governor, the Legislative Assembly, the Department and other parties of the Regional Board's choosing.

(6) Periodically as determined and described by the Department, every Regional investment Board shall in accordance with ORS 285B.239(8), to submit reports on regional performance measures allowing the Department and its Commission, the Legislature and the Governor to evaluate the effectiveness of each region's implementation strategy and ensuring the resources are being effectively used.

(7) The reports under section (4) shall, at a minimum, relate to and be integrated with the Regional Board's annual report to the Governor and the

Legislative Assembly on the expenditure of Regional Controlled Funds under ORS 285B.257(4), 285B.235(7)(a,b and c) and 285B.263(6).

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)
Stats. Implemented: ORS 285B.239
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-055-0900

Waiver of Provisions Not Required by Statute

The Director or the Director's designee may waive non-statutory requirements of this division of administrative rules, if demonstrated to the satisfaction of the Director that such a waiver serves to further the goals and objectives of ORS 285B.230 to 285B.251 and 285B.269, and that it contributes to sound economic or community development.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)
Stats. Implemented: ORS 285B.230 - 285B.251, 285B.269
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0110

Purpose and Scope

This division of administrative rules is intended to establish technical clarity for the allocation, distribution, uses and evaluation of a Regional Board's past performance of their implementation Strategy with moneys from the Regional Investment Fund and the Rural Investment Fund, under ORS 285B.254, 285B.257, 285B.260 and 285B.263, for effective implementation of long-term regional Investment Strategies in addition to other available resources.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)
Stats. Implemented: ORS 285B.254, 285B.257, 285B.260 & 285B.263
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0130

Definitions

For purposes of this division of administrative rules, *the definitions described in OAR 123-055-0120 apply*. Moreover, unless the context demands otherwise:

(1) **Fixed Assets** mean plant, equipment or other tangible assets of an individual private business that have a useful life lasting longer than one year, and that are normally subject to depreciation for income tax purposes.

(2) **Grant Contract** means the contract between the Department and the Fiscal Entity for disbursement of Regionally Controlled Funds to the Region, as described in OAR 123-057-0170.

(3) **Strategic Regional Investment Opportunity Fund project** means a project or activity funded in collaboration by the department and regional boards, as determined under ORS 285B.263(2), to award projects or activities.

(4) **Regional Fund** means the Regional Investment Fund under ORS 285B.260 and 285B.263.

(5) **Rural Fund** means the Rural Investment Fund under ORS 285B.254 and 285B.257.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)
Stats. Implemented: ORS 285B.254, 285B.257, 285B.260 & 285B.263
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0170

Agreement of Department with Fiscal Entity

For purposes of the Department's distribution of moneys to the Regions:

(1) Prior to the disbursement of any Regionally Controlled Funds to the Region through the Fiscal Entity, there must be a Grant Contract between the Department and the Fiscal Entity, duly authorized, executed and delivered by the Fiscal Entity, such that the following shall already be in effect:

(a) Recognition of the Region as issued by the Director; and

(b) Either the agreement entered into by the governing bodies of the counties comprising the Region and their designated Fiscal Entity or the agreement designating the Regional Board as the Fiscal Entity, in accordance with OAR 123-055-0240, such that the agreement is attached to and referenced in the Grant Contract.

(2) The Department reserves the right to terminate the Grant Contract, terminate the disbursement of Regionally Controlled Funds or take legal action, if the Fiscal Entity fails to maintain its duties, violates its covenants or exceeds its authority under the Grant Contract, an agreement described in OAR 123-055-0240, the Investment Strategy or this division of administrative rule.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)

ADMINISTRATIVE RULES

Stats. Implemented: ORS 285B.254, 285B.257, 285B.260 & 285B.263
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0190

General Availability and Use of Funds

Subject to the Grant Contract:

(1) No moneys shall be disbursed to the Fiscal Entity until the Investment Strategy or its relevant update has been finally approved in accordance with division 055 of this chapter of administrative rules, except as described in OAR 123-057-0330 and 123-057-0430.

(2) Unless otherwise directed by the Department, Regionally Controlled Funds that are received by the Region through the Fiscal Entity shall be promptly returned to the Department:

(a) If not obligated by formal action of the Regional Board on or before July 1, one year after the end of the biennium; and

(b) If unexpended at the termination or expiration of the Grant Contract.

(3) Public entities that directly or indirectly receive Regionally Controlled Funds shall comply with public procurement guidelines, minimum wage and hour standards, municipal budget and audit laws, and other applicable state and local regulations.

(4) The Department's payment of Regionally Controlled Funds is subject to the availability of money in the Regional Fund and the Rural Fund. Regions shall proportionately share in any shortfall of lottery revenue.

(5) The Fiscal Entity shall maintain records of all activities associated with the Investment Strategy and expenditures of Regionally Controlled Funds. The Department is entitled to monitor the Fiscal Entity's records to verify compliance with the Grant Contract.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)
Stats. Implemented: ORS 285B.254, 285B.257, 285B.260 & 285B.263
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0210

Common Requirements

Regionally Controlled Funds for implementing the Investment Strategy shall be obligated and expended subject to the Regional Board's evaluation of the merit and readiness of the project, in accordance with the adopted project selection criteria and subject to the consistency of the project with the priorities of the Investment and Implementation Strategy, such that:

(1) All projects or activities funded meet the funding criteria set forth in the Regional Investment Strategy approved by the Governor to ensure funded projects and activities are in compliance ORS 285B.239(7)(a)-(c) and in accordance with 123-055-0620.

(2) The expenditure of the Regional Controlled Funds must be authorized by the Regional Board, according to the Region's procedures governing such authorization.

(2) Regionally Controlled Funds shall not be used as prohibited in OAR 123-057-0230

(3) Any activity or project funded through this division of administrative rules shall indicate that it is state lottery-funded and authorized by the Regional Board in all public documentation and on a publicly visible sign associated with any project involving construction activity. The sign shall be provided by the Regional Board funding the project and the sign shall be approved by the Department prior to placing the sign at the project site.

(4) Any public facility, as defined in ORS 447.210, for which construction costs are in any part paid for with Regionally Controlled Funds, shall be accessible to and made useable by handicapped persons in accordance with the U.S. Americans with Disabilities Act of 1990 (Public Laws 101-336).

(5) Any activity paid for in whole or in part with Regionally Controlled Funds that affects physical development of land shall comply with the applicable requirements of division 008 of this chapter of administrative rules, this state's land use laws and the local comprehensive plan.

(6) An individual private business receiving direct or substantial benefits from Regionally Controlled Funds may be required to comply with division 070 of this chapter of administrative rules for entering into a first-source hiring agreement, but only if required by the Region in the Investment Strategy.

(7) Regionally Controlled Funds may only be provided to private for-profit businesses for a project and activity, whether as a grant or a loan, if that project and activity is consistent in its own right with an activity spec-

ified in the Investment Strategy (apart from any general objective for financially inducing business development, recruitment or expansion).

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)
Stats. Implemented: ORS 285B.245, 254.285B, 285B.260, 285B.263 & 461.740

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0230

Common Prohibitions

Regionally Controlled Funds may **not** be used to do any of the following:

(1) Retire any debt;

(2) Reimburse any person or municipality for expenditures made or expenses incurred before final approval of the Investment Strategy, except for preparation and administration as described in OAR 123-057-0330 and 123-057-0430;

(3) Substitute for available budgeted resources in supporting ongoing public services or infrastructure that already exist, but rather shall support only new or enhanced local services benefiting the Region's capacity for economic development;

(4) Maintain existing staff of a public or private entity, except for staff time dedicated to:

(a) The administrative needs of the Investment Strategy or the Regional Board;

(b) Redirected or augmented efforts consistent with the Investment Strategy, such as new technical assistance for enhancing regional coordination or local economic development activities/capacity; or

(c) Continuing to fulfill objectives or activities of the Investment Strategy as initiated in a previous biennium; or

(5) Assist in any way with the relocation of a business facility within this state from one labor market area to another, unless:

(a) The job losses in the originating labor market area are less than or equal to 0.1 percent of the most recently available estimate for the civilian labor force therein; or

(b) The relocation entails an improvement in the quality and a significant increase in the size of the business's total in-state employment, without being detrimental to any rural area, subject to determinations of the Department.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3), 285B.257(7) & 285B.263(2)

Stats. Implemented: ORS 285B.245, 285B.254, 285B.257, 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0310

Objective and Geography

(1) The Rural Fund, as generally allocated by the Commission, provides a flexible source of financial assistance to benefit rural communities and to help them undertake locally-determined economic development projects and programs, potentially ineligible for support through other state or federal sources. It is intended to offer a vehicle by which Regional Boards can leverage other funding sources to the maximum extent possible for improving the economies of rural areas.

(2) The Rural Fund proportion of a project's funding out of Regionally Controlled Funds shall not significantly exceed the project's relative benefit for persons or communities in rural areas, as estimated by the Regional Board when authorizing the project.

(3) Location of the Rural Fund project or activity in a rural area is required, only if significant benefits accrue to the immediate vicinity where the project or activity takes place.

(4) A Regional Board may focus more strategically in defining what is meant by Arural@ for purposes of its Region, but as used in this division of administrative rule, Arural areas@ mean those parts of this state that are outside of:

(a) The acknowledged Portland Metropolitan Area Regional Urban Growth Boundary; and

(b) The acknowledged urban growth boundaries of cities with population of 30,000 or more, including Albany, Bend, Corvallis, Eugene, Springfield, Salem, Keizer or Medford.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.254(3)

Stats. Implemented: ORS 285A.010, 285B.254 & 285B.257

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0330

Rural Action Plan Development

Moneys from the Rural Fund may be dedicated to technical assistance and staff support for preparing or updating the rural action plan and for developing programs and projects under it, such that:

ADMINISTRATIVE RULES

(1) The amount of money so dedicated is determined by the Regional Board;

(2) The Department may distribute moneys for such dedicated purposes prior to approval of the Investment Strategy with the rural action plan; and

(3) These moneys may be used to pay for relevant work after it has been completed, regardless of OAR 123-057-0230(2).

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.254(3)

Stats. Implemented: ORS 285B.257

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0350

Funding Pursuant to Rural Action Plan

For purposes of receiving and using Rural Fund money:

(1) A Region without an up-to-date rural action plan may not receive its counties' Rural Fund allocations, and such moneys may be proportionally reallocated to other Regions by the Department at the end of the biennium.

(2) The rural action plan is an element of the Investment Strategy, and shall be reviewed and approved in the context of the regionally adopted or biennially revised Investment Strategy, although it may be approved separately, subject to satisfaction of OAR 123-055-0400 and 123-055-0420, as follows:

(a) At any time during and for the biennium, in order to be amended to an already approved Investment Strategy; or

(b) Prior to the Investment Strategy for purposes of this rule, in anticipation of its inclusion in an Investment Strategy that is already prepared in draft form and will be adopted/updated in the current biennium.

(3) The rural action plan may merely refer to and highlight other Investment Strategy elements for purposes of the Rural Fund, if the Investment Strategy is entirely or mostly oriented towards rural areas.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.254(3)

Stats. Implemented: ORS 285B.254, 285B.257

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 8-2000(Temp), f. 5-2-00, cert. ef. 5-2-00 thru 9-30-00; EDD 13-2000, f. & cert. ef. 8-15-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0410

Components

(1) The Regional Fund, as allocated by the Commission, differs from the Rural Fund in that its moneys may be used for projects and activities that benefit any part of the Region.

(2) The Regional Fund is used for the following:

(a) Technical assistance and staff support for development and refinement of the Investment Strategy or for development and administration of a Regional Partnership, up to a limit set by the Commission;

(b) Personnel and expenses for administering the Investment Strategy and its implementation; and

(c) Projects and activities implementing the Investment Strategy.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.260, 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0430

Dedicated to Plan Preparation

As determined by the Commission, a maximum percentage of the moneys from the Regional Fund in each biennium may be dedicated by a Regional Board for preparation of the Investment Strategy and for support of a Regional Partnership, such that:

(1) The maximum limit established by the Commission is expressively included in the Grant Contract;

(2) The Department shall take reasonable efforts to make such moneys available prior to approval of the Investment Strategy or a biennial update, including but not limited to executing the Grant Contract and specifically disbursing such moneys through it;

(3) The moneys may only be used for technical assistance and staff support for:

(a) Development and refinement of the Investment Strategy; or

(b) Development and administration of a Regional Partnership; and

(4) Such moneys may be spent on relevant work and expenses incurred prior to disbursement of the funds or final approval of the Investment Strategy, regardless of OAR 123-057-0230(2).

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0450

Guidelines for Financing Fixed Asset Acquisitions of Private Businesses

For purposes of grants or loans from the Regional Fund to individual private businesses for the acquisition of Fixed Assets, under ORS 285B.263(4), to complement existing public and private financing:

(1) Only a portion (not all) of the moneys for projects and activities (OAR 123-057-0410(3)(d)) in any biennium may be used for such purposes, including but not limited to the capitalization of a revolving loan fund or funds for private business projects.

(2) The Investment Strategy must contain the terms and conditions for such grants or loans, when the Investment Strategy is submitted for review pending final state-level approval, along with other provisions in the Investment Strategy applicable to relevant activities.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0470

Tourism and Industrial Marketing

For purposes of ORS 285B.245(2) and expending Regional Fund money for projects to market a Region for creating, expanding or retaining tourism or industrial activity, investments and related jobs:

(1) If a Region intends to use any of its Regional Fund allocation for such purposes, then the Investment Strategy must generally show how the projects to be funded will complement and will not conflict with statewide marketing campaigns and efforts aimed at travelers/tourists or at industrial investors, such that:

(a) This section may be fulfilled by describing procedural steps, criteria or the like for selecting and authorizing projects; and

(b) The Investment Strategy needs only to address the basic thrust of statewide campaigns, as they exist at the time that the Investment Strategy is locally adopted or updated in each biennium.

(2) Consistent with OAR 123-055-0600, the Department shall seek to coordinate such marketing efforts at the state and regional level, especially by emphasizing ways to effectively take advantage of each level's respective resources (or other types of resources).

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1)

Stats. Implemented: ORS 285B.245

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0510

Allocation

In each biennium: In accordance with ORS 285B.263(c)(2) and 285B.266(3), the Department may allocate a specific portion of the Strategic Reserve Fund to be used as the Strategic Regional Investment Opportunity Fund.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0530

Use and Criteria of Strategic Regional Investment Opportunity Project Moneys

In each biennium, the Department shall allocate funds and adopt criteria that must be applied to the selection of Strategic Regional Investment Opportunity Fund Projects. Subject to further specification at the discretion of the Department, these criteria shall:

(1) Ensure that each Strategic Regional Investment Opportunity Fund Project actualizes one or more of the following:

(a) The project is developed and brought forward to the Department by a Regional Partnership or Board, Regional Development Officers or other business partners;

(b) The project can demonstrate a significant private business investment, short or long term job creation or other long term economic development impacts that results in job creation;

(c) Greater competitiveness and productivity by the Regions' traded-sector industries resulting in short term job creation or retention;

(d) The investment of these funds will close a critical gap in funding for one-time expenditures;

(e) Significant improvement in the variety, wage level and quality of jobs in the participating Regions;

(f) Collaboration with one or more industries that are important to the Regions' future;

ADMINISTRATIVE RULES

(A) Eliminate barriers that impede competitiveness of existing businesses;

(B) Foster new or expanded businesses emerging in the Regions;

(C) Internationally market goods and services from the Regions; or

(D) Diversify the regional economies; or

(i) Similar goals consistent with or conducive to statewide efforts and priorities for economic and community development.

(2) Insist that Strategic Regional Investment Opportunity Projects adhere to funding standards, as follows:

(a) By satisfying sound investment/underwriting principles;

(b) By combining with funds from private, local, regional, state or federal sources; and

(c) By ensuring that the project is ready to proceed in terms of delivering planned outcomes in a reasonable time, including but not limited to a thorough scope of work in the project application, contract and reporting requirements as described in this rule, clear commitment of other resources and the absence of barriers to the project's timely commencement.

(3) Forbid Strategic Regional Investment Opportunity Fund Projects that amount to the following:

(a) A subsidy for ongoing capacity of an organization or for ongoing operation and maintenance of a facility;

(b) Open-ended efforts that lack a demonstrable and realistic plan for effectively concluding the project, generating future resources or ensuring the usefulness of any deliverables/capacity in the future; or

(c) A failure to demonstrate the criteria as described in Section 1(b) if this rule.

(4) The department shall fund projects fund in accordance with the following:

(a) The Department shall facilitate the identification and undertaking of Strategic Regional Investment Opportunity Fund Projects through communications and assistance to Regional Boards and Fiscal Entities through the Department's Regional Development Officers. Regions seeking to access their allocated portion of the funds shall do so through their regionally assigned Regional Development Officer.

(b) Strategic Regional Investment Opportunity Fund projects addressing projects that meet the criteria as described in this rule may be advanced for approval upon joint recommendation by a Regional Partnership or Regional Boards response committee and a Regional Development Officer. If the project is recommended, the Regional Development Officer will draft a recommendation signature.

(c) Following approval of project funding, projects are assigned to the most appropriate Division within the Department to negotiate final project conditions if any, performance measures and to develop and execute contract documents. The contract will specify the process and timing of disbursements of funds, conditions for reporting results, terms for repayment of funds where appropriate and the process for project closeout.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-057-0710

General Guidance

For purposes of ORS 285B.257(4) and 285B.263(6), each Region shall prepare a biennial report to the Governor and Legislative Assembly:

(1) This biennial report shall be prepared and submitted in conformance with the following:

(a) Format and procedures that the Department may prescribe; and

(b) The Region's periodic performance reports and regional performance measures and distribution criteria including goals pursuant to OAR 123-055-0620 and 285B.239.

(2) The final biennial report shall be due at a time determined by the Department in relation to each general session of the Legislature, and shall include information from prior biennia not covered in the previous biennial report, as well as the most currently available information for the ongoing biennium.

(3) The biennial report shall describe all expenditures of Regionally Controlled Funds and where multiple state funds are invested in a job creation or retention projects such as Strategic Regional Investment Opportunity Fund projects, the department will:

(a) In some manner, differentiate and proportion between the funding sources when reporting these job creation projects to the Legislature.

(5) The biennial report shall also indicate the success of projects and programs as funded or completed, not only in terms of the project and program itself, but also in terms of how each one contributes to:

(a) Carrying out the Investment Strategy as whole;

(b) Affecting performance measures and regional benchmarks specified therein; and

(c) Achieving identified priorities for regional economic priorities, as both defined in statute and by the Region itself in the Investment Strategy.

(6) The biennial report may (in addition to information about expenditures of Regionally Controlled Funds and about funded projects) address the Region's and the Investment Strategy's general progress and impact, especially in coordination with other resources and entities.

(7) The biennial report shall indicate the success of projects and activities as funded in accordance with the regionally adopted two year implementation strategy, and Governor approved, project funding criteria that has been established by the adoption of the strategy and goals as described in ORS 285B.239 thru 285B.263. Based on this report, the regions will be evaluated by Department Staff in accordance with ORS 285B.239(a)(b)(c). If the Department determines through evaluation of the biannual report, the region has funded projects not complying with the regions adopted distribution criteria, the Department will reduce future allocations from this fund in a like percent of the funds spent on the projects not meeting the adopted criteria established by the strategy.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.257(2)

Stats. Implemented: ORS 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

Adm. Order No.: EDD 7-2004(Temp)

Filed with Sec. of State: 2-3-2004

Certified to be Effective: 2-3-04 thru 8-1-04

Notice Publication Date:

Rules Adopted: 123-027-0055, 123-027-0105, 123-027-0155, 123-027-0160, 123-027-0165, 123-027-0170, 123-027-0200, 123-027-0210

Rules Amended: 123-027-0035, 123-027-0040, 123-027-0050, 123-027-0060, 123-027-0070

Rules Suspended: 123-027-0080

Subject: The Marine Navigation Fund rules provide procedures, standards and criteria for Oregon ports to receive federal funding for dredging and dredging related projects and for non-federal projects that may not qualify for federal funding but qualify under an expanded set of criteria. The 2003 legislature provided funds for non-federal projects for the first time and with that they provided more detailed requirements.

The Department is amending this division of administrative rules to incorporate the new legislation, to clean up the text, and to rearrange the format of the rule to make it easier to read and understand.

Rules Coordinator: Lynn Beaton—(503) 986-0201

123-027-0035

Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Marine Navigation Improvement Fund authorized by ORS 777.262 to 777.267.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0040

Definitions

For the purposes of these rules, the following terms will have the following definitions, unless the text clearly indicates otherwise:

(1) Department means the State of Oregon Economic and Community Development Department.

(2) "Director" means the Director of the Economic and Community Development Department.

(3) "Federally authorized project," means a project that has been authorized or qualifies for federal funding from the United States Army Corps of Engineers.

(4) "Non-federal project" means a navigation project that is eligible under these rules but does not qualify for federal funding from the United States Army Corps of Engineers.

(5) "Fund" means the Marine Navigation Improvement Fund.

(6) "Project" means studies, necessary permits, dredging, acquisition, modification and maintenance of dredge disposal sites and construction of

ADMINISTRATIVE RULES

a new navigation improvement project that is sponsored by a port and is eligible for assistance from the Fund. A project can be either a federally authorized project or a non-federally authorized project.

(7) "Non-Federal Share" means that portion of a project cost not paid for by the United States Army Corps of Engineers.

(8) "Port" means a port incorporated under ORS Chapter 777 or 778 that may be known as a "port authority" or "port district."

(9) "State of Oregon" means State of Oregon government departments or agencies.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0050

Project Eligibility

Federally Authorized Projects must meet the following criteria:

(1) First priority for assistance from the Fund shall be given to projects that meet the following criteria:

(a) Congress authorized the project;

(b) The project is listed in the Port's business or strategic plan;

(c) The project has confirmed positive benefit/cost ratios as required by the National Economic Development Plan and has completed all federally required studies; and

(d) The project is sponsored by a port.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0055

Application Requirements

The Port must notify the Department of a potential federally authorized project at the time it initiates the project with the United States Army Corps of Engineers. The Port must submit written documentation to the Department evidencing its participation with the United States Army Corps of Engineers in a project. The written documentation must:

(1) Describe the nature and purpose of the project, including: proposed project scheduling; project term; estimated project cost; the Port's estimated non-federal share of the total project cost; and, the required schedule for payment of the Applicant's non-federal share of the total project cost;

(2) Contain federal documents that authorize the project, including Reconnaissance/Feasibility Studies;

(3) Contain a copy of the Port's proposed Local Cost Share Agreement with the United States Army Corps of Engineers for undertaking and carrying out the project.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0060

Application Review and Approval

Based upon a review of the information described in OAR 123-027-0055, the Department will determine whether the project is eligible for assistance from the Fund. If the documentation is not adequate to determine eligibility, the Department will require the Port to submit additional information as may be necessary.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0070

Approval and Award

(1) The Department and the Port will execute a contract prior to disbursement of moneys from the Fund. The contract will be in a form and content as provided by the Department.

(2) Payments from the Fund will be disbursed in accordance with the executed contract.

(3) The Port must provide the Department with a written report, records, and detailed accounting of costs in the format required by the Department:

(a) Within 30 days following the close of each federal fiscal year;

(b) Within 90 days following final completion of a project.

(4) Any amount disbursed from the Fund and not used for a project must be returned to the Department.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0080

Fund Administration

(1) The Department and the Port shall execute a contract prior to disbursement of moneys from the Fund. The contract shall be in a form and content as provided by the Department.

(2) For federally authorized projects, payments from the Fund will be disbursed in accordance with the United States Corps of Engineer's schedule requirements for payment of the non-federal share.

(3) The Port must provide the Department with a written report, records, and an accounting of detailed costs for a federally authorized project:

(a) Within 30 days following the close of each federal fiscal year;

(b) Within 90 days following final completion of a project.

(4) For non-federally authorized projects, payments will be made on approved project costs as described in the executed contract or subsequent amendments.

(5) The Port must provide the Department with written reports, records, and an accounting of detailed costs for a project as described in the contract or subsequent amendments.

(6) Any amount disbursed from the Fund and not used for a project must be returned to the Department.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; Suspended by EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0105

Project Eligibility

Non-federally authorized Projects that meet the following criteria are also eligible for assistance from the Fund:

(1) The project is listed in a Port's business or strategic plan;

(2) The project is ready to begin in the biennium for which funding is requested;

(3) The project is a new water project that directly supports, or provides access to, a federally authorized navigation improvement project or a federally authorized navigation channel; and

(4) The project meets the criteria of a freight project, or a commercial/recreation project:

(a) Freight projects are those that facilitate transportation for at least 5,000 tons of freight or cargo annually;

(b) Commercial/recreation projects support at least 1,000 use days annually as evidenced by information from the State Marine Board, the Ports Reporting System, the U.S. Coast Guard, or other similar source of reliable data, or be necessary to support the operation of at least one tour boat.

(5) Navigation facilities that can't meet the criteria listed in section (2)(d) may still qualify for funding if:

(a) The proposed improvement project is designed to facilitate usage to a level that exceeds the criteria in subsection (2)(d); or

(b) Usage of the proposed improvement project is reasonably forecasted to meet the criteria in subsection (2)(d) within the first two years of operation and usage is forecasted to exceed the minimum criteria thereafter.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0155

Application Requirements

(1) An eligible port district may submit an application after consulting with Department staff on a preliminary determination of eligibility and otherwise following the Department's procedures for submitting applications.

(2) The application must be in the form provided by the Department and must contain or be accompanied by such information as the Department may require. The Department will process only completed applications.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0160

Application Review and Approval

(1) The application must be in the form provided and must contain or be accompanied by such information as the Department may require. The Department will process only completed applications.

ADMINISTRATIVE RULES

(2) To approve an application for assistance from the fund, the Department must make the determinations as follows:

(a) The project is an eligible project. If the Department determines that the applicant and/or the proposed project do not meet the requirements of this section, the Department may reject an application or require further documentation from the applicant;

(b) The requisite need for the project has been demonstrated in the application or the local planning process;

(c) The loan security includes the pledge of revenues and/or other funds, and is sufficient, when considered with other security, to assure repayment;

(d) The applicant is willing and able to enter into a contract with the Department for repayment of the loan; and

(e) Moneys in the fund are or will be available for the project.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0165

Funding

(1) Funding for projects will be limited to funds appropriated by the Legislative Assembly.

(2) Projects eligible under section 0100(1) of this rule may be awarded loan or grant funding of up to the amount of the non-federal share.

(3) Projects eligible under 0100(1)(d) may be awarded loan or grant funding of up to 75 percent of the project cost. A 25 percent local match is required. In-kind services from the Port may be no more than 10 percent of the total project cost.

(4) Projects eligible under 0100(1)(e) may be awarded loan or grant funding of up to 50 percent of the project cost. A 50 percent local match is required. In-kind services from the Port may be no more than 10 percent of the total project cost.

(5) The port must secure and be able to provide upon request, a land use compatibility statement from the appropriate jurisdiction(s) for the project.

(6) Interest rates will be determined during the financial review. Loan term will not exceed 25 years.

(7) Grants may be available after September 1, 2004 under the following circumstances:

(a) Money is still available in the Fund;

(b) A loan is not feasible due to the financial hardship of the port;

(c) Job creation and/or retention will be a direct result of the project;

(d) There is an urgent need for environmental remediation and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project;

(e) The project deals with critical public safety issues and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project; or

(f) There is imminent threat that the Port will lose permits and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0170

Approval and Award

(1) The Department and the Port will execute a contract prior to disbursement of moneys from the Fund. The contract will be in a form and content as provided by the Department.

(2) Payments from the fund will be disbursed in accordance with the executed contract.

(3) The Port must provide the Department with written reports, records, and an accounting of detailed costs for a project as described in the contract.

(4) Any amount disbursed from the Fund and not used for a project must be returned to the Department

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0200

Sanctions

(1) The Department may invoke sanctions against recipients as listed in the contract, if it finds that significant corrective actions are necessary to protect the integrity of the Project funds, and those corrective actions are not, or will not be, made within a reasonable time. The Department will not

impose sanctions until the recipient has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted.

(2) One or more of the following sanctions may be imposed by the Department; bar a recipient from applying for future assistance; revoke an existing award; withhold unexpended funds; require return of unexpended funds or repayment of expended funds; withhold other state funds such as state-shared revenues; and, other remedies that may be incorporated into Grant or Loan contracts.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

123-027-0210

Appeals and Exceptions

(1) Appeals of local government decisions regarding a Project must be made at the local level.

(2) The Director will consider appeals of the Department's funding decisions. Only the Port may appeal. **Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed.** The Director's decision is final.

(3) The Director 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.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04

Adm. Order No.: EDD 8-2004

Filed with Sec. of State: 2-3-2004

Certified to be Effective: 2-3-04

Notice Publication Date: 9-1-03

Rules Adopted: 123-049-0060

Rules Amended: 123-049-0005, 123-049-0010, 123-049-0020, 123-049-0030, 123-049-0040, 123-049-0050

Subject: Provides for permanent incorporation and addition to rule, by reference, of changes to the previous program handbook/guidelines for the State of Oregon's operation of the federally funded Drinking Water State Revolving Fund, under the U.S. Safe Drinking Water Act and the Environmental Protection Agency. These changes provide critical clarification and establishment of modifications to this Fund and a completed new handbook including formalization of an ancillary loan fund for projects directed not at public water system infrastructure, but rather at protecting the source of water used by the system.

Rules Coordinator: Lynn Beaton—(503) 986-0201

123-049-0005

Purpose, Scope and Incorporated Documents

(1) This division of administrative rules implements a federally funded State revolving fund to provide financing to Community and Nonprofit non-community drinking water systems for planning, design, construction or improvement of drinking water facilities or systems needed to maintain or achieve compliance with drinking water standards and to further public health protection goals of the federal **Safe Drinking Water Act Amendments of 1996** and this state's Drinking Water Quality Act.

(2) In accordance with ORS 285A.213, this division of administrative rules governs the administration of the moneys awarded through this Safe Drinking Water Revolving Loan Fund by the Economic and Community Development Department in cooperation with the State of Oregon's Health Services of the Oregon Department of Human Services, but not activities of Health Services itself.

(3) "SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Loan Fund & Drinking Water Protection Loan Fund" (July 2003), including but not limited to its appendices, is:

(a) The principal source of information on this program, as prepared by the Department;

(b) Available by contacting any of the Department's regionally assigned staff;

ADMINISTRATIVE RULES

(c) Incorporated into and adopted as part of this division of administrative rules, by reference; and

(d) Subject to the same definitions as used in this division of administrative rules.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285A.213(4)
Stats. Implemented: ORS 285A.213
Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 11-2000(Temp), f. 7-20-00, cert. ef. 7-20-00 thru 1-16-01; EDD 1-2001, f. 1-11-01, cert. ef. 1-12-01; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0010

Definitions

As used in this division of administrative rules, unless the context clearly indicates otherwise:

(1) "Act" means the Safe Drinking Water Act Amendments of 1996, Public Law 104-182, and any subsequent amendments.

(2) "Applicant" means a Community or Nonprofit non-community water system that is applying for a loan from the Fund.

(3) "Community water system" means a public water system, other than one owned by an agency of the federal government, that:

(a) Has 15 or more service connections used by year-round residents; or

(b) Regularly serves 25 or more year-round residents.

(4) "Contract" means a legally binding agreement between the Department and Recipient that sets out the terms and conditions for award of Project funds.

(5) "Department" means the State of Oregon's Economic and Community Development Department as (re)organized under ORS 285A.070.

(6) "Fund" means the Safe Drinking Water Revolving Loan Fund, which is the financing program managed by the Department under this division of administrative rules to pay for infrastructure improvements to eligible public water systems, and which includes moneys originating directly from federal capitalization grants (apart from set-asides), this state's match of such grants, program loan repayments, interest earnings and any additional funds provided by this state.

(7) "Intended Use Plan" the description of how the state intends to use moneys awarded and loaned from the Fund to meet the objectives of the Act, as annually prepared by Health Services pursuant to USEPA guidelines.

(8) "Nonprofit non-community water system" means a public water system that:

(a) Is not a Community water system;

(b) Regularly serves at least 25 people, even if they are not year-around residents; and

(c) Is recognized under Oregon law as a nonprofit corporation.

(9) "Project" means facility design construction activities or related/preceding tasks identified in the Contract and loan agreement for which the Recipient may expend, obligate or commit funds to address a drinking water problem or a documented health hazard.

(10) "Project Priority List" means the comprehensive priority list of potential, eligible activities, as developed under the Intended Use Plan in response to letters of interest from Community and Nonprofit non-community water systems.

(11) A "public water system" means a system or infrastructure for the provision to the public of water for human consumption through pipe or other constructed conveyances, regardless of ownership, including but not limited to facilities for source of supply, filtration, treatment, storage, transmission or metering of that water.

(12) "Recipient" means a Community or Nonprofit non-community water system that has been awarded a loan from the Fund for a Project.

(13) "USEPA" means the Environmental Protection Agency of the United States federal government.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285A.213(4)
Stats. Implemented: ORS 285A.213
Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0020

Eligible Applicants and Activities

(1) All Community water systems and Nonprofit non-community water systems are eligible to apply for a Fund loan except those determined to be ineligible by the Department because of prior nonperformance.

(2) Eligible and ineligible activities are defined in the Act and in USEPA's **Drinking Water State Revolving Fund Program Guidelines**, EPA 816-R-97-005 (February 1997), as well as subsequent revisions or editions of such guidelines.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285A.213(4)
Stats. Implemented: ORS 285A.213
Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0030

Program Information

(1) The Department shall prepare program guidelines, application forms and other supplementary program information to help eligible Applicants seek financing and prepare loan applications for the Fund.

(2) Program guidelines as prepared under section (1) of this rule shall include an explanation of project eligibility, the Project Priority List, the Intended Use Plan, disadvantaged communities, types of financial assistance, loan rates and terms, borrowing limits, public notification process, contract administration, federal crosscutting requirements and environmental review process.

(3) In addition to this division of administrative rules, the Department shall administer the Fund in compliance with the requirements of the Act, as amended, and the Act's applicable rules, guidelines and requirements from USEPA.

(4) For purposes of land use coordination, any Project activity paid for with Fund loans shall comply with the applicable requirements of division 8 of this chapter of administrative rules and OAR chapter 660.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285A.213(4)
Stats. Implemented: ORS 285A.213
Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0040

Program Rights and Remedies

(1) The Department may exercise certain rights and remedies in the event the Recipient fails to comply with Contract provisions and the Recipient fails to correct the deficiencies within a reasonable time after the Recipient is notified of the deficiencies. The circumstances that may warrant the Department's exercise of rights or remedies include, but are not limited to one or more of the following:

(a) None of the Project activities have begun within six months after award;

(b) Any third party agreement relating to the Project is not legally binding within six months of the award;

(c) Federal or State statutory or regulatory requirements have not been met;

(d) There is a significant deviation from the Contract;

(e) The Department finds that significant corrective actions are necessary to protect the integrity of the Project funds, and those corrective actions are not, or will not, be made within a reasonable time; or

(f) A Recipient defaults on loan payments, which may otherwise be made from any source of revenue at the Recipient's disposal, including but not limited to General Fund revenue.

(2) One or more of the following rights and remedies may be exercised by the Department if the Recipient fails to comply with Contract provisions and the Recipient fails to correct the deficiencies within a reasonable time after Recipient is notified of the deficiencies:

(a) Bar a Recipient from applying for future Department assistance;

(b) Revoke an existing Department award;

(c) Withhold unexpended Department funds;

(d) Require immediate return of unexpended Department funds;

(e) Require repayment of expended Department funds;

(f) Withhold other state funds otherwise due to the Recipient, such as state-shared revenues; or

(g) Other remedies that may be incorporated into the contract.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the Contract.

(4) The Recipient shall be responsible for ensuring that any subcontractor complies with the applicable terms and conditions of the contract. Nothing in this rule shall restrict the Department's right to enforce independently the terms of any contract or to recover any sums that may become due as the result of a breach of such Contract.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285A.213(4)
Stats. Implemented: ORS 285A.213
Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

ADMINISTRATIVE RULES

123-049-0050

Private Ownership and Regulation of Loan Subsidies for Public Benefit

(1) Only if a privately owned public water system is regulated under the jurisdiction of the State of Oregon Public Utility Commission (PUC) may it enjoy the benefits of a "disadvantaged community," pursuant to section 1452(d) of the Act, in receiving financial assistance through the Fund, including but not limited to principal forgiveness.

(2) For purposes of principal forgiveness of a loan by the Fund, the amount of forgiven principal shall not be treated as equity, but rather in all cases as a contingent liability on the balance sheet of the public water system receiving the loan and on the balance sheet of any entity that acquires that system or the assets financed by the loan.

(3) If a water system is sold that was awarded principal forgiveness by the Fund, the value of the principal forgiveness shall be effectively excluded from the purchase price, consistent with section (2) of this rule, such that the benefit of the principal forgiveness continues to accrue to the ratepayers or users of the system rather than to the seller. (This section also applies to the sale or lease of system assets financed by the loan, and it pertains but is not limited to the privatization of a publicly owned system)

(4) If section (2) or (3) of this rule is violated, then the water system shall repay the full amount of the forgiven principal into the Fund. The Department shall determine the schedule of such repayment, as it deems appropriate under the circumstances.

(5) The Oregon Public Utility Commission has full authority to enforce the effects of this rule through applicable regulation of an affected water system.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 11-2000(Temp), f. 7-20-00, cert. ef. 7-20-00 thru 1-16-01; EDD 1-2001, f. 1-11-01, cert. ef. 1-12-01; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0060

Drinking Water Protection Loan Fund

(1) For purposes of implementing section 1452(k)(1) of the Act, the Department shall administer loans to public water systems for protecting surface and underground sources of drinking water, in order to solve or prevent health problems before the water is collected or treated by the system.

(2) The moneys for these loans are derived from the "local assistance" set-aside of the federal capitalization grant, such that unused amounts will be transferred to the Fund, and repayments shall be either added to the Fund or placed in a dedicated account for further lending under this rule.

(3) The loans under this rule are distinct from the Fund. Relevant provisions of this division of administrative rules, however, shall apply to the administration of such loans.

(4) For purposes of this rule, administration includes underwriting assessments, loan awards, contract execution, disbursements, loan repayments and so forth.

(5) Health Services (Oregon Department of Human Services) and the Oregon Department of Environmental Quality shall handle determinations of eligibility, prioritization of loan recipients and related duties.

(6) More specific guidelines for the loans under this rule are available and included in the document incorporated by reference in OAR 123-049-0005(3).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 8-2004, f. & cert. ef. 2-3-04

Oregon Liquor Control Commission Chapter 845

Adm. Order No.: OLCC 1-2004

Filed with Sec. of State: 1-21-2004

Certified to be Effective: 3-21-04

Notice Publication Date: 10-1-03

Rules Amended: 845-015-0140

Subject: OAR 845-015-0035 is the rule by which the commission lays out its service requirements of retail sales agents in terms of days and hours of operation. Current rule language prohibits Sunday sales, and lists a number of holidays upon which agencies must be closed.

With the passage of HB 4028, effective April 12, 2002, the Commission needs to amend OAR 845-015-0140 to agree with statutory language. The proposed amendments will allow retail sales agents the option of being open on Sundays and holidays, with no minimum operating hours on Sundays and holidays.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-015-0140

Hours and Days of Operation

To ensure adequate service to the public, the Commission requires retail liquor stores to maintain convenient hours of operation:

(1) Except for Sundays and holidays, all retail liquor stores must be open between the hours of 12 noon and 6 p.m. Retail liquor stores may not open earlier than 7 a.m. or close later than 10 p.m.

(2) Except for Sundays and holidays, retail liquor stores will be open a minimum of eight hours each day.

(3) On Sundays or holidays, retail liquor stores may be open for any number of hours, but may not be open before 7 a.m. or after 10 p.m. Sunday and holiday openings are optional for Retail Sales Agents.

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5)

Stats. Implemented: ORS 471.750(1)

Hist.: LCC 1-1978(Temp), f. & ef. 1-25-78; LCC 5-1978, f. 5-24-78, ef. 5-25-78; Renumbered from 845-010-0350; LCC 12-1983, f. 11-14-83, ef. 1-1-84; LCC 3-1985, f. 2-28-85, ef. 4-1-85; OLCC 4-2002(Temp), f. & cert. ef. 4-12-02 thru 10-8-02; OLCC 11-2002, f. 8-29-02, cert. ef. 10-9-02; OLCC 2-2003, f. 1-27-03, cert. ef. 2-1-03, Renumbered from 845-015-0035; OLCC 16-2003(Temp), f. & cert. ef. 9-23-03 thru 3-20-04; OLCC 1-2004, f. 1-21-04, cert. ef. 3-21-04

Oregon Public Employees Retirement System Chapter 459

Adm. Order No.: PERS 1-2004

Filed with Sec. of State: 1-22-2004

Certified to be Effective: 1-22-04

Notice Publication Date: 12-1-03

Rules Repealed: 459-005-0320

Subject: ORS 243.800 provides for an Optional Retirement Plan (ORP) in which certain higher education employees can participate instead of PERS. The statute provides that the ORP is administered by the State Board of Higher Education. This rule was being amended to conform to the new definition of "vesting" under HB 2003. At the request of the Oregon University System (OUS), however, staff has instead reconsidered the need for this rule at all. As the rule pertains to administration of the ORP, staff concurs with OUS that this rule should be repealed instead of amended. The ORP's administrators should more properly develop rules pertaining to that plan.

Rules Coordinator: Yvette S. Elledge—(503) 603-7713

Adm. Order No.: PERS 2-2004

Filed with Sec. of State: 1-22-2004

Certified to be Effective: 1-22-04

Notice Publication Date: 6-1-03

Rules Amended: 459-011-0100, 459-011-0110

Subject: ORS 238.156(1) and (2) direct the PERS Board to adopt rules pertaining to contributions, benefits and service credit for military service, taking into account federal law addressing these topics. The modification to OAR 459-011-0100 is intended to fulfill this requirement; specifically, to conform with the provisions of the federal Uniformed Services Employment and Reemployment Rights Act, or "USERRA."

ORS 238.156(3) provides military service credit for those employees who do not meet the eligibility requirements of USERRA. The modification to OAR 459-011-0110 is intended to interpret and clarify the provisions of this section of the statute.

Rules Coordinator: Yvette S. Elledge—(503) 603-7713

459-011-0100

Credit for Military Service under USERRA

(1) **Purpose.** The purpose of this rule is to implement ORS 238.156(1).

(2) **Limitation of scope of rule.** Contributions, benefits and service credit provided under this rule shall not exceed contributions, benefits and service credit required under federal law for periods of military service.

(3) **Definitions.** For purposes of this rule:

(a) "Employee" means an individual employed by a participating public employer in a position that meets the requirements of ORS 238.015(4) and who meets the definitions set forth in ORS 238.005(7).

(b) "Employee contributions" means contributions made to the Fund.

(c) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule,

ADMINISTRATIVE RULES

the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(d) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- (A) Active duty;
- (B) Active duty for training;
- (C) Initial active duty for training;
- (D) Inactive duty training;
- (E) Full-time National Guard duty;

(F) A period for which an employee is absent from a position of employment for the purpose of an examination to determine the fitness of the employee to perform any of the above types of duty; or

(G) A period for which an employee is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

(e) "Salary" means the rate of pay the employee would have earned if he or she had remained employed during the period of military service, including any increases that would have been awarded the employee based on longevity of employment or seniority of position. If such rate of pay is not reasonably certain, the rate shall be based on the employee's average rate of pay from the employer. The average rate of pay shall be calculated for a period not to exceed the 12-month period immediately preceding the period of military service.

(f) "Uniformed services" means the following:

- (A) Armed Forces;
- (B) Army National Guard;
- (C) Air National Guard;
- (D) Commissioned corps of the Public Health Service; and
- (E) Any other category of individuals designated by the President in time of war or national emergency.

(g) "USERRA" means the 1994 federal Uniformed Services Employment and Reemployment Rights Act as in effect on the effective date of this rule.

(4) Retirement credit under USERRA.

(a) **Eligibility.** An employee shall be eligible for the benefits of this section if:

(A) The employee leaves PERS-covered employment to perform military service;

(B) The cumulative length of the employee's absence from employment with the employer for military service does not exceed the limits set forth in USERRA §4312;

(C) The employee initiates reemployment on or after December 12, 1994, with the same PERS-covered employer within the time limits specified in USERRA §4312; and

(D) All other eligibility requirements for benefits under USERRA are met.

(b) **Credit for military service.** An employee who meets the eligibility requirements of subsection (a) of this section shall be credited with the amount of retirement credit the employee would have accrued if he or she had remained in employment with the employer during the period of military service, only to the extent that the employee contributions have been made.

(c) **Termination.** An employee's eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(5) Employee contributions.

(a) Employee contributions shall be made upon reemployment for eligible military service in accordance with the following:

(A) Contributions to be made by the employer. If the employee was entitled to employer-paid pre-tax (EPPT) contributions as described in OAR 459-009-0200(2) as of the date the employee left employment to perform military service, the employer shall pay, in a lump sum payment, the amount of employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(B) Contributions to be made by the employee. If the employee was entitled to only member-paid pre-tax (MPPT) or member-paid after-tax (MPAT) contributions, the employee may contribute part or all of the employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(b) Any individual, agency, or organization may pay the amounts specified in paragraph (5)(a)(B) on behalf of the employee.

(c) Contributions made under this section must be made during the period beginning with reemployment and whose duration is three times the period of the employee's military service, such period not to exceed five years.

(d) Any contributions made under this section shall be added to the employee's regular account.

(e) Contributions made under this section shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(6) **Employer contributions.** Any employer contributions associated with credit for military service under this rule shall be made as directed by PERS in accordance with ORS 238.225.

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

Stat. Auth.: ORS 238.650, 238.156

Stats. Implemented: ORS 238.156

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0015; PERS 2-2004, f. & cert. ef. 1-22-04

459-011-0110

Credit for Military Service under ORS 238.156(3)

(1) **Definitions.** For purposes of this rule:

(a) "Armed Forces" means the:

- (A) Army;
- (B) Navy;
- (C) Air Force;
- (D) Marine Corps; and
- (E) Coast Guard.

(b) "Employee" means an individual employed by a participating public employer in a position that meets the requirements of ORS 238.015(4) and who meets the definitions set forth in 238.005(7).

(c) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(d) "Military service" means the period during which the employee is in active duty service in the Armed Forces.

(e) "Salary" means the employee's rate of pay, for contribution and benefit calculation purposes, at the time the employee entered or reentered military service.

(2) Retirement credit under ORS 238.156(3).

(a) **Eligibility.** An employee shall be eligible for the benefits of this rule if:

(A) The employee leaves employment to perform military service;

(B) The employee returns to employment with the same employer after other than dishonorable discharge from military service and within the time limits specified in ORS 238.156(3)(b); and

(C) The employee is either not entitled to or would receive a lower benefit under the provisions of OAR 459-011-0100.

(b) **Credit for military service.** An employee who meets the eligibility requirements of subsection (a) of this section shall be credited with the amount of retirement credit the employee would have accrued if he or she had remained in employment with the employer during the period of military service, provided that all required contributions have been made.

(3) **Contributions for the period of military service.** To receive credit for the period of military service, contributions must be made to the Fund in accordance with the following:

(a) Contributions must be made in a lump sum payment as specified in ORS 238.156(3)(c);

(b) Such lump sum payment must equal six percent of the salary that would have been paid to the employee had the employee remained in employment with the employer during the period of military service based on the employee's salary rate at the time the employee entered or reentered military service;

(c) Any individual, agency, or organization may pay the amount specified in this subsection on behalf of the employee; and

(d) Any contributions made under this section shall be added to the employee's regular account and in all respects shall be considered as though made by payroll deduction.

(e) Contributions made under this rule shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(4) **Employer contributions.** Any employer contributions associated with credit for military service under this rule shall be made as directed by PERS in accordance with ORS 238.225.

Stat. Auth.: ORS 238.650, 238.156

Stats. Implemented: ORS 238.156

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0155; PERS 2-2004, f. & cert. ef. 1-22-04

ADMINISTRATIVE RULES

Adm. Order No.: PERS 3-2004
Filed with Sec. of State: 1-22-2004
Certified to be Effective: 1-22-04
Notice Publication Date: 11-1-03
Rules Adopted: 459-075-0100, 459-080-0100

Subject: New administrative rules are needed to implement and clarify Enrolled House Bill 2020, which establishes the Oregon Public Service Retirement Plan. OAR 459-075-0100 implements USERRA with respect to the pension program. OAR 459-080-0100 implements USERRA with respect to the individual account program.

Rules Coordinator: Yvette S. Elledge—(503) 603-7713

459-075-0100

Credit for Military Service under USERRA

(1) **Purpose.** The purpose of this rule is to implement section 13, chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

(2) **Limitation of scope of rule.** Contributions, benefits and service credit provided under this rule shall not exceed contributions, benefits and retirement credit required under federal law for periods of military service.

(3) **Definitions.** For purposes of this rule:

(a) “Employee” means an employee, as defined in OAR 459-070-0001, who:

(A) Has established membership in the pension program in accordance with section 5(1), chapter 733, Oregon Laws 2003 (Enrolled HB 2020); or

(B) Is entitled to credit toward the probationary period required by section 5(1), chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

(b) “Employer” means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(c) “Military service” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- (A) Active duty;
- (B) Active duty for training;
- (C) Initial active duty for training;
- (D) Inactive duty training;
- (E) Full-time National Guard duty;

(F) A period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any of the above types of duty; or

(G) A period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. §12503 or 32 U.S.C. §115.

(d) “Uniformed services” means the following:

- (A) Armed Forces;
- (B) Army National Guard;
- (C) Air National Guard;
- (D) Commissioned corps of the Public Health Service; and
- (E) Any other category of persons designated by the President in time of war or national emergency.

(e) “USERRA” means the 1994 federal Uniformed Services Employment and Reemployment Rights Act as in effect on the effective date of this rule.

(4) **Eligibility for retirement credit under USERRA.** An employee shall be entitled to the benefits of this rule if:

(a) The employee leaves employment with a participating public employer to perform military service;

(b) The cumulative length of the employee’s absence from employment with the employer for military service does not exceed the limits set forth in USERRA §4312;

(c) The employee initiates reemployment with the same participating public employer within the time limits specified in USERRA §4312; and

(d) All other eligibility requirements for benefits under USERRA are met.

(5) **Retirement credit for military service under USERRA.** An employee who meets the eligibility requirements of section (4) of this rule shall receive the amount of credit toward the period of employment required under section 29, chapter 733, Oregon Laws 2003 (Enrolled House Bill 2020), and the vesting requirements described under section 31, chapter 733, Oregon Laws 2003 (Enrolled House Bill 2020), as well as the retirement credit the employee would have accrued if he or she had

remained in employment with the employer during the period of military service.

(6) **Termination.** An employee’s eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(7) **Employer contributions.** Any employer contributions associated with credit for military service under this rule shall be made as directed by PERS in accordance with section 24, chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

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

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733; USERRA §4312

Hist.: PERS 3-2004, f. & cert. ef. 1-22-04

459-080-0100

Credit for Military Service under USERRA

(1) **Purpose.** The purpose of this rule is to implement section 43, chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

(2) **Limitation of scope of rule.** Contributions, benefits and service credit provided under this rule shall not exceed contributions, benefits and service credit required under federal law for periods of military service.

(3) **Definitions.** For purposes of this rule:

(a) “Employee” means:

(A) An eligible employee, as defined in section 1, chapter 733, Oregon Laws 2003 (Enrolled HB 2020);

(B) An active member of PERS, as defined in ORS 238.005, on or after January 1, 2004; or

(C) An employee who is entitled to credit toward the probationary period required by ORS 238.015.

(b) “Employer” means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(c) “Military service” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- (A) Active duty;
- (B) Active duty for training;
- (C) Initial active duty for training;
- (D) Inactive duty training;
- (E) Full-time National Guard duty;

(F) A period for which an individual is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any of the above types of duty; or

(G) A period for which an individual is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

(d) “Salary” means the rate of pay the eligible employee would have earned if he or she had remained employed during the period of military service, including any increases that would have been awarded the employee based on longevity of employment or seniority of position. If such rate of pay is not reasonably certain, the rate shall be based on the employee’s average rate of pay from the employer. The average rate of pay shall be calculated for a period not to exceed the 12-month period immediately preceding the period of military service.

(e) “Uniformed services” means the following:

- (A) Armed Forces;
- (B) Army National Guard;
- (C) Air National Guard;
- (D) Commissioned corps of the Public Health Service; and
- (E) Any other category of persons designated by the President in time of war or national emergency.

(f) “USERRA” means the 1994 federal Uniformed Services Employment and Reemployment Rights Act as of the effective date of this rule.

(4) **Eligibility for retirement benefits under USERRA.** An eligible employee shall be entitled to the benefits of this rule if:

(a) The employee leaves employment with a participating public employer to perform military service;

(b) The cumulative length of the employee’s absence from employment with the employer for military service does not exceed the limits set forth in USERRA §4312;

(c) The employee initiates reemployment with the same participating public employer within the time limits specified in USERRA §4312;

(d) All employee contributions have been made; and

ADMINISTRATIVE RULES

(e) All other eligibility requirements for benefits under USERRA are met.

(5) **Service credit for military service under USERRA.** An employee who meets the eligibility requirements of section (4) of this rule shall receive the amount of credit toward the period of employment required under section 29, chapter 733, Oregon Laws 2003 (Enrolled House Bill 2020), and the vesting requirements described under section 31, chapter 733, Oregon Laws 2003 (Enrolled House Bill 2020), the employee would have accrued if he or she had remained in employment with the employer during the period of military service.

(6) **Termination.** An employee's eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(7) **Employee contributions.**

(a) Employee contributions shall be made upon reemployment for eligible military service in accordance with the following:

(A) Employee contributions to be made by the employer. If the employee's employer had agreed to pay employee contributions under section 34(2)(b), chapter 733, Oregon Laws 2003 (Enrolled HB 2020) as of the date the employee left employment to perform military service, the employer shall pay, in a lump sum payment, the amount of contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(B) Employee contributions to be made by the employee. If the employee's employer had not agreed to pay employee contributions, or had agreed to pay employee contributions under section 34(2)(a), chapter 733, Oregon Laws 2003 (Enrolled HB 2020) as of the date the employee left employment to perform military service, the employee may pay all or part of the contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(b) Any individual, agency or organization may pay the amount specified in paragraph (5)(a)(B) on behalf of the employee.

(c) Employee contributions may only be paid during the period beginning with reemployment and whose duration is three times the period of the employee's military service, such period not to exceed five years.

(d) Employee contributions shall be credited to the employee account established in section 37(2), chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

(e) Employee contributions shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(8) **Employer contributions.**

(a) If the employee's employer had agreed to make employer contributions under section 36, chapter 733, Oregon Laws 2003 (Enrolled HB 2020) as of the date the employee left employment to perform military service, the employer shall pay, in a lump sum payment, the amount of contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(b) Any contributions made under this section shall be added to the employee's employer account established in section 37(3), chapter 733, Oregon Laws 2003 (Enrolled HB 2020).

(c) Contributions made under this section shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(9) Military service that includes January 1, 2004. If an employee as defined in section (3)(a)(B) or (C) of this rule performs military service over a period including January 1, 2004:

(a) Retirement credit and contributions for military service prior to January 1, 2004, shall be determined in accordance with OAR 459-011-0100.

(b) Retirement credit and contributions for military service on or after January 1, 2004, shall be determined in accordance with this rule and OAR 459-011-0100.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: OL 2003 Ch. 733
Stats. Implemented: OL 2003 Ch. 733
Hist.: PERS 3-2004, f. & cert. ef. 1-22-04

Oregon Student Assistance Commission
Chapter 575

Adm. Order No.: OSAC 1-2004
Filed with Sec. of State: 2-12-2004

Certified to be Effective: 2-12-04

Notice Publication Date: 1-1-04

Rules Amended: 575-030-0005, 575-031-0015

Subject: The statutory language relating to an eligible institution in the Oregon Opportunity Grant program was changed by the Legislature in 1999. ORS 348.180(2)(d) defines eligible institution as an "Oregon-based generally accredited, not-for-profit institution of higher education." Previously, the operative statutory language regarding an eligible institution was that it must be "located in this state." No definition is provided in statute regarding "Oregon-based," and the Attorney General has ruled that this term is an "inexact" statutory term, and that the Commission has the discretion to define the term. Several out-of-state schools, which are accredited in Oregon, have asked the Commission to amend the current definition to allow their participation in the Opportunity Grant program. The adoption of the proposed amendments would allow otherwise needy Oregon students, who attend institutions approved by the Office of Degree Authorization, to participate in the program. This change would also bring the definition of an eligible institution in line with used in the Former Foster Youth Scholarship program, another General-Funded program.

Rules Coordinator: Susan Taylor—(503) 687-7443

575-030-0005

Definitions

For the purposes of all grant programs, the following definitions shall be used:

(1) "Resident of Oregon". Residency is established by virtue of the student (in the case of independent students) or the student's parent (in the case of dependent students) having been in continuous residency in this state for the 12 months preceding enrollment. Residency is immediate in the case of a dependent student whose parents have moved to this state for a reason other than the student's enrollment. The residency period may be reduced to the preceding six months in the case of an independent student who moved to this state for a purpose other than education:

(a) A dependent resident student whose Oregon domiciled parent(s) move out-of-state shall retain resident classification as long as the student is continuously enrolled at an Oregon high school or Oregon postsecondary institution. Continuous enrollment is defined as completion of an academic year within any 12-month period;

(b) An independent resident student shall retain resident classification as long as the student is continuously enrolled at an Oregon postsecondary institution. Continuous enrollment is defined as completion of an academic year within any 12-month period;

(c) A dependent student whose parent(s) are serving on active duty in the U. S. Armed Forces outside the State of Oregon shall have residency status determined by the parents' declared "home of record". An independent student who is serving on active duty in the U. S. Armed Forces outside the State of Oregon shall have residency status determined by the student's declared "home of record";

(d) A student from a state other than Oregon, or from the Federated States of Micronesia, who is receiving or is eligible to receive financial assistance through the government of that state or the Federated States, shall not be considered a resident of Oregon;

(e) Eligibility to borrow through a federal loan program guaranteed by the Commission does not necessarily qualify a student as an Oregon resident for the purposes of the grant programs administered by the Commission.

(2) "Undergraduate Student" is a regularly enrolled student who:

(a) Has not obtained a baccalaureate or higher degree from any accredited institution; or

(b) Has not been classified as a "graduate student" by the institution disbursing funds.

(3) "Dependent/Independent Student". The definition of independent/dependent student shall be the definition used for the student aid programs under Title IV of the Higher Education Act of 1965 as amended.

(4) "Financial Need". The difference between the family contribution, derived from a system of need analysis annually approved by the Commission, and the cost of education.

(5) "Cost of Education". The sum of tuition, fees, room and board (where applicable), books, supplies, personal expenses, transportation, and other allowable costs identified by the U.S. Department of Education.

ADMINISTRATIVE RULES

(6) "Full-Time Enrollment". Registration and payment of required fees as a full-time student, at an eligible institution or combination of eligible institutions, as defined by the institution disbursing funds. Students attending more than one eligible institution must meet the definition of concurrently enrolled as defined in OAR 575-030-0005(8) to be considered full-time.

(7) "Concurrently Enrolled". A student who attends more than one eligible institution under a written consortium agreement or concurrent enrollment program.

(8) "Oregon-based". Having an educational institution that is both located and headquartered in Oregon.

Stat. Auth.: ORS 348

Stats. Implemented: ORS 348.230 - 348.260

Hist.: SSC 12, f. & ef. 12-15-76; SSC 18, f. & ef. 10-19-77; SSC 1-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 1-1979, f. & ef. 1-17-79; SSC 2-1980, f. 1-31-80, ef. 4-1-80; SSC 4-1980, f. & ef. 10-22-80; SSC 1-1981, f. & ef. 9-3-81; SSC 2-1986, f. & ef. 2-25-86; SSC 5-1987, f. & ef. 10-23-87; SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 5-2002, f. & cert. ef. 3-12-02; OSAC 1-2004, f. & cert. ef. 2-12-04

575-031-0015

Institutional Eligibility

Eligible institutions are any Oregon-based, non-profit institutions of higher education which:

(1) Are recognized by the U.S. Department of Education as eligible institutions; and

(2) Request participation in the program; and

(3) Sign an institutional participation agreement.

Stat. Auth.: ORS 348 & 378

Stats. Implemented: ORS 348.250 - 348.260

Hist.: SSC 12, f. & ef. 12-15-76; SSC 18, f. & ef. 10-19-77; SSC 1-1981, f. & ef. 9-3-81; SSC 2-1986, f. & ef. 2-25-86; SSC 5-1987, f. & ef. 10-23-87; SSC 3-1988, f. & cert. ef. 8-9-88; OSAC 1-2004, f. & cert. ef. 2-12-04

.....

Oregon Student Assistance Commission, Office of Degree Authorization Chapter 583

Adm. Order No.: ODA 2-2004(Temp)

Filed with Sec. of State: 2-11-2004

Certified to be Effective: 2-11-04 thru 7-30-04

Notice Publication Date:

Rules Amended: 583-030-0010, 583-030-0020, 583-030-0035, 583-030-0041, 583-030-0042, 583-030-0046

Subject: Re-filing to correct a technical error, retroactive to 11-1-2003 effective date of rule.

Rules Coordinator: Susan Taylor—(541) 687-7433

583-030-0010

Exemptions

The standards and procedures in this rule shall not apply to a school determined by the Office of Degree Authorization under ORS 348.594 to be exempt in either of the following ways, except that no one is exempt when assisting a school that is not exempt.

(1) A school in the public postsecondary educational system of the State of Oregon is exempt when offering degrees and credits exclusively in its own name and under its own control as the Oregon University System or constituent unit thereof, an Oregon community college, or the Oregon Health and Science University.

(2) A school is exempt from state oversight of religious aspects of its structure and programs when offering only degrees in theology and religious occupations with exclusively religious titles explicitly approved for the school by the Office of Degree Authorization.

Stat. Auth.: ORS 348.594

Stats. Implemented: ORS 348.594

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; ECC 3-1981, f. & ef. 12-16-81; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thru 7-30-04

583-030-0020

Exercise of Office Authority

(1) A school that offers to anyone from within Oregon or offers to Oregon residents from outside the state any form of instruction, lecture, training, tutoring, seminar, workshop, examination, evaluation, or other service represented as contributing credit or otherwise leading toward a specified or unspecified degree or certificate that will or might be conferred anywhere shall notify the Office in advance and then promptly supply all information the Office requests. Failure to notify the Office in advance or

to provide preliminary information as directed may result in permanent denial of approval for the school to offer any services in or from Oregon. Schools that offer no degrees in Oregon but want to offer a certificate are under the jurisdiction of the Private Career Schools office of the Oregon Department of Education and should contact that office for approval.

(2) On the basis of preliminary information, the Office will determine whether the school:

(a) Shall apply for state authorization to offer instruction or related services leading to one or more degrees under the standards in OAR 583-030-0035, verbatim or as modified under 583-030-0036; or

(b) Shall apply for deferment of the authorization requirement conditional on continuing to offer, under contract satisfactory to the Office, services leading only to academic credit issued by and in the name of an authorized or exempt school; or

(c) Shall apply for deferment of the authorization requirement conditional on continuing to offer services that do not, alone or in combination with services from any other school, lead substantially toward a degree to be conferred anywhere.

(3) A school that applies for degree authorization or exemption or requests a deferment shall use forms and follow procedures determined by the Office. Failure to comply constitutes good reason to reject an application or a deferment request. Such school shall be open to inspection and may be inspected at any time to verify its statements and to examine facilities. Inspection of a school and evaluation of its application or deferment request will be performed by state officials or consultants as the Office considers necessary, and findings will be utilized as the Office considers appropriate. Information from other examiners, such as accreditors or professional licensing agencies, may accompany materials submitted by the school and may be used by the Office at its discretion.

(4) Deferment of the requirement to apply for degree authorization is based on specified services from specified locations. A school receiving such deferment shall notify the Office immediately of any subsequent change in its offer of credit. Such school shall continue to supply information pertinent to its degree and credit status upon request and shall be open to inspection by the Office at any time. A deferment based on an inter-school contract or the offer of essentially non-degree credit is a temporary waiver entirely at the discretion of the Office, which may end it at any time, and it shall not be construed as an approval with right of appeal.

(5) Authorization to offer instruction or related services leading to a degree applies to specific curricula and services, offered at or from specific locations. The Office, on the basis of judgment about the relationship between a curriculum and a degree title, may require revision of title. Authorization is given for a specific degree for a fixed period of not less than two nor more than four calendar years. During any such period, the Office at its discretion may include a new location or closely related curriculum within the scope of the authorization through an abbreviated application procedure, with reduction or waiver of fee. Such abbreviated procedures generally apply to proposed changes that do not require a new faculty. At regular application junctures, several curricula leading to the same degree may be submitted as part of a single application. The Office may vary the length of approval periods by up to one year subject to the four-year limit in order to consolidate applications or renewals for the convenience of the school or the Office.

(6) Authorization to offer instruction or related services leading to a degree expires at the end of the period for which it is given, without right or presumption of renewal, except that an authorized school having submitted a complete and timely application for renewal continues to be authorized until such time as a review or revocation procedure may determine otherwise. After discontinuing its offer of an authorized degree before the end of the period of authorization, a school shall not reinstate the degree without permission from the Office. A program shall be deemed discontinued if a period of two academic years passes without any students being enrolled in the program.

(7) Authorization to offer instruction or related services leading to a degree is subject at all times to revocation for proper cause according to procedures described in OAR 583-030-0045 below.

(8) Schools that held religious exemption under these rules as of September 1, 2003 may continue to operate under the rules in effect as of that date until June 30, 2004. As of July 1, 2004, all schools claiming religious exemption must meet the new standards in effect as of that date. Entities that have not been approved under the new religious-exempt standards as of July 1, 2004 are not authorized to issue degrees. Any degrees issued after June 30, 2004 by an entity that lacks ODA approval are invalid for use as credentials under ORS 348.609.

Stat. Auth.: ORS 348.594, 348.606

Stats. Implemented: ORS 348.594, 348.603, 348.606

ADMINISTRATIVE RULES

Hist.: ECC 22, f. & ef. 12-22-75; ECC 2-1980, f. & ef. 4-14-80; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thur 7-30-04

583-030-0035

Standards for Schools Offering Degree Programs In or From Oregon

In order to receive and hold authorization to offer in or from Oregon instruction or related services leading to one or more academic degrees, a school must remain open to inspection at all times and continuously satisfy each of the following standard requirements as written, except where the Office approves modification under OAR 583-030-0036 or substitution under 583-030-0037. Standards Applicable to All Programs:

(1) Name. The school shall use for doing business publicly a name that is consistent with its purpose and educational programs.

(2) Purpose. The school shall serve a reasonably distinct general purpose useful to Oregon society.

(3) Control.

(a) All persons responsible for top management policy must be individually qualified by education, experience, and record of conduct to assure effective management, ethical practice, and the quality of degrees and services offered. Boards must collectively demonstrate financial, academic, managerial and any necessary specialized knowledge, but individual members need not have all of these characteristics. Any controlling organization or owner is subject to this standard. All board members, administrators as defined in 583-030-0035(6) below, or owners of five percent or more of shares of an applicant school or parent corporation must disclose the following:

(A) Any prior felony convictions.

(B) Any known violations of federal financial aid rules by a school of which the person was a board member or employee.

(C) Any known violations of the policies of an accreditor by a school of which the person was a board member or employee.

(D) Any previous or current ownership or administration of a school that closed or filed for bankruptcy.

(E) Such indicators of incapacity to oversee a postsecondary institution by key people may disqualify a school or administrator from approval.

(b) Persons who control a nonprofit school shall not ordinarily be operating officers or employees of the school, and their authority and role shall not be attenuated by commitment to other than the school's best interest as a public trust. The Office may at its discretion permit persons employed by the school to hold up to 20 percent of the seats on a school's board if the school can demonstrate that circumstances warrant such representation, but in no case shall a majority of board members receive a direct or indirect financial benefit from the school, its employees or its students, nor may any person obtaining such benefits be present when such benefits are discussed or determined. Standard reimbursement for costs related to board service is permitted.

(c) The board of directors of a religious-exempt school may be a church, mosque, synagogue or similar board, provided that the applicant school demonstrates that the board has adequate experience in organizational oversight. Such a board may include an unlimited number of members who are employed by a church of which the school is an educational unit or affiliate, provided that compensation and benefits of such employees is established through a process that provides adequate protection against conflicts of interest.

(4) Interest:

(a) A school operated for profit shall disclose fully to students and faculty, as well as to the Office, the specific financial interest of any organization or person, except that a large group of shareholders may be described generally. Any person or entity holding at least 5 percent of voting or common shares in a for-profit school must be named and the percentage of holdings disclosed. All business activities of interested organizations or persons are subject to disclosure.

(b)(A) A nonprofit school shall have a published policy that is followed in practice against conflicts of interest at all organizational levels.

(B) No governing board member, officer, or other person in a position to influence the management of a nonprofit school shall have any direct or indirect means of personal gain from the policy or activities of the school except as provided under "Control" above. However, such persons may loan money to the school at a moderate rate of return if a needed loan is not available from commercial lenders. This section does not prohibit a person who owns or is employed by an entity with which a nonprofit school does business from serving on the school's board, provided that the school can demonstrate that no personal financial gain has occurred or could occur as a result of such board service. If a board member owns or is employed by

a business that is the sole practical provider within 25 miles of goods or services needed by the school, or if the school pays less than \$1,000 annually for such goods or services, the school may request an exemption in that case.

(5) Organization. The school and any parent organization shall be organized so as to distribute responsibility clearly among positions in a logical structure that is consistent with services offered and qualifications needed to fulfill the duties of the positions. An individual may occupy more than one position.

(a) There shall be located in Oregon an administrator generally responsible for school operations within the state and transaction of business with the Office, except that alternative arrangements may be permitted at the discretion of the Office where a non-Oregon school conducts a small or highly specialized operation within the state. Unless an exception is approved by the Office because of unusual compensatory qualification, that administrator shall possess a degree at least as high as any offered by the school in connection with operations in Oregon, together with appropriate administrative experience.

(b) There shall be a chief executive officer for the entire school responsible to its governing board or other corporate owner for overall management of operations in Oregon and elsewhere. Unless an exception is approved by the Office because of unusual compensatory qualification, that officer shall possess a doctor's degree or otherwise a degree higher than any offered by the school anywhere, together with postsecondary managerial experience appropriate to the level, size, and complexity of the school.

(c) There shall be an academic officer for the entire school responsible for faculty and academic programs offered in or from Oregon. Unless an exception is approved by the Office because of unusual compensatory qualification, that officer shall possess at least a master's degree and shall possess a doctor's degree if the school offers any graduate or non-baccalaureate professional degree. That officer shall have experience in teaching and academic administration, both experiences appropriate to the level, size, and complexity of the school.

(d) There shall be a business officer for the entire school responsible for accounting and managerial services. Unless an exception is approved by the Office because of unusual compensatory qualification, that officer shall possess at least a bachelor's degree in a business-related field, together with appropriate administrative experience.

(6) Administrators.

(a) The school shall satisfy the Office that all top executive officers and other administrators are individually qualified by education, experience, and record of conduct to assure competent management, ethical practices, and effective educational service. Unless an exception is approved by the Office because of unusual compensatory qualification, administrators above the entry level shall have experience related to their present duties, and all administrators shall possess appropriate academic degrees earned from schools that are regionally accredited or otherwise determined by the Office to be acceptable. At a minimum, the following functions, irrespective of formal titles, are always considered among the administrators covered by this section: president, chief academic officer, chief business officer, chief student services officer, library director, admissions director, financial aid director and director of human resources.

(b) The school shall employ, compensate, supervise, and evaluate its administrators systematically and fairly, not arbitrarily.

(c) Administrators shall be paid by fixed salary and not by commission. Any portion of payment that is based on enrollment of students recruited by the administrator or the administrator's staff is considered payment by commission.

(d) Full-time administrators should generally be retained for at least one academic year absent cause for dismissal. The school must provide ODA with data regarding turnover of full-time administrators. In the event that over half of full-time administrators are not retained for at least one academic year, ODA may require a school to implement a mandatory minimum one-year contract if necessary to ensure program stability. Part-time administrators designated upon hiring as temporary or adjunct positions and so informed by the school have no expectation of continuing employment. ODA may limit use of part-time administrators upon finding that such use results in substandard services to students.

(e) The school shall fully inform its administrators as to whether and how they are indemnified against professional liability.

(f) The school shall demonstrate an effort when hiring administrators to avoid dependence on its own most recent graduates. If more than 20 percent of all applicant school administrators hold their highest degree from the applicant school, this standard cannot be met unless fewer than 10

ADMINISTRATIVE RULES

schools in the United States offer the highest degree available in the field. Schools offering solely religious degrees are exempt from this requirement.

(7) Teachers.

(a) The school must keep official transcripts for all teaching faculty.

(b) The school shall satisfy the Office that all teachers are individually qualified by education and experience to give expert instruction or evaluation in their specialties. Unless an exception is approved by the Office because of unusual compensatory qualification, teachers shall be qualified for the various levels of instruction or evaluation as described below, with degrees earned from schools that are accredited by a federally recognized accreditor or otherwise determined by the Office to be acceptable.

(c) Teachers shall be numerous enough and so distributed as to give effective instructional and advisory attention to students in all programs offered by the school.

(d) A school having an undergraduate FTE student-faculty ratio of greater than 30-1 or a graduate FTE student-faculty ratio of greater than 20-1 for students taught in or from Oregon must demonstrate that students and faculty have adequate opportunities for one-to-one interaction.

(e) A school that does not have at least one full-time teacher resident in Oregon or directly teaching Oregon students in each specialty must demonstrate with specific examples the adequacy of faculty contribution to organizational integrity and continuity, to academic planning, and to resident student development.

(f) The school shall employ, compensate, supervise, and evaluate its teachers systematically and fairly, not arbitrarily, and shall have a faculty development policy that continuously improves their knowledge and performance. Teachers shall be paid by fixed salary and not by commission. Any portion of payment that is based on enrollment of students recruited by the teacher is considered payment by commission.

(g)(A) In order to ensure program stability and quality of instruction, full-time teachers should generally be retained for at least one academic year absent cause for dismissal. The school must provide ODA with data regarding turnover of full-time teachers. In the event that at least half of full-time teachers are not retained for at least one academic year, ODA may require a school to implement a mandatory minimum one-year contract if necessary to ensure program stability and quality of instruction. Part-time teachers designated upon hiring as temporary or adjunct positions and so informed by the school have no expectation of continuing employment beyond the term for which they are hired. ODA may limit use of part-time teachers upon finding that such use results in substandard education of students.

(B) A full-time teacher evaluated as better than adequate and not removed for cause can expect continually renewed appointment unless the position is eliminated for documented financial or curricular reasons.

(h) The Office does not require that teachers be indemnified for activities carried out as a requirement of their positions. However, the school shall fully inform its teachers in writing upon hire as to whether and how they are indemnified against professional liability.

(i) The school shall demonstrate an effort when hiring teachers to avoid dependence on its own most recent graduates. No more than 20 percent of all applicant school teachers can hold their highest degree from the applicant school unless fewer than 10 schools in the United States offer the highest degree available in the field. Schools offering solely religious degrees are exempt from this requirement.

(j) A teacher of an academic or scientific discipline within an occupational or professional degree program (e.g., economics within a business program, psychology within education, anatomy within nursing) ordinarily shall possess the appropriate degree in the discipline rather than a non-disciplinary occupational or professional degree. Lower-division undergraduate courses may be taught by those with non-disciplinary degrees who have demonstrable and extensive acquaintance with the discipline.

(k) Standards applicable to specific degree levels.

(A) Standards applicable to associate degrees: A teacher on a faculty offering associate's degrees ordinarily shall possess a bachelor's degree appropriate to the subject taught or evaluated, except that compensatory nonacademic qualifications will be more readily accepted by the Office in programs leading to occupational degrees. Where the degree emphasizes transfer courses in the arts and sciences, the teacher ordinarily shall possess an appropriate master's degree.

(B) Standards applicable to bachelor's degree programs: A teacher on a faculty offering bachelor's degrees ordinarily shall possess an appropriate master's degree.

(C) Standards applicable to master's degree programs: A teacher on a faculty offering master's degrees ordinarily shall possess an appropriate doctor's degree and some teaching experience, except that up to half of the

teachers in an occupational or professional degree program may substitute for the doctorate a master's degree together with occupational or professional licensure or equivalent certification and related work experience. More substitutions may be permitted where the terminal degree for teachers in an occupational or professional field is not generally considered to be a doctorate.

(D) Standards applicable to doctoral programs: A teacher on a faculty offering doctor's degrees ordinarily shall possess an appropriate doctor's degree and substantial graduate or first-professional teaching experience, including experience overseeing advanced independent study or student practice, except that the doctor's degree alone may suffice for teaching courses at the master's level generally or at any level in the teacher's particular subspecialty.

(8) Curriculum. The school shall justify a degree offer by assuring the quality of all attendant teaching, learning, and faculty-student interaction. The curriculum shall have a structure that reflects faculty responsibility for what is to be learned overall, as well as in each course, and thus for the logical sequence and increasing difficulty of subjects and instructional levels. The curriculum shall reflect the distinction between the liberal disciplines and the occupations and professions, the nature of specialization in study and work, the contribution of liberal arts and sciences, and the relationship between teaching and faculty creativity. A graduate curriculum shall reflect a concept of the graduate school as a group of scholars, the faculty members of which have had extensive collegiate teaching experience and are engaged in the advancement of knowledge. Periods of study and other fundamental requirements for the four levels of academic degree are as follows.

(a) An associate's degree shall require at least two academic years in FTE postsecondary study, including general requirements as found in current guideline.

(b) A bachelor's degree, or baccalaureate, shall require at least four academic years in FTE postsecondary study, including general requirements. At least 40 semester credit hours shall be in upper-division courses, and no more than two academic years of instruction shall be from schools that do not offer baccalaureate degrees. The degree shall require distinct specialization, i.e., a "major," which should entail approximately one academic year of work in the main subject plus one year in related subjects, or two academic years in closely related subjects within a liberal arts interdisciplinary program.

(c) A master's degree shall require at least one full academic year in FTE post-baccalaureate study, except that a first-professional master's degree may be authorized for study beyond fulfillment of undergraduate requirements approved by the Office if the total period of study is at least five academic years. The curriculum shall specialize in a single discipline or single occupational or professional area and culminate in a demonstration of mastery such as a research thesis, a work of art, or the solution of a practical professional problem.

(d) A doctor's degree shall require at least three academic years in specialized post-baccalaureate FTE study, except that a first-professional doctor's degree may be authorized for four academic years of study beyond fulfillment of undergraduate requirements approved by the Office. Study for a closely related master's degree may be counted toward doctoral requirements. The doctor's degree shall represent a student's ability to perform independently basic or applied research at the level of the professional scholar or to perform independently the work of a profession that involves the highest levels of knowledge and expertise. Requirements for the degree shall include demonstration of mastery of a significant body of knowledge through comprehensive examination, unless a graduate must pass a similar examination in order to be admitted to professional practice in Oregon. The curricular program of a research degree shall be appropriately broad and shall manifest full understanding of the level and range of doctoral scholarship, the function of a dissertation and its defense, the nature of comprehensive examination, and the distinction between matriculation and degree candidacy.

(e) Schools offering solely religious degrees are exempt from the required course mix at all degree levels. The state will not review sectarian content of curriculum for degrees with a religious title or significant religious content; the state's only concern will be to ensure that the curriculum as a whole has a reasonable structure related to credits awarded.

(f) Undergraduate Degree Components. These are the basic requirements for different kinds of degrees available in Oregon.

(A) Credit hours. This section states credit hours as semester credit hours (SCH). Colleges using the quarter system should multiply these credits by 1.5 to obtain the correct requirement in quarter credit hours (QCH) under quarter systems.

ADMINISTRATIVE RULES

(B) Liberal Education. Fields of study within the liberal arts and sciences, or simply 'liberal arts,' are called 'disciplines' and are conventionally divided into three areas of knowledge: humanities, social studies, and natural science. A common classification of the liberal disciplines follows.

(i) Humanities: Language, literature, philosophy, religious thought; fine arts (not emphasizing performance skills).

(ii) Social studies or sciences: Anthropology, cultural geography, general history, religious history and culture, economics, political science, general psychology, sociology.

(iii) Natural sciences: Biology, biological psychology, chemistry, physics, geology and physical geography, mathematics.

(iv) The liberal disciplines do not include professional and vocational courses, such as agriculture and forestry (or wildlife management), architecture and design, business and public administration, broadcasting or journalism, computer technology, education, engineering and related technologies, health professions, home economics, law, library science, military science, parks and leisure studies, physical education and recreation, protective services, or religious services. The liberal disciplines also do not include artistic performance or physical activity courses, practical and general information courses such as personal health, career planning, human relations, public speaking, elementary writing, elementary mathematics, and computer fundamentals.

(C) General Education. General education is a term that includes not only liberal education but other courses outside a student's major field, especially in mathematics, computer science, writing, and speaking. A bachelor's degree requires one academic year of general education. Two-year degrees require less. Degrees with arts or science titles have more liberal arts requirements than do professional degrees, in which much of the general education may be non-liberal. All associate and bachelor's degrees require one year (at least 6 semester or 9 quarter credit hours or equivalent alternate term credit hours) of English composition or equivalent ODA-approved writing courses. Students may meet this requirement by achieving a score on a nationally normed test that would permit a waiver of English composition requirements or the award of academic credit in English composition at an accredited college or university.

(D) Major Field. A bachelor's degree requires study in a major field for one academic year. Thus, the major must include 30 SCH or more, with 20 SCH in the upper division and 15 SCH (22 or 23 QCH) of upper-division hours taught by the resident faculty. A dual major simply doubles these numbers.

(E) An interdisciplinary major is permitted. It requires 60 SCH (39-40 upper division, 30 of those in residence) in either three or four disciplines, with at least 15 hours in each discipline and at least 9 upper-division hours in each, of which 6 must be in residence. A school may offer a major or an interdisciplinary option in any field in which it has more than one fully qualified teacher if at least one teaches full time. ODA may approve minor variations in order to allow programs to operate efficiently.

(F) Degrees. The following undergraduate degree names, levels and types are available in Oregon.

(i) Bachelor of Arts. An arts degree, the B.A. requires competency in a foreign language and one academic year in the humanities, i.e., 30 SCH, of which 12 can be in foreign languages. The language competency requirement is equivalent to the 12 hours, the second-year level, and ESL students can satisfy it with 12 hours of English language and literature. As general education outside the major, the B.A. requires 24 SCH in the liberal arts and sciences, with at least 6 hours in each of the three areas: humanities, social studies and natural sciences.

(ii) Bachelor of Science. A science degree, the B.S. requires one academic year in the social or natural sciences, i.e., 30 SCH, of which 12 can be in mathematics and state-approved computer courses. As general education outside the major, the B.S. requires 24 SCH in the liberal arts and sciences, with at least 6 hours in each of the three liberal arts and sciences areas.

(iii) Bachelor, Professional. As general education outside the major, the professional bachelor's degree requires 24 SCH hours in the liberal arts and sciences, with at least 6 hours in each of the three liberal arts and sciences areas.

(iv) Bachelor, Technical. As general education outside the major, the technical bachelor's degree requires 24 SCH in the liberal arts and sciences, or in non-vocational courses closely related to them, with at least 3 hours in each of the three areas and a total of at least 9 in the two areas most unrelated to the major.

(v) Associate of Arts. A full-transfer degree, the A.A. requires two academic years applicable to B.A. or B.S. study and fulfilling baccalaureate liberal arts requirements. A major is optional. Thus, the A.A. requires 24

SCH in the liberal arts and sciences, with at least 6 hours in each of the three liberal arts and sciences areas.

(vi) Associate of Science. A limited-transfer degree, the A.S. requires a major and two academic years applicable to professional or technical baccalaureate study. The A.S. degree requires 24 SCH in the liberal arts and sciences, or in non-vocational courses closely related to them, with at least 6 hours in each of the three areas.

(vii) Associate, Professional or Technical. A terminal degree, the professional or technical associate's degree requires a major (Degree title examples: Associate of Applied Arts, Associate of Applied Science, Associate of Technology, Associate of Occupational Studies, Associate of Business, Associate of Religion).

(9) Credit. The school shall award credit toward degrees proportionate to work done by students and consequent upon the judgment of qualified teachers and examiners. No more than one year of an academic program can be completed using any combination of the noninstructional methods set forth in (e), (f) and (g) below.

(a) A credit hour earned through nontraditional learning schedules shall have proportionate value to credit hours based on customary term lengths.

(b) Credit awarded by the school shall be based solely upon the judgment of teachers who have had extensive direct contact with the students who receive it, with the exception of methods listed in these rules if approved in advance by ODA.

(c) At least one academic year of credit toward any degree, most of it near the end, shall represent teaching or direct evaluation by faculty members employed by the school, except that the Office may approve a lesser amount for an associate's degree.

(d) Transfer credit integral to the school's approved degree curriculum may be awarded at the corresponding degree level for academic work documented by other schools that are regionally accredited, authorized to confer degrees in or from Oregon, or otherwise individually or categorically approved by the Office. Such credit must be converted as needed from semester, quarter or nontraditional calendar systems.

(e) Advanced Placement credit integral to the approved degree curriculum may be awarded in the lower-division up to a limit of one academic year for passing examinations constructed by testing organizations satisfactory to the Office.

(f) Challenge examination credit as an actual component of the approved degree curriculum may be awarded only at the undergraduate level for successful performance on a final course examination, or on a similar test covering all course content, given by the school in lieu of requiring class attendance. No more than 25 percent of an undergraduate degree program may be earned through challenge examinations.

(g) Noncollegiate learning integral to the approved degree curriculum may be awarded credit only at the undergraduate level for learning validated by a student "portfolio," a credit evaluation guide issued by the American Council on Education, or a similar criterion. Such learning must be formulated through sufficient contact between teacher and student, communicated competently in terms of ideas (e.g., concept, generalization, analysis, synthesis, proof) rather than mere description, and judged by faculty members or contracted experts demonstrably qualified to evaluate it. Upper-division credit of this type may be awarded only in academic fields in which the school employs its own faculty. No more than 25 percent of an undergraduate degree program may be earned through award of credit for noncollegiate work.

(h) Credit may be awarded for distance learning if the school demonstrates that it has adequate methods in place to ensure that student work is sufficient both in quality and quantity to meet ODA requirements, courses are developed and taught by qualified faculty and there will be sufficient interaction between students and faculty and, if possible, among students. The Office may limit or disallow credit awarded for any type of distance learning if the school cannot demonstrate adequate oversight and quality control measures.

(10) Admission. The school shall offer admission only on receipt of evidence that the applying student can reasonably expect to complete a degree and to benefit from the education obtained. Any student permitted to take courses within a degree curriculum has been admitted thereby unconditionally to the degree program unless individually informed otherwise in writing. Students offered unconditional admission shall have the following qualifications, unless the Office approves specific testing or other alternative method of determining applicant admissibility.

(a) A student admitted to undergraduate degree study for the first time shall have either a high school diploma or an equivalent credential. Home-schooled students without a traditional credential may be admitted provid-

ADMINISTRATIVE RULES

ed that they can demonstrate the ability to perform college-level academic work.

(b) A student admitted to undergraduate degree study with undergraduate experience shall have a record of successful performance therein or else a record of responsibility and achievement following unsuccessful collegiate performance.

(c) A student admitted to graduate degree study shall have a baccalaureate degree from a school that is accredited, authorized to confer degrees in Oregon, or otherwise approved by the Office either individually or by category.

(d) A student admitted to first-professional degree study shall have at least three academic years of accredited or ODA-approved undergraduate credit, graded average or better, including pre-professional courses specified by the school and approved by the Office.

(11) Guidance. The school shall help students to understand the curriculum and to make the best use of it.

(a) There shall be a program of general orientation for new students.

(b) Each student shall be assigned a qualified academic advisor to assist individually in planning, course selection, learning methods, and general adjustment.

(c) The school shall provide career guidance to the extent that curriculum is related to a specific prospective occupation or profession.

(12) Learning. The school shall require each student to complete academic assignments and demonstrate learning appropriate to the curriculum undertaken.

(a) Teachers or evaluators shall inform students clearly using a syllabus or similar instrument of what should be learned in each course and how it will be measured.

(b)(A) Expectations of student performance shall be increased with each ascending step in degree level. Higher degrees must represent an increase in the difficulty of work and expectations of students, not simply a cumulation or increase in quantity of student work.

(B) Evidence of expectation (e.g., syllabi and sample exams) and performance (e.g., student grades) shall be retained for all academic courses for at least one year.

(c) The school shall require students to make continuous progress toward a degree while they are enrolled and liable for tuition and shall suspend or dismiss those who do not make such progress, except that a period of probation with guidance may be instituted in order to obviate separation of a student who can be expected to improve immediately. Continuous progress for students receiving Title IV aid shall be defined according to federal Title IV standards. Students not receiving Title IV aid shall meet the school's own published standards for satisfactory progress.

(d) Grading and appeal procedures shall be fair and administered equitably, and criteria of student progress shall be validated by research if not obviously valid.

(13) Student Affairs. Through both services and supervision the school shall demonstrate commitment to the success of individual students and to maintenance of an atmosphere conducive to learning.

(a) Rules of student conduct shall be reasonable, sufficiently specific, fully communicated, systematically and equitably enforced, and accompanied by policy and practice of disciplinary due process, including notice and hearing and related rights.

(b) Security services and fire protection shall be adequate to ensure student safety on school premises.

(c) Counseling or advising services, if provided, shall be accurately described. There shall be no suggestion of professional psychological counseling, therapy, or testing, unless provided by persons who possess directly related graduate degrees and any required licensure.

(d) Health services where provided shall be under supervision of a registered nurse or licensed physician. There shall be an arrangement for quick and effective referral in medical or psychiatric emergencies beyond school capability. The school shall provide adequate first-aid supplies on its premises.

(e) Housing where provided or endorsed by the school shall be conducive to study and adequately supervised.

(f) Financial aid services shall be provided by qualified administrators.

(g) Placement services where provided shall be described clearly to students, and the school shall take precautions to avoid unrealistic expectation of placement.

(h) Organizations and activities where sponsored or endorsed by the school, whether using school facilities or not, are the responsibility of the school and shall be supervised if and insofar as necessary to ensure student safety and good conduct.

(i) Recreation or rest areas shall be provided on school premises and equipped appropriately in relation to student use and need.

(j) Records documenting relationships between the school and a student shall be open to that student, who may request changes or enter dissenting comments, and the content of records shall be objective and fair. The private notes of a counselor are not to be considered records and shall not be transmitted as such, either inside or outside the school. All medical records are confidential and shall not be released without permission of the patient.

(k) There shall be available to undergraduate students and responsible for student affairs an official who possesses knowledge, skill, and managerial experience particularly appropriate to the function, unless the Office waives this requirement. In general, waivers are granted only for small startup schools in their first approval cycle and for schools that mainly teach people who are of nontraditional age (23 or older) or already in the workforce.

(l) Every school shall distribute a student handbook or similar publication describing services and regulations, unless such descriptions are complete in the school's main catalog.

(14) Information. School publications, advertisements, and statements shall be wholly accurate and in no way misleading. Reference to state approval shall be limited to that described in OAR 583-030-0041. Reference to accreditation shall be limited to that defined in OAR 583-030-0015(2). A prospective student shall receive a complete description of the school and its policies, including an estimate of annual or program costs, before being enrolled. This estimate is not binding on the institution but must give prospective students a reasonable idea of their financial commitment. Where a degree implies preparation for a specific occupation, the school shall explain clearly the true relationship between its curriculum and subsequent student qualification for occupational practice, including graduates' success rates in passing licensure examinations if applicable.

(a) The school shall publish at least every two years a catalog or general bulletin. The catalog shall contain a table of contents and adequate information concerning period covered, school name and address, telephone numbers, state approval, purpose, relationship to occupational qualification, controlling structure, board membership, financially interested parties, internal organization, faculty and administrators (listing position or teaching specialization together with all earned degrees and their sources, omitting unearned degrees and not confusing professional licenses with degrees), degree requirements and curricula, academic calendar, credit policy in accordance with OAR 583-030-0035(9), transferability of credit to other schools, admission requirements and procedures, academic advising and career planning, academic policies and grading, rules of conduct and disciplinary procedure, student services (counseling, health, placement, housing, food, bookstore, activities, organizations), student records, library, facilities, fees and refunds, estimated total expenses, financial aid, and job opportunities for current students. Electronic publication meets this standard provided that a paper version of the catalog is provided to ODA, is available to students upon request and is maintained as the "official" version in order to avoid confusion if electronic versions are changed.

(b)(A) The school shall publish in its catalog or general bulletin a description of the line of authority from Oregon operations to all sources of control, including any parent or intermediary organizations.

(B) The catalog shall include membership of the school governing board and at least the officers of the governing board of any other organization that exerts direct or indirect control.

(C) A school operated for profit shall publish in its catalog a clear description of the financial interest of any organization, and it shall publish the names of persons having an interest in a closely held school corporation or parent corporation of a subsidiary school.

(c) The school shall be scrupulously ethical in all communication with the public and with prospective students.

(A) A claim made to attract students shall be documented by evidence available to any person on request. The school shall make no attempt to attract anyone who does not appear likely to benefit from enrollment, and no attempt to attract students on any basis other than instruction and campus life appropriate to an educational institution.

(B) Outside the regular student financial aid process, there shall be no discounting of tuition as an incentive to enroll.

(d) A school without regional accreditation shall print in a separate section of its catalog titled "transfer of credit to other schools" a statement warning students verbatim that "transfer of credit is always at the discretion of the receiving school, generally depends on comparability of curricula, and may depend on comparability of accreditation." Other comments may follow concerning the school's documented experience in credit transfer-

ADMINISTRATIVE RULES

ability, but it must be clear that a student should make no assumptions about credit transfer.

(e) Research involving human subjects shall be done only with their informed consent.

(15) Credentials. The school shall provide accurate and appropriate credit transcripts for students who enroll and diplomas for students who graduate.

(a) The school shall maintain for every past and present student, and shall issue at the request of any student who is not delinquent in fee payment, a current transcript of credits and degrees earned. The transcript shall identify the school fully and explain the academic calendar, length of term, credit structure, and grading system. It shall identify the student and show all prior degrees earned, details of any credit transferred or otherwise awarded at entry, and periods of enrollment. It shall include for each period of enrollment every completed course or module with an understandable title, number of credits earned, and grade received. The transcript shall note with or without explanation if the student is not immediately eligible to continue enrollment, e.g., for reasons of academic probation or suspension.

(b) Upon satisfaction of degree requirements and payment of all fees owed, the school shall provide the graduating student with a diploma in a form approved by the Office, appropriately documenting conferral of the degree.

(16) Records. The school shall keep accurate and safe all records affecting students. There shall be at all times complete duplicate transcript information kept in a location away from the original transcripts, such that duplicates and originals are not exposed to risk of simultaneous damage. In addition to transcripts, which may never be destroyed, the school shall maintain detailed records documenting the significant parts of its formal relationship with each student: financial transactions and accounts, admission qualifications, validation of advanced standing, instructor course records as posted to transcripts, and status changes due to unsatisfactory performance or conduct. Such supporting records shall be kept safe for a period of at least three years after a student has discontinued enrollment. Instructor course records other than those posted to transcripts shall be kept for at least one year.

(17) Library. The school shall provide or arrange for its faculty and students direct or electronic access to verbal and sensory materials sufficient in all subjects of the curriculum to support instruction and to stimulate research or independent study.

(a) The school may arrange for comprehensive privileges from libraries of other organizations, provided it can prove convenient access and extensive use, but the school shall retain full responsibility for adequacy of resources available to students.

(b) Library services shall be under the direction of a person educated professionally in library and information studies, except that the Office may waive this requirement where the range of academic fields represented is narrow.

(c) Library resources shall be current, well distributed among fields in which the institution offers instruction, cataloged, logically organized, and readily located.

(d) The school shall maintain a continuous plan for library resource development and support, including objectives and selection of materials, and shall maintain accurate information on resource collections, access, student use, faculty use, staffing, and finance.

(e) The school should conform to the following guidelines for library services unless it can justify a deviation on the basis of unusual educational requirements.

(A) With the exception of those in specialized associate's degree programs, students should receive direct, contracted or electronic access to a minimal basic collection equivalent to that held by accredited schools offering similar programs. The applicant school must demonstrate this comparability.

(B) Staff should include a professional librarian for each 1,000 students, with clerical support adequate to relieve librarians of all non-professional duties.

(C) Students should have full access to all resources for at least 40 hours per week, and all services should be available for 20 hours per week. The facility, whether provided by the college directly or by contract, should seat no less than 10 percent of the students enrolled unless the program is primarily intended to train practitioners in technical or fine arts fields, in which case a lower percentage may be requested. If the school meets the library standard largely by electronic means, electronic services must be available to a comparable portion of the student body for a comparable period.

(18) Facilities. The school shall have buildings and equipment sufficient for the achievement of all educational objectives and shall maintain a plan for facilities use and development, ordinarily including data showing utilization. A school that offers a residential or semi-residential degree shall conform to the standard criteria listed below unless the Office approves an exception based on unusual conditions. A school that does not own facilities meeting the standard shall provide them by lease or other arrangement that guarantees operational stability and continuity.

(a) Buildings in general, including student or faculty housing units, shall be uncrowded, safe, clean, well furnished, and in good repair; and they shall be well lighted, heated, ventilated, and protected from noise. School grounds where provided shall be appropriately used and adequately maintained.

(b) Instructional facilities shall be adequate and conducive to learning. There shall be no less than 15 square feet per student station in classrooms, with at least one station for every two FTE students enrolled. Total classroom and study area, including library space for reading, shall be no less than 10 square feet per FTE student.

(c) Laboratory space and instructional equipment shall be inventoried, its use explained on the resulting report, and its adequacy defended on criteria obtained from experts and documented by the school. A laboratory ordinarily shall have no less than 30 square feet per student station.

(d) Clinical facilities and other public service areas shall be appropriate for instruction of students as well as for service to patients or clients.

(e) Faculty offices shall be sufficient to prevent crowding and to allow private conversations with students.

(19) Finance. The school shall have financial resources sufficient to ensure successful continuing operation and to guarantee full refund of any unearned tuition. There shall be competent financial planning using complete and accurate records. The school shall demonstrate satisfaction of this standard upon application, and thereafter annually, by submitting independently audited financial statements with opinion by a certified public accountant. In some cases, the Office at its discretion may accept an audited balance sheet with opinion, together with annual operating statements that have been reviewed by the auditor. A school that is a subsidiary shall submit financial statements of the parent corporation on request. In unusual circumstances, the Office may require a special investigative audit and report.

(a) Financial reports shall be prepared in a format acceptable to the Office, clearly delineating assets and liabilities and informatively classifying revenues by source and expenditures by function.

(A) Operating expenditures shall be classified so as to show separately what has been spent for direct instruction, with the inclusion of strictly academic administration optional.

(B) Separate expenditures shall be shown also for library services, non-library academic support, student services, organized research, public services, and auxiliary services.

(C) Facility operating expenditures ordinarily should be shown separately. The other administrative and institutional support expenditures may be itemized or combined.

(D) Student aid must be shown separately as either an expenditure or a reduction of income.

(E) Hospitals and clinics must be accounted for as separate enterprises, with all costs allocated and fully charged back as reductions of general institutional expenditures.

(b) Current assets shall be entirely tangible and such that the school is not dependent for solvency on substantial increases in receivables collection rate, gifts, tuition rates, or enrollment. Prospective tuition for which a student is not legally liable is not an asset and shall not be shown as a receivable or other balance sheet asset. Tuition collected but still subject to refund shall be shown as a "prepaid" or "unearned" tuition liability.

(c) A school unable to demonstrate financial strength may be permitted at the discretion of the Office to submit a surety bond in amount equal to the largest amount of prepaid tuition held at any time. The bond would be subject to claims for tuition refund only.

(d) The school shall carry casualty and general liability insurance sufficient to guarantee continuity in case of accident or negligence, and it shall provide or else require by policy professional liability insurance for all of its officers and employees.

(20) Fees and Refunds. The school shall maintain fee and refund policies that are fair, uniformly administered, and clearly explained in the school catalog as well as in any contract made with students. A student shall not be enrolled without having received the explanatory material. The school shall not change its fee policy during an academic year and shall not

ADMINISTRATIVE RULES

at any time make extreme changes affecting students already enrolled without permission from the Office.

(a) Tuition shall be charged by the credit hour or by fixed rate, for instruction during an academic semester, quarter, or shorter term. No student is obligated for tuition charged for a term that had not commenced when the student withdrew or a term that was truncated by cessation of school services.

(b) A non-refundable application fee charged by the school ordinarily shall not exceed \$100. A total of \$200, including such fee, may be kept by the school from a student who withdraws voluntarily after accepting admission but before attending classes. Any additional fees preceding admission, such as those for qualification, aptitude, or placement tests given by the school or an external testing organization, must be specifically approved by the Office.

(c) After classes begin for a term, a student who withdraws from a course is eligible for a partial refund through the middle week of the term. Refunds shall be based on unused instructional time and shall be prorated on a weekly basis for schools using a semester, quarter or nontraditional calendar. Without specific Office approval, refund rates shall not be differentiated on the criteria of a student's source of income or loan repayment obligations except as otherwise required by law. In particular, the school shall treat federally aided and unaided students alike.

(d) Fees for credit transferred, for credit attempted or earned by examination or portfolio, or for any period when a student is not attending classes (e.g., during a field experience or a period of thesis research) shall be justified to the satisfaction of the Office, and they shall be explained fully to prospective students. Any such fee must be based on the cost of service actually provided, ordinarily less than the cost of regular instruction, and the mere award of credit does not justify a fee.

(e) Academic policies shall not artificially prolong the enrollment of a failing student with the effect of increasing financial obligation.

(f) Separation from the school for reason of discipline or other administrative action shall not cause forfeiture of ordinary refund amounts.

(g) Charges for food, housing, academic supplies, books, and activities shall ordinarily be based on time of service or exact measure of materials and services provided. Refunds for unused portions of such non-tuition items, whether payment for them was separate or included in tuition, shall be prorated on that basis upon withdrawal, except that the Office may give permission for reduced housing refund to a student whose withdrawal is essentially voluntary and creates a vacancy that cannot be filled. Commitments to purchase school services up to a full academic year may be enforced so long as the student remains in attendance.

(21) Creative Rights. Students shall retain rights to their creative academic work. The school and faculty shall give full attributive credit for any student work used in publications, classes, performances, exhibits, or elsewhere. Major portions of student creative work shall not be used without permission, except that general display may be part of a course or degree requirement. Nonliterary work shall be purchased from the student if it is not returned after a reasonable display period.

(22) Evaluation. The school shall evaluate its own educational effectiveness continually in relation to purpose and planning, including in all aspects the opinions of students. There shall be evaluation of present curriculum and instruction, of attrition and reasons for student withdrawal, and of performance by students after their graduation. In addition to the comments of graduates, employer opinions and licensing examination records should be used in the post-graduation study.

(23) Fair Practice. Notwithstanding the absence of a specific standard or prohibition in this rule, no school authorized to offer academic degrees or seeking to qualify for such authorization shall engage in any practice that the Office, accepting the burden of proof in due process, finds to be in contravention of statutory intent by reason of being fraudulent, dishonest, unethical, unsafe, exploitive, irresponsible, deceptive, or inequitable and thus harmful or unfair to persons with whom it deals.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thur 7-30-04

583-030-0041

Authorization Statement in School Catalog

(1) Upon receipt of authorization to offer instruction or related services leading to one or more degrees, and until such time as that authorization has expired or been revoked, an Oregon school shall print the following statement prominently on the inside front cover or facing page of its catalog and any general bulletin, shall include the statement with any inter-

net web site announcement, and may publish the statement in other school announcements. Choose one descriptive term from each parenthetical pair.

This school (is) (is a unit of) a (business) (nonprofit) corporation authorized by the State of Oregon to offer and confer the academic (degree) (degrees) described herein, following a determination that state academic standards will be satisfied under OAR 583-030. Inquiries concerning the standards or school compliance may be directed to the Office of Degree Authorization, 1500 Valley River Drive, Suite 100, Eugene, Oregon 97401.

(2) A non-Oregon school shall print or affix the above statement on the inside front or back cover (preferred) or on an appropriate page approved by ODA of every catalog distributed in Oregon.

Stat. Auth.: ORS 348.606

Stats. Implemented: ORS 348.603 & 348.606

Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 2-2000, f. 7-7-00, cert. ef. 7-20-00; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thur 7-30-04

583-030-0042

Reporting Requirements

(1) A school authorized to offer instruction or related services leading to one or more academic degrees under the standards in OAR 583-030-0035 shall submit to the Office annually, with a form provided in the fall, a brief report of activities and planning in the academic or fiscal year just ended. In its report, the school shall describe any important changes in academic or administrative policies, facilities or locations of instruction, and organization or personnel. The school shall also supply data requested on state and federal forms provided by the Office, including forms for the Integrated Postsecondary Education Data System (IPEDS), together with current catalogs and the latest independent financial audit not previously submitted. Between annual reports, the school shall send to the Office promptly the resumes of new owners, governing board members, officers, or administrators or teachers serving Oregon students, and shall send immediately the details of any possible or anticipated change of ownership or governance or any other matter having extensive effect on the school.

(2) A school authorized to offer instruction or related services leading to one or more academic degrees under the substitute standards provided by OAR 583-030-0037 shall report as described in the preceding paragraph, except that immediate reporting of new governing board members, officers, administrators, or teachers is not required. The reporting of any possible or anticipated change of ownership or governance or other major change should be immediate.

(3) A non-Oregon school authorized to offer instruction or related services leading to one or more academic degrees but without resident instruction in Oregon, under OAR 583-030-0036, shall submit to the Office annually, with a form provided in the fall, a brief report of activities and planning in the academic or fiscal year just ended, insofar as Oregon students would be affected. In its report, the school shall describe as they might affect Oregon residents any important changes in academic or administrative policies, facilities or locations of instruction, and organization or personnel. The school shall also supply Oregon enrollment and degrees-granted data on a state form provided by the Office, together with current catalogs and the latest independent financial audit not previously submitted. IPEDS reports will not be made through Oregon. Between annual reports, the school shall send to the Office immediately details of any possible or anticipated change of ownership, governance, curriculum, Oregon site coordinator, or other matter having potential importance to Oregon students.

(4) A school approved to offer exempt religious degrees under OAR 583-030-0010(2) will use the same forms as standard schools.

(5) An authorized or exempted degree-granting school shall continue during the period of its authorization or approved exemption to respond promptly to Office requests for general or particular information and shall supply the information as directed.

(6) A school that ceases to offer any authorized or exempted degree or the instruction related thereto, other than during regular academic recesses, shall notify the Office immediately and not reinstate the degree program without permission.

Stat. Auth.: ORS 348.594 & 348.606

Stats. Implemented: ORS 348.594, 348.603, 348.606

Hist.: EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thur 7-30-04

583-030-0046

Fees and Expenses

(1) Each application from a school seeking new or renewed authorization to confer or offer to confer a degree, or through instruction or related services to provide academic credit applicable to a degree, shall be

ADMINISTRATIVE RULES

accompanied by payment of a fee to the "State of Oregon ODA." There is no entitlement to refund of a paid fee under any circumstances. The fee is intended to recover the expenses of carrying out a review and providing services to a school during its period of authorization.

(2) The fees reflect proportionately, though not in sum, the usual demands of adequate review plus subsequent service.

Basic fee schedule for ODA reviews
Doctoral degrees — \$5,500
Masters degrees — \$4,150
Bachelors degrees — \$4,150
Associate degrees — \$2,750
External degrees — \$250 minimum, \$1000 maximum

(a) External degrees. The base fee for an external degree or free-standing certificate is \$250, with a higher fee not to exceed a total of \$1000 possible if the application appears likely to pose complex questions requiring additional staff time or professional consultation.

(b) Certificates. No fee is charged when an institution with an approved degree wants to add a certificate in the same field.

(c) Fee discounts.

(A) In reviewing simultaneous application for two or more degrees, the Office at its discretion may reduce the fee for review of a degree that is closely related in type and content to one for which the full fee is paid. Such a reduction ordinarily depends on the provision of instruction by a single faculty for both degrees.

(B) The Office at its discretion may also reduce the fee when institution size, low faculty and administrative turnover, stability of ownership or board membership or other factors substantially reduce staff time required for evaluation and subsequent oversight and service. Such reductions are limited to 20 percent below the basic fee.

(C) The fee for religious-exempt schools shall be 15 percent less than the standard fee, independent of any other discounts, because staff time spent on the reviews will be somewhat less than for a standard school.

(3) Application from a school for authorization to offer instruction or related services providing academic credit applicable to a degree offered only by another school or schools shall be accompanied by fees proportionate to those established in the paragraph immediately above. However, such fees may be discounted at the discretion of the Office to reflect a program of reduced dimension if and only when the necessary review analysis is concomitantly reduced.

(4) When the Office finds it necessary to pay an expert outside consultant for assistance in reviewing an application, or when it incurs other unusual expenses in the course of review, all costs thus incurred may be charged to the applicant school in addition to the basic fee.

Stat. Auth.: ORS 183 & 348
Stats. Implemented: ORS 348
Hist.: ECC 1-1982(Temp), f. & cert. ef. 3-12-82; ECC 2-1982, f. & cert. ef. 9-8-82; EPP 1-1988, f. & cert. ef. 1-7-88; EPP 1-1993, f. & cert. ef. 6-28-93; EPP 1-1995, f. & cert. ef. 10-6-95; EPP 1-1996, f. & cert. ef. 8-7-96; SSC 1-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 1-2000, f. & cert. ef. 2-29-00; ODA 1-2001, f. & cert. ef. 6-27-01; ODA 1-2003, f. & cert. ef. 4-16-03; ODA 4-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 2-2004(Temp), f. & cert. ef. 2-11-04 thur 7-30-04

Adm. Order No.: ODA 3-2004

Filed with Sec. of State: 2-13-2004

Certified to be Effective: 2-13-04

Notice Publication Date: 1-1-04

Rules Amended: 583-040-0025

Subject: Proposed revisions to shorten and simplify the adverse impact program approval process used by the Office of Degree Authorization.

Rules Coordinator: Susan Taylor—(541) 687-7443

583-040-0025

Review Procedure

The ultimate governing board of a school or system that may propose or oppose new publicly funded postsecondary programs and locations must ensure conformity to the following procedure:

(1) A proposing board, or its school by delegation, shall notify other potentially affected segments and the Office of its intent to propose a new postsecondary program or location. Each sector of Oregon postsecondary education must designate at least two recipients for this notice. Notice served upon these recipients by letter or e-mail shall meet the notice requirements of these rules for all potentially affected schools in each sector. Notice shall be given at least 16 days before the proposing board intends to ratify the proposal and in a manner approved by the Office. If an objection is filed, then board ratification shall be postponed until the adverse impact claim has been resolved. Multiple sites, geographic regions

or statewide service for a program may be listed in a single notice at the proposing institution's option. Only sites or regions included in this notice shall be considered proposed locations.

(2) In order to exercise rights under this rule, a school or segment concerned that apparent duplication might be detrimental must respond to the proposer and give a response copy to the Office within 15 days of receiving the notice of intent to propose a new program or location.

(3) The proposing school shall contact within 7 days of receiving an objection any responding school that says it may be affected. Within 15 days of being contacted every responder must join the proposer for informal discussion among school officers constituting an effort to resolve all concerns. The parties may jointly invite the Office or any advisory panel to enter the discussion as a resource and mediator. Lacking agreement, the proposer if it so chooses may postpone board ratification up to the time limit set by step 8 below. The proposer must notify ODA and the objector of its intentions.

(4) If agreement is not reached informally, a school that anticipates damage because of the proposer's latest declaration of intent may within 15 days of the meeting required in section 3 submit to the Office and the proposing school a written demur to explain why it anticipates damage and to question where applicable the proposer's projections for enrollment, internships, or job placement of graduates. The Office may advise withdrawal of the responder's demur if it is not found persuasive.

(5) Within 15 days after receiving a demur that is not subsequently withdrawn, the proposing school if it so chooses may respond in writing so as to restate or offer modification of its proposal. A copy of any such communication must be provided to ODA.

(6) If unsatisfied with a proposer's response, the demurring school or schools may within 15 days of receipt continue demurrals by replying in writing to argue for withdrawal or specific modification of the proposal.

(7) If no agreement emerges from the exchange of written ideas, the Office will within 15 days convene the disagreeing schools for a discussion of quality of evidence on all sides and formal negotiations. Staff members of the ultimate governing boards may attend. At any stage of negotiations, the Office may recommend acceptance of the proposal in its latest form or upon request by all parties may assemble a review panel of academic experts having no conflict of interest to assist and advise the parties.

(8) If negotiation at the institutional level fails to produce complete agreement, the proposing school shall either withdraw the proposal or within 60 days of the meeting required in section 7 obtain a decision from its ultimate governing board as to whether the board wishes to go forward with the proposal in some form after acquiring full knowledge of objections by responders. The ultimate governing board shall report its decision immediately to the Office.

(9) If the decision of the proposer's ultimate governing board does not satisfy the ultimate governing board of every demurring school, the Office shall recommend a resolution to the boards. If the boards do not all accept the recommendation, the Commission shall appoint a mediator to mediate between their representatives to seek a negotiated resolution at the board level.

(10) If negotiation between board representatives does not produce agreement within 90 days of the date that the issue was referred to the boards for mediation under Section 9, the Office shall refer the question with accompanying record for decision by the Commission, which may at its discretion arrange to have one or more commissioners hear arguments in review but shall not receive any evidence not already in the record as distributed by the Office to all parties before mediation. The Commission must act within 180 days of the date that the issue is referred to ODA for a recommendation as set forth in section (7) above. The Commission must approve the proposed program if the proposing school proves that it meets an unmet workforce need in the state.

(11) A final program review decision made by the Commission and issued through the Office is an agency order other than contested case, which may therefore be appealed by any engaged board, through petition for review without jury to the Circuit Court for Marion County or to the circuit court in the county where petitioner resides.

(12) Nothing in these rules precludes OSAC through ODA from encouraging and accepting agreements among all potentially affected sectors regarding new programs and locations in situations in which such agreements are a more effective and efficient way to establish and improve post-secondary service to Oregonians than program-by-program notice and response.

Stat. Auth.: ORS 348.603
Stats. Implemented: ORS 348.603
Hist.: ECC 24, f. & cert. ef. 1-19-76; SSC 2-1997(Temp), f. & cert. ef. 8-25-97; ODA 2-1998, f. & cert. ef. 8-12-98; ODA 4-2000, f. & cert. ef. 11-13-00; ODA 2-2003, f. 10-29-03, cert. ef. 11-1-03; ODA 3-2004, f. & cert. ef. 2-13-04

ADMINISTRATIVE RULES

Oregon Watershed Enhancement Board Chapter 695

Adm. Order No.: OWEB 1-2004

Filed with Sec. of State: 1-26-2004

Certified to be Effective: 1-26-04

Notice Publication Date: 10-1-03

Rules Adopted: 695-020-0098

Rules Amended: 695-020-0020, 695-020-0092, 695-020-0093, 695-020-0094, 695-020-0095, 695-020-0096, 695-020-0097

Subject: Revision to rules governing grant awards in the Oregon Watershed Enhancement Board's Small Grant Program, along with the addition of a new section on Ineligible Project Types (OAR 695-020-0098).

Rules Coordinator: Bonnie King—(503) 986-0181

695-020-0020

Small Grant Program Definitions

(1) "Affected City" means any city within which all or part of a watershed enhancement project funded by the Board would be located.

(2) "Affected County" means any county within which all or part of a watershed enhancement project funded by the Board would be located.

(3) "Board" means Oregon Watershed Enhancement Board.

(4) "Director" means the executive director of the Oregon Watershed Enhancement Board.

(5) "Educational Advisory Committee," or "EAC," is a continuous committee comprised of representatives from agencies and natural resources boards or commissions with representation on the Board and others with environmental, industrial or agricultural interests.

(6) "Grant Agreement" is the legally binding contract between the Board and the grant recipient. It consists of the conditions specified in OAR 695-020-0080, the notice of grant award, special conditions to the agreement, a certification to comply with applicable state and federal regulations, the project budget and the approved application for funding the project.

(7) "Maintenance" means those activities and actions necessary to sustain the useful life of a constructed watershed improvement. Maintenance does not include those activities necessary to establish the improvement.

(8) "Non-Structural Methods" are those which rely on strategies other than the creation and installation of structures to meet the project goals.

(9) "Regional Review Team" is a team of designated personnel with regional knowledge and interdisciplinary expertise drawn from agencies represented on the Board and other entities to evaluate regional grant applications. The composition of regional review teams may be changed by the Director.

(10) "Technical Advisory Committee," or "TAC," is a continuous committee of the Board comprised of designated personnel from the Oregon Departments of Forestry, Fish and Wildlife, Water Resources, Environmental Quality, Agriculture and the Oregon State University Extension Service; USDA Forest Service, USDI Bureau of Land Management; and the USDA Natural Resources Conservation Service and other members invited by the Director to participate in Committee activities.

(11) "Watershed Action Plan Project" means a project that identifies and prioritizes potential action that would benefit watershed conditions based on problems identified in a watershed assessment.

(12) "Watershed Assessment Project" means a project that systematically reviews existing information about watershed conditions and processes such as erosion rates, pollution sources, fish habitat conditions, riparian conditions, culvert fish passage problems, etc., and relates those conditions and processes to desired future conditions.

(13) "Watershed Council Support" means a grant that supports the capacity of a watershed council or group of watershed councils to conduct the activities necessary for the watershed protection, enhancement, and restoration work of the council(s). This support may include coordinator salary and benefits, operating costs, and grant administration costs.

(14) "Watershed Education Project" means a project whose primary purpose is to communicate information about watersheds. It may be a workshop, demonstration project, a planned course of study, or the implementation of a public awareness strategy.

(15) "Watershed Management Project" means a project that involves an on-the-ground element such as: riparian planting, fish habitat construc-

tion, wetland restoration, livestock grazing plans, water conservation projects utilizing the state Conserved Water Program, etc.

(16) "Watershed Monitoring Project" means a project that identifies conditions in the watershed. It may be for the purpose of gathering baseline data on current conditions, for evaluation of the specific effects of management actions, or for comparing similar watershed components before and after a project.

(17) "Land or Water Acquisition Project" means a project, or part of a project, that proposes acquiring an interest in land or water from a willing seller for the purpose of protecting and/or restoring native salmonids, fish and wildlife habitat, watersheds, or water quality in Oregon.

(18) "Partners" are non-governmental or governmental persons or entities that have committed funding, expertise, materials, labor, or other assistance to a proposed project.

(19) "Land Acquisition Advisory Committee" (LAAC) is a committee comprised of three or more individuals with expertise relating to the acquisition of interests in land, appointed by the Director of the Oregon Watershed Enhancement Board. The LAAC will review the documents submitted by grant applicants relating to the transfer of a land interest such as the preliminary title report, the fair market value appraisal, the terms of the acquisition and the hazardous materials report, and make a recommendation to the Board.

(20) "Water Acquisition Advisory Committee" (WAAC) is a committee comprised of three or more individuals with expertise relating to the acquisition of interests in water, appointed by the Director of the Oregon Watershed Enhancement Board. The WAAC will review the documents submitted by grant applicants relating to the transfer of a water interest such as the appraisal, a statement from the Oregon Water Resources Department, and the applicant's proposal for protecting instream flows, and make a recommendation to the Board.

(21) "Ecoregion" means a large area of land or water that contains a geographically distinct assemblage of natural communities that:

(a) Share a large majority of their species and ecological dynamics;

(b) Share similar environmental conditions; and

(c) Interact ecologically in ways that are critical for their long-term persistence.

(22) "Small Grant" is a grant awarded for an eligible watershed restoration project by a Small Grant Team for up to 75 percent of the project costs. A Small Grant may not exceed \$10,000.

(23) "Small Grant Team" (Team) is a group of people formed in each Small Grant Area to recommend funding for watershed restoration projects.

(24) "Small Grant Area" is a geographic area established by the OWEB Board in which a Small Grant Team may form to administer a Small Grant Program.

(25) "Program Grant" is a grant from OWEB to a Small Grant Team to recommend as eligible Small Grants of up to \$10,000 within the Small Grant Area.

(26) "Program Grant Agreement" is a grant agreement between OWEB and a Small Grant Team regarding the allocation of Small Grant funds within a Small Grant Area by the Small Grant Team using OWEB funds.

(27) "Project Evaluation Committee" (Committee) is a group of Small Grant Team members designated by vote of the Team to evaluate Small Grant Project applications received and to make Small Grant Project award recommendations based upon the Team's adopted priority watershed concerns and eligible project types. A Team may by unanimous vote decide not to designate a Committee.

(30) "Program Administration" refers to all efforts made by Teams or individual team members on behalf of applicants or the Small Grant Team prior to a project grant award recommendation. No program administration costs may be included in Small Grant project grant awards.

(31) The "Small Grant Fiscal Agent" is responsible for managing all expenses associated with a Small Grant Project and for reporting those expenses to OWEB in a manner consistent with OWEB fiscal reporting standards. Fiscal Agents will be councils, districts, tribes, or entities designated as eligible by the Small Grant Team in their operating procedures. A Small Grant project's eligible fiscal agent will be identified on the Small Grant Project application and in the OWEB Small Grant Project grant agreement.

Stat. Auth.: ORS 183, ORS 197 & ORS 541

Stats. Implemented: ORS 541.345 - ORS 541.395

Hist.: GWEB 3-1987(Temp), f. & ef. 9-25-87; GWEB 1-1988, f. & cert. ef. 3-31-88; GWEB 3-1989, f. & cert. ef. 7-31-89; GWEB 1-1990, f. & cert. ef. 8-8-90; GWEB 1-1997, f. & cert. ef. 10-29-97; GWEB 1-2000, f. & cert. ef. 11-15-00; OWEB 2-2001, f. & cert. ef. 6-13-01; OWEB 1-2002, f. 1-25-02, cert. ef. 2-8-02; OWEB 2-2002, f. & cert. ef. 9-26-02; OWEB 1-2004, f. & cert. ef. 1-26-04

ADMINISTRATIVE RULES

695-020-0092

Small Grant Program

(1) The Oregon Watershed Enhancement Board (OWEB) may provide funding for a locally administered Small Grant Program from its Watershed Improvement Grant Fund. Funds may be allocated for the Small Grant Program in amounts and at times decided by the Board.

(2) The goals of the Small Grant Program are to:

(a) Support implementation of the Oregon Plan for Salmon and Watersheds.

(b) Support projects designed to improve water quality, water quantity, and fish and wildlife habitat. Such projects include, but are not limited to, those developed to implement Total Maximum Daily Loads (TMDLs), Agricultural Water Quality Management Area Plans, urban nonpoint source pollution management plans, and the Board of Forestry's Forestry Program for Oregon.

(c) Make funds available to local decisionmakers to address local priority resource concerns, habitat values, and watershed functions.

(d) Encourage landowner participation in watershed improvement by making funds available more quickly than is possible through OWEB's Regular Grant Program.

(e) Treat the source of watershed health problems through technically sound projects that use proven techniques from one of the six approved sources listed in OAR 695-020-0094(2), and that demonstrate benefits to aquatic species, wildlife, or watershed health across all land uses.

(f) Encourage partnerships among watershed councils, soil and water conservation districts (SWCDs), and tribes.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541

Hist.: OWEB 1-2002, f. 1-25-02, cert. ef. 2-8-02; OWEB 1-2004, f. & cert. ef. 1-26-04

695-020-0093

Small Grant Program Administered by Small Grant Teams

(1) The OWEB Board may award program grants to eligible Small Grant Teams to enable the Teams to administer a Small Grant Program within a Small Grant Area. A Small Grant Team must submit a program grant application to OWEB on a designated form at times designated by the OWEB Board to be eligible to receive a program grant to administer a Small Grant program.

(2) Small Grant Teams will invite in writing each soil and water conservation districts (SWCD) and watershed councils located partially or entirely within the Small Grant Area, and each tribe with reservation, tribal, aboriginal, or ceded lands, or usual and accustomed sites located partially or entirely within the Small Grant Area to appoint one representative to a Small Grant Team. Participation on a Team is voluntary. A Small Grant Team must have at least two actively participating members to be eligible to allocate Small Grant funds. Each eligible Team may receive a program grant from OWEB to allocate Small Grants Project awards of up to \$10,000 for eligible watershed restoration projects consistent with local priority watershed concerns and eligible project types adopted by the team.

(3) Members of each Small Grant Team are encouraged to invite individuals with expertise in a watershed restoration discipline or other watershed restoration interests to consult with the Team on its priorities, program elements, and recommendations for project grant awards.

(4) The OWEB Board will establish Small Grant Areas for the Small Grant Program. The boundaries of the Small Grant Areas will be drawn based upon hydrologic boundaries, existing watershed restoration partnerships, and similarities in resource concerns. Only one Small Grant Team may administer a Small Grant Program in each Small Grant Area. A copy of the Small Grant Area map is available upon request from OWEB and can also be viewed on the OWEB website.

(5) A Small Grant Team may petition the OWEB Board to adjust the boundaries of Small Grant Areas. If a Team has not been formed in a Small Grant Area, an organization eligible to appoint a member to a Small Grant Team may petition the Board to adjust the boundaries of Small Grant Areas. Written approval from all Small Grant Teams affected, or if a Small Grant Team has not been formed, all entities eligible to appoint a member to the Small Grant Team in that area, is required before a boundary adjustment petition may be filed with the Board.

(6) The OWEB Board will consider all boundary-adjustment petitions once a biennium, at the time it considers reauthorizing Small Grant Program funds for the next biennium. The OWEB Board may choose to consider a boundary adjustment upon a valid motion by Board members, without petition by a Small Grant Team or organization that is an eligible Small Grant Team member. However, the OWEB Board will consult with affected Small Grant Teams, and if a Team has not been formed, eligible Team members in the area before considering the boundary adjustment. A

decision by the OWEB Board to approve a boundary adjustment will consider one of the following:

(a) The current Small Grant Area boundaries fragment existing watershed restoration partnerships;

(b) The current Small Grant Area boundaries fragment hydrologically connected areas or ecologically similar landscapes in a way that would make setting local restoration priorities difficult; or

(c) The current Small Grant Area boundaries encompass many different limiting factors for water quality, water quantity, and fish and wildlife habitat. Adjusting boundaries would improve the ability of watershed restoration partners to focus their efforts on the limiting factors with which they have expertise.

(7) Prior to submitting a program grant application to OWEB, the Small Grant Team will adopt the following program elements that will be attached as part of the program grant application:

(a) Rules of operation for administration of the Small Grant Team and the Small Grant Program, including:

(A) Rules governing decision-making and membership,

(B) Application processing and project grant agreement procedures,

(C) Designation of a public contact, and a member with authority to sign project grant agreements on behalf of the Small Grant Team,

(D) Record keeping,

(E) Processes and criteria for recommending project grant awards,

(F) Processes for evaluating the technical feasibility of projects,

(G) Processes and formats for biennial reporting,

(H) Entities, in addition to councils, districts, and tribes, designated by the Small Grant Team as being eligible fiscal agents, and

(I) Application acceptance windows.

(b) Priority watershed concerns to be addressed by the Small Grant Team;

(c) A list of project types most likely to effectively address the local watershed concerns adopted by the Small Grant Team. This list must be consistent with the list of eligible project types in OAR 695-020-0096(4). Teams wishing to add project types not on the list need to petition OWEB for their eligibility in their Small Grant Area. The proposed project type needs to demonstrate to the satisfaction of the OWEB Director a clear watershed benefit for the Small Grant Area. It must also be consistent with the team's adopted priority watershed concerns, and must be referenced to one of the six approved technical guidance sources listed in OAR 695-020-0094(2).

(8) The program elements adopted by the Small Grant Team will be included as an attachment to the program grant application to OWEB from the Small Grant Team. A program grant to a Small Grant Team to administer a Small Grant Program will not be awarded until the Team has adopted the required program elements.

(9) In identifying priority watershed concerns, the Small Grant Team will consider current information on the condition of the watershed and its limiting factors to support native fish and to meet water quality standards. The priority watershed concerns should be adopted with reference to documents addressing the limiting factors to: 1) Clean Water Act standards as identified in Total Maximum Daily Load Water Quality Management Plans and in Agricultural Water Quality Management Area Plans; and to 2) watershed assessments and action plans, other watershed analyses, the Oregon Forest Practices Act, and soil and water conservation district annual work plans and long-range business plans. Priority watershed concerns and the list of eligible project types adopted by the Small Grant Team will address the source of watershed health problems, and not the effects.

(10) Small Grant Teams may designate members of the Team as a Project Evaluation Committee to evaluate Small Grant Project applications in lieu of the entire Team. If established, this Committee will have equal representation from soil and water conservation district and watershed council Team members. The Team, or if designated, its Committee, will select applications to recommend for funding based on its priority watershed concerns, eligible project types, and the technical merits of the project. The Small Grant Team, or if designated, the Committee, is encouraged to invite technical experts to assist in the evaluation of proposed projects.

(11) Each Small Grant Team will develop application evaluation criteria that will be based on the questions asked in the application, as well as on additional evaluation considerations listed by teams in their operating procedures. Evaluation criteria will be attached to a Team's operating procedures. Teams will make available to applicants the evaluation criteria along with the Team's list of priority watershed concerns and eligible project types.

(12) Small Grant Teams will establish in their operating procedures two-week windows throughout the OWEB fiscal year during which they

ADMINISTRATIVE RULES

will receive applications. At a maximum, two-week windows will be open 12 times in the OWEB fiscal year, and teams or their designated committee will act upon complete applications within 30 days of their receipt. At a minimum, two-week windows will be open four times during the OWEB fiscal year, and teams or their designated committee will act upon complete applications within 30 days of the close of each application period.

(13) Small Grant Teams may write their own project grant agreements, using an OWEB-provided template, or they may forward the approved application and materials to OWEB for processing of the project grant agreement. The OWEB Director reserves the discretion to alter this arrangement as necessary.

(14) OWEB has 20 working days after receipt of these materials to verify that the approved application is consistent with the Team's local priorities and with OWEB's statute and administrative rules. Upon verification, and depending on the grant agreement arrangement made with OWEB, OWEB will either send an original project grant agreement, or will return a fully executed project grant agreement, to the project manager for the grantee, listed in the project grant agreement. OWEB will keep the original project grant agreement on file, and the project manager for the grantee will be responsible for, depending on the grant agreement arrangement with OWEB, securing signatures and providing copies to all signatories. Signatories to the OWEB project grant agreement will include the grantee; a representative of the Small Grant Team; a representative of OWEB; and a Fiscal Agent for the grantee, if different from the grantee. A project grant agreement is not valid until all signatories to the agreement have signed. Project grant agreements must be signed within 90 days of the first signature on the grant agreement, or they will be considered void. Work will not begin on a project until a project grant agreement is valid. OWEB will make Small Grant Project award payments directly to the fiscal agent designated in the Small Grant Project agreement.

(15) Project maintenance and effectiveness monitoring are the responsibility of the landowner. OWEB will not pay for either, and applicants may not use any planned post-project maintenance and effectiveness monitoring as match for the OWEB project grant. However, applicants may budget for plant establishment (i.e., weeding and watering of plants over time to improve chances of successful establishment) in the Small Grant Project application, or they may put the amount estimated for plant establishment toward the required 25 percent match. OWEB will pay for no more than two years of post-project plant establishment, or up to \$500 for two years, which is paid for in the final payment request.

(16) The Small Grant Team will be responsible for providing the Oregon Watershed Enhancement Board and the Soil and Water Conservation Commission with a summary report prior to the end of each OWEB biennium that:

(a) Addresses how the Team's funded projects:

(A) Generally demonstrate clear watershed benefit to aquatic species, wildlife, or watershed health.

(B) Specifically met local priority watershed concerns and Agricultural Water Quality Management Area Plans.

(b) Evaluates the effectiveness of the Team's:

(A) External interactions with landowners, applicants, grantees, project partners, and OWEB Small Grant Program staff (i.e., the challenges that faced the team with each of these groups and whether the team was successful at resolving them).

(B) Internal interactions with each other (i.e., the challenges that faced the team and whether the team was successful at resolving them).

(c) Attaches the following:

(A) Tracking sheets for recommended and denied applications for the current biennium.

(B) Revised operating procedures, priority watershed concerns, or eligible project types for the coming biennium, if any.

(17) The OWEB Director may authorize an independent performance audit of any Small Grant Team, and if the Director determines the Team is not complying with the rules of the Small Grant Program, may restrict future team funds.

(18) Small Grant Teams will retain unsuccessful and successful applications, as well as meeting records for a period of five years.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541

Hist.: OWEB 1-2002, f. 1-25-02, cert. ef. 2-8-02; OWEB 1-2004, f. & cert. ef. 1-26-04

695-020-0094

Small Grant Program Application

(1) A Small Grant applicant may be any person, tribe, watershed council, soil and water conservation district, not-for-profit institution, school, community college, state institution of higher education, independ-

ent not-for-profit institution of higher education, or political subdivision of this state that is not a state agency. A state agency or federal agency may apply for funding under this section only as a co-applicant with one of the other eligible entities.

(2) Small Grant Project applications submitted to the Small Grant Team will include a completed application form provided by OWEB, and will use technical guidance from at least one of the six sources listed below. Small Grant Project applicants will cite in the application the practice code(s), or the page number and paragraph, for the technical guidance source listed. The Small Grant Team will verify the citation. If technical guidance and standards for a project are not available from one of these sources, the project is not eligible for funding under the Small Grant Program.

(a) The Natural Resource Conservation Service (NRCS) Field Office Technical Guide, and local cost share list.

(b) A Guide to Placing Large Wood in Streams (Oregon Department of Fish and Wildlife and Oregon Department of Forestry 1995).

(c) The Oregon Road/Stream Crossing Restoration Guide (Oregon Department of Forestry, Spring 1999).

(d) Forest Practices Technical Note No. 4: Fish Passage Guidelines for New and Replacement Stream Crossing Structures (Oregon Department of Forestry, May 10, 2002).

(e) Forest Practices Technical Note No. 5: Determining the 50-Year Peak Flow and Stream Crossing Structure Size for New and Replacement Crossings Structures (Oregon Department of Forestry, May 10, 2002).

(f) The Nonpoint Source Pollution Control Guidebook for Local Government (Oregon Department of Environmental Quality and Oregon Department of Land Conservation and Development 1994).

(3) Only watershed councils, soil and water conservation districts, tribes, and entities designated as eligible by the Small Grant Team in their operating procedures may serve as fiscal agents for a Small Grant Project.

(4) The application budget is the Small Grant applicant's statement of how OWEB funds will be spent. Should the Small Grant Team be approve the application for funding, the grantee will only be able to bill OWEB for the line items appearing in the OWEB column in the application budget. Grantees wishing to change either line items or line item amounts must first request permission from OWEB.

(5) The applicant will sign the application. The landowner, if not the applicant, will sign either the application or a cooperative landowner agreement provided by the team. Teams will keep the original cooperative landowner agreement on file, and all signatories, plus OWEB, will be provided copies. Project funds will not be released until OWEB has either the landowner's signature on the application or a signed copy of the cooperative landowner agreement.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541

Hist.: OWEB 1-2002, f. 1-25-02, cert. ef. 2-8-02; OWEB 1-2004, f. & cert. ef. 1-26-04

695-020-0095

Small Grant Program Grants

(1) Prior to the disbursement of any Small Grant Project funds, the grantee must sign a Small Grant Project agreement containing such terms and conditions as may be deemed necessary by the Director to ensure that the expected benefits of the project are realized, and that applicable legal requirements and any special conditions of the Board with regard to particular grants are met.

(2) Each Small Grant Project awarded will be limited to a maximum of \$10,000 per project, per landowner, per OWEB fiscal year, including technical assistance and fiscal administrative expenses.

(3) Fiscal administrative expenses included in each Small Grant Project may not exceed 10 percent of the OWEB grant amount for direct project costs. However, project grants for a total of \$2,000 or less may include fiscal administrative expenses up to \$200, not to exceed the total amount awarded.

(4) Travel expenses directly related to project implementation are eligible for funding under the Small Grant Program, subject to OWEB review and approval. Travel expenses will be reimbursed only in accordance with rates approved by the Department of Administrative Services and which are in effect at the time the expense was incurred. The grantee must identify the reason or purpose for all travel expense reimbursement requests. No mileage reimbursement will be paid for the use of motorcycles or mopeds. The Small Grant Program will not reimburse for meals, lodging, or out-of-state travel.

(5) Equipment purchases directly related to project implementation are eligible for funding under the Small Grant Program, subject to OWEB review and approval. However, OWEB discourages the use of limited

ADMINISTRATIVE RULES

Small Grant Project funds on equipment purchases, and instead encourages Teams to work with applicants to obtain equipment through other means, such as borrowing or renting. Following project completion, equipment purchased with OWEB funds will reside with any of the following: watershed council, soil and water conservation district, tribe, local government, or a school district. These entities will make the equipment available to each other at no cost, other than nominal maintenance costs.

(6) Small Grant Project award recipients must provide evidence of at least 25 percent secured match for the Small Grant Project award prior to disbursement of grant funds by including a signature of commitment from the entity(ies) providing match on the OWEB Secured Match Form. Match must be current and specific to the Small Grant Project. The same match may not be used for multi-phased projects, unless it is divided among the phases. Applicants may attach the completed match form to their application or they may submit the form with their first grant award payment request. Disbursement of the final grant award payment requires evidence of actual match contributed, shown on the Actual Match Form. Match may include labor, volunteer time, technical assistance, materials or services provided, donated property, or cash. OWEB funding may not be used as match for a Small Grant Project funded by OWEB.

(7) All Small Grant Projects will be completed within 24 months from the date of team approval of the application. No project completion extensions beyond 24 months will be allowed.

(8) Upon project completion, the grantee will provide OWEB and the Small Grant Team with a copy of the Project Completion Report and color photographs.

(9) The following standards will be applied to each Small Grant Project payment:

(a) Each Small Grant award will be disbursed in no more than two payments.

(b) The first payment may consist of an advance of up to 60 percent of the Small Grant award upon presentation of a detailed estimate of expenses for a specified time period.

(c) No funds may be released until submission of evidence that all required permits and licenses for the project have been granted.

(d) The second and final payment will not be disbursed until OWEB receives from the grantee through the designated fiscal agent:

(A) Receipts and invoices for expenditures of previous fund releases, and receipts and invoices supporting the new fund release request,

(B) A spreadsheet, documenting all project expenses,

(C) A completed Actual Match Form, showing all project match, which must total at least 25 percent of the amount actually spent on the Small Grant Project,

(D) A satisfactory Project Completion Report with color photographs of the project site, and

(E) A current Oregon Watershed Restoration Reporting Form, showing among other things, evidence of actual match contributed.

(10) Two years following project completion, the individual designated in the project application will provide OWEB and the local Small Grant Team with a Year-Two Status Report. Applicants may budget for this in the OWEB application, or they may put the amount toward the required 25 percent match funds by choosing not to budget for it in the OWEB application.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541

Hist.: OWEB 1-2002, f. 1-25-02, cert. ef. 2-8-02; OWEB 1-2004, f. & cert. ef. 1-26-04

695-020-0096

Eligible Small Grant Projects

(1) The Small Grant Program will fund only those projects that:

(a) Demonstrate in the Small Grant Project application a clear watershed benefit to aquatic species, wildlife, or watershed health.

(b) Are consistent with the local Small Grant Team's priority watershed concerns, as identified in their program grant agreements with OWEB.

(c) Adhere to OWEB administrative rules, OAR 695-020-0010-695-020-0110 and 695-025-0010-695-025-0050.

(d) Meet the definition of "capital expenditure" under ORS 541.351(4).

(e) Are implemented in a manner consistent with the Oregon Aquatic Habitat Restoration and Enhancement Guide.

(f) Use and clearly identify in the small grant application technical guidance from at least one of the six approved sources in OAR 695-020-0094(2), and cite in the application the practice code(s), or the page number and paragraph, for the technical guidance source listed.

(2) Small Grant Projects to be completed in phases on the same property are eligible for Small Grant Project funding, provided only one phase is submitted for funding consideration per OWEB fiscal year, and provid-

ed all phases occur at different locations on the property. In general, OWEB encourages multi-phased project applications to be submitted through the OWEB Regular Grant Program.

(3) Teams must select from the following list when identifying priority watershed concerns for their Small Grant Area:

(a) Instream Process and Function

(b) Fish Passage

(c) Urban Impact Reduction

(d) Riparian Process and Function

(e) Wetland Process and Function

(f) Upland Process and Function

(g) Water Quantity/Irrigation Efficiency

(h) Road Impact Reduction

(4) The following project types are eligible for funding. Teams are encouraged to be strategic in identifying eligible project types in an effort to better support salmon recovery objectives and Agricultural Water Quality Management Area Plans. Teams may petition OWEB to allow project types not appearing on the list, as described in OAR 695-020-0093(7)(c).

(a) Instream Process and Function

(A) Improve Instream Habitat: place large wood, boulders, or salmon carcasses

(B) Manage Erosion: bioengineer stream banks, slope stream banks, or develop water gaps

(C) Eradicate Exotic Aquatic Species

(b) Fish Passage

(A) Remove Irrigation or Push-Up Dams: install alternatives (e.g., infiltration galleries, point-of-diversion transfers) or convert from gravity diversion to pumps

(c) Urban Impact Reduction

(A) Install storm water runoff treatments (e.g., create bioswales, green roofs)

(B) Create Off-Channel Flood Storage

(C) Employ Integrated Pest Management

(d) Riparian Process and Function

(A) Manage Nutrient and Sediment Inputs: fence out livestock, develop off-channel watering (in combination with fencing riparian area), or redirect effluent

(B) Manage Vegetation: plant or seed native riparian species, propagate native riparian plants, or control weeds in conjunction with a restoration project

(C) Employ Integrated Pest Management

(e) Wetland Process and Function

(A) Manage Nutrient and Sediment Inputs: fence out livestock or develop alternative watering sites

(B) Manage Vegetation: control weeds (in conjunction with a restoration project), or plant native wetland species

(C) Restore Wetlands: excavate or remove fill, or eliminate drainage structures

(D) Employ Integrated Pest Management

(f) Upland Process and Function

(A) Manage Erosion: terrace land, employ laser leveling, create wind-breaks, install sediment basins, develop filter strips, manage mud (e.g., gravel high-use areas, develop paddocks), or reduce tillage

(B) Manage Nutrient and Sediment Inputs: redirect effluent, cover manure storage areas where not required by permit, order, or enforcement action, or develop off-channel watering sites (e.g., develop springs, install water pumps, install wells)

(C) Manage Vegetation: reduce fuel loads (e.g., prescribed burning, non-commercial thinning), control/remove juniper (except late-seral/old growth), plant or seed native upland species (or native beneficial mix), or control weeds (in conjunction with a restoration project)

(D) Employ Integrated Pest Management

(g) Water Quantity/Irrigation Efficiency

(A) Recharge Groundwater: roof water harvesting

(B) Implement Irrigation Practices that result in decreased water use and in any of the following: measurable increased instream flow, increased groundwater level, or improved water quality (e.g., pipe existing ditch, install drip or sprinkler systems, install automated soil moisture monitors, or recover or eliminate tail water)

(h) Road Impact Reduction

(A) Decommission Roads

(B) Improve Surface Drainage

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541

Hist.: OWEB 1-2002, f. 1-25-02, cert. ef. 2-8-02; OWEB 1-2004, f. & cert. ef. 1-26-04

ADMINISTRATIVE RULES

695-020-0097

Periodic Review and Evaluation of the Small Grant Program

Once a biennium, and in consultation with representatives of the Soil and Water Commission, tribes, and Small Grant Teams, OWEB will review annual reports submitted by Small Grant Teams and evaluate the need for program improvements and administrative rule changes.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541

Hist.: OWEB 1-2002, f. 1-25-02, cert. ef. 2-8-02; OWEB 1-2004, f. & cert. ef. 1-26-04

695-020-0098

Ineligible Small Grant Projects

(1) The Small Grant Program will not fund projects that:

(a) Do not demonstrate a clear watershed benefit to aquatic species, wildlife, or watershed health.

(b) Are inconsistent with the local Small Grant Team's priority watershed concerns, as identified in their program grant agreements with OWEB.

(c) Do not adhere to OWEB administrative rules: OAR 695-020-0010-695-020-0050, 695-020-0055, 695-020-0080-695-020-0097, and 695-025-0010-695-025-0050.

(d) Do not meet the definition of "capital expenditure" under ORS 541.351(4).

(e) Do not use and clearly identify in the small grant application technical guidance and standards from one of the six approved sources listed in OAR 695-020-0096(1)(e).

(f) Are at the same location as, and are identical to, projects that have already been funded, are currently being funded, or are currently being considered for funding through either the Small Grant Program or the OWEB Regular Grant Program.

(2) The following project types are ineligible for funding through the Small Grant Program:

(a) Project planning and design not done in conjunction with the implementation of funded restoration or enhancement activities.

(b) Routine maintenance.

(c) Fish screens.

(d) Constructed stream bank armoring.

(e) Development of off-channel watering systems not done in conjunction with fencing a riparian area or managing nutrient and sediment inputs in upland areas.

(f) Pond cleaning and pond creation (does not include off-channel watering systems and pump-back systems).

(g) Residential landscaping not done in conjunction with the implementation of funded riparian restoration or enhancement activities.

(h) Weed control not done in conjunction with the implementation of funded restoration or enhancement activities.

(i) Projects required as a condition of a local, state, or federal permit, order, or enforcement action (e.g., mitigation projects, manure storage and management projects that are required by a permit from ODA).

(j) Irrigation practices that do not result in decreased water use and any of the following: measurable increased instream flow, increased groundwater level, or improved water quality.

(k) Irrigation water conservation projects that propose any of the following activities:

(A) Irrigation system maintenance or renovation of existing pipe.

(B) Restoring a system that has deteriorated due to lack of maintenance and/or inadequate design.

(C) Portable pipe (does not include gated pipe) or ditch cleaning.

(D) Electrical costs resulting from conversion to pump from flood irrigation.

(l) Western juniper management that involves the removal of lateral/old growth juniper.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541

Hist.: OWEB 1-2004, f. & cert. ef. 1-26-04

Public Utility Commission Chapter 860

Adm. Order No.: PUC 5-2004

Filed with Sec. of State: 1-29-2004

Certified to be Effective: 1-29-04

Notice Publication Date: 12-1-03

Rules Adopted: 860-037-0067, 860-037-0101, 860-037-0307, 860-037-0517, 860-037-0567

Rules Amended: 860-037-0001, 860-037-0010, 860-037-0015, 860-037-0020, 860-037-0025, 860-037-0030, 860-037-0035, 860-037-

0040, 860-037-0045, 860-037-0050, 860-037-0055, 860-037-0060, 860-037-0065, 860-037-0070, 860-037-0075, 860-037-0080, 860-037-0105, 860-037-0110, 860-037-0115, 860-037-0120, 860-037-0125, 860-037-0205, 860-037-0210, 860-037-0215, 860-037-0220, 860-037-0225, 860-037-0230, 860-037-0235, 860-037-0240, 860-037-0245, 860-037-0310, 860-037-0405, 860-037-0410, 860-037-0415, 860-037-0425, 860-037-0430, 860-037-0435, 860-037-0440, 860-037-0445, 860-037-0450, 860-037-0505, 860-037-0510, 860-037-0515, 860-037-0520, 860-037-0525, 860-037-0530, 860-037-0535, 860-037-0540, 860-037-0545, 860-037-0550, 860-037-0555, 860-037-0560, 860-037-0565, 860-037-0605, 860-037-0610, 860-037-0615, 860-037-0620, 860-037-0625, 860-037-0630

Rules Repealed: 860-037-0305, 860-037-0315

Subject: This rulemaking clarifies language in existing rules, updates the Commission's telephone numbers and address, and implements five new rules based on recommendations of the Water Issues Steering Committee in its report to the Commission, August 2002. The new rules include compliance enforcement by regent appointment, acquisition adjustments, and accounting treatment of Contributions in Aid of Construction, wastewater disposal, and wastewater service charges.

Rules Coordinator: Lauri Salisbury—(503) 378-4372

860-037-0001

Scope and Applicability of Rules

(1) Adoption of these rules shall in no way preclude the Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any wastewater utility subject to these rules. Furthermore, these rules shall not in any way relieve any wastewater utility subject to them from any of its duties under the laws of this State. Upon application by a wastewater utility the Commission may relieve it of any obligations under these rules.

(2) The rules contained in this division are applicable to wastewater service provided by public wastewater utilities, as defined in OAR 860-037-0010(28) and (36), providing service in the State of Oregon.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 5-2004, f. & cert. ef. 1-29-04

860-037-0010

Definitions

As used in this Division:

(1) "Actual cost" means the direct cost of parts, materials, and labor of a specific item or project separated from indirect costs.

(2) "Applicant" means a person that:

(a) Applies for service with a wastewater utility; or

(b) Reapplies for service at a new or existing location after service has been discontinued.

(3) "Association" means an incorporated or unincorporated association of individuals or a homeowner association providing wastewater service, as defined in ORS 757.005.

(4) "Co-customer" means a person who meets the definition of "customer" and is jointly responsible with another person for payments for wastewater utility service on an account with the wastewater utility. If only one of the co-customers discontinues service in his/her name, the remaining co-customer shall retain customer status only if he/she reapplies for service in his/her own name within 20 days of such discontinuance, provided the wastewater utility contacts the co-customer or mails a written request for an application to the remaining co-customer within one business day of the discontinuance.

(5) "Commission" means the Public Utility Commission of Oregon.

(6) "Construction" includes installation of a new wastewater system or part thereof, or the alteration, repair, or extension of an existing wastewater system. The grading, excavation, and earth-moving work connected with installation, alteration, or repair of a system, or part thereof, is considered to be a part of the wastewater system construction.

(7) "Contributions in aid of construction" means any money, service, or property received by a wastewater utility for capital expenditures at no cost to the utility and with no obligation to repay the benefactor.

(8) "Cooperative" means a cooperative corporation as defined in ORS chapter 62.

ADMINISTRATIVE RULES

(9) "Cost-based" means the direct and indirect costs of a specific item or project, including overhead and a reasonable return on investment.

(10) "Customer" means any person, partnership, association, corporation, or governmental agency who has applied for, been accepted, and is currently receiving service unless otherwise noted. Notwithstanding section (2) of this rule, a customer who voluntarily terminates service and subsequently requests service with the same wastewater utility at a new or existing location within 20 days after disconnection retains customer status.

(11) "Customer service line" means that portion of the sewer pipe extending from the end of the utility service connection to the structure or premises to be served. The customer service line is purchased, installed, maintained, repaired, and replaced as necessary by the customer and at the customer's expense.

(12) "DEQ" means the Oregon Department of Environmental Quality.

(13) "Domestic wastewater" means the water-carried human waste, together with such groundwater infiltration and surface water that may be present that flow to wastewater treatment facilities from residences, buildings, industrial establishments, or other places.

(14) "District" means a corporation as defined under ORS Chapter 553.

(15) "Emergency repair" means repair of a failing wastewater system when immediate action is necessary to relieve a situation in which sewage is backing up into a dwelling or building, or repair of a broken sewer pipe. It does not include the construction of new or additional installation, expansion, alteration, or repair of a system, or part thereof that does not constitute a public health hazard.

(16) "Failing system" means a failing wastewater system or any wastewater system that discharges untreated or incompletely treated sewage or septic tank effluent, directly or indirectly, onto the ground surface, public waters, dwellings, or buildings.

(17) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(18) "Industrial/commercial wastewater" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing trade, business, or from the development or recovery of any natural resource.

(19) "Legal availability" means a wastewater system will be legally available for service if the system is not under a DEQ connection permit moratorium.

(20) "Lift or pump station" means any pump, structure, equipment, or device, used to lift sewage or effluent to a higher elevation. Lift stations are considered a part of the wastewater collection system.

(21) "Main line extension" means the extension of a main line to an area not previously served. If the main line extension is required at the request of a potential customer in order to receive service, the cost of such extension will comply with the wastewater utility's main line extension policy.

(22) "Pressure transport piping" means piping that conveys sewage or effluent under pressure into a common sewage system by means of a pump, siphon, or gravity.

(23) "Public health hazard" means a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents, including radiological, relating to sewage that are likely to cause human illness, disorder, or disability, or it is probable that the public is exposed to disease-caused physical suffering or illness due to the presence of inadequately treated sewage. These include, but are not limited to, pathogens, viruses, bacteria, parasites, toxic chemicals, and radioisotopes.

(24) "Public utility" has the meaning given the term in ORS 757.005 and 757.061. The term does not include People's Utility Districts (PUDs), municipalities, or cooperatives.

(25) "Registered dispute" means an unresolved issue between a customer or applicant and a wastewater utility that is under investigation by the Commission's Consumer Services Section or Utility Division staff, but is not the subject of a formal complaint.

(26) "Service connection" means the physical connection of the utility service line and the customer service line and that portion of the sewer pipe extending from the sewer main line to the boundary line of the customer's property, easement, public road, or street under which the sewer main line is located.

(27) "System development charge (SDC) or fee" is the infrastructure charge to all potential customers by a wastewater utility prior to service being initiated. The SDC encompasses the total cost of the wastewater system proportionately allocated to all potential customers.

(28) "Utility" means any wastewater utility, except when a more limited scope is explicitly stated.

(29) "Utility service line" means that portion of the sewer pipe between the sewer main line and the customer's property line. The utility service line is purchased, installed, maintained, repaired, and replaced as necessary by the utility and at the utility's expense.

(30) "Wastewater" means sewage or the water-carried human or animal waste from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration and surface water that may be present. The admixture of domestic and industrial waste or other by-products, such as sludge, is considered sewage.

(31) "Wastewater collection system" means all components including pipes, manholes, pumps, lift or pumping stations, and other components necessary to collect and transport domestic and/or industrial liquid waste from a community, individual, corporation, or entity that produces wastewater, sewage, or other waste treatable in a community or private wastewater treatment facility.

(32) "Wastewater service" means the collection, transportation, treatment, and disposal of wastewater for the public or any other beneficial or necessary purpose. Wastewater service does not include septic pumping.

(33) "Wastewater system" means any structure, equipment, or process required to collect, carry away, and treat sewage, including pipe or conduits, lift or pump stations, main lines, and other structures, devices, appurtenances, and facilities used for collecting, treating, or disposing of wastewater, or for collecting or conveying sewage to an ultimate point for treatment and disposal.

(34) "Wastewater treatment facilities" includes all pipes, pumps, canals, lagoons, plant, structures, and appliances, and other real estate, fixtures, and personal property owned, operated, and controlled or managed in connection with or to facilitate the collection, transport, treatment, and disposal of wastewater for the public, or any other beneficial or necessary purpose.

(35) "Wastewater treatment system" means any sewage treatment system. It includes all structures, facilities, equipment, or processes for treating, neutralizing, stabilizing, and/or disposing of domestic waste and sludge, including industrial waste discharged to sewage treatment works.

(36) "Wastewater utility" means all public water utilities as defined ORS 757.005 and 757.061 that also provide wastewater service inside the boundaries of a city, either directly or through an affiliate, regardless of the number of customers receiving water or wastewater service.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005 & 757.061

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 5-2004, f. & cert. ef. 1-29-04

860-037-0015

Information for Customers and Applicants

(1) Upon request, the wastewater utility shall furnish customers or applicants with such information as is reasonable to permit such customers to secure efficient service.

(2) A wastewater utility shall keep on file and open for public inspection at its offices: complete rate schedules, contract forms, rules and regulations of the utility, and a copy of the Commission's rules and regulations.

(3) Upon request, the wastewater utility shall supply a copy of its approved tariffed rates applicable to the type or types of wastewater service furnished to the customer by the wastewater utility.

(4) When service is initiated and not less than once each year thereafter, a wastewater utility shall give its customers a written summary of the customers' rights and responsibilities, as they relate to the wastewater utility providing service. If service is initiated without a personal contact between the utility and the customer, the wastewater utility shall mail the summary to the customer no later than when the first bill statement is mailed. The summary shall include the text approved by the Commission's Consumer Services Section and describe:

(a) The customer's option to designate a third party to receive bills and notices and the availability of notices in languages other than English;

(b) Special payment options such as equal payment plans. Any late-payment charges shall be explained, along with the availability of any preferred billing date option;

(c) Procedures for conflict resolution, including how to register a dispute with the utility and with the Commission and the toll-free number of the Commission's Consumer Services Section: 1-800-522-2404 or TTY 711.

(5) When service is initiated, the wastewater utility shall inquire if the customer would like to receive notices in a language other than English and will inform the customer of the types of notices and translations currently available. If the language chosen is not available, the utility will inform the customer or applicant that the translated version does not yet exist, but that

ADMINISTRATIVE RULES

the customer or applicant's interest will be recorded for the Commission. Each utility shall report to the Commission the number of requests for notices and summaries in non-English languages. The report shall specify the number of requests for each language.

(a) The Commission will translate the Rights and Responsibilities Summary for Oregon Utility Consumers into the designated non-English languages and provide copies to the wastewater utilities. The information published by a wastewater utility pursuant to OAR 860-037-0015 shall prominently display the following statement in the designated non-English languages at the beginning of the summary and be printed in boldface: A version of the Rights and Responsibilities Summary for Oregon Utility Consumers printed in this language is available by calling (name of utility) at (phone number).

(6) Each wastewater utility shall maintain a business location and a regular telephone number at which it may be contacted directly by customers, applicants, or the Commission during its regular business hours. The utility shall respond to nonemergency customer inquiries, complaints, and service problems within a reasonable time period. For purposes of this rule, a reasonable time period is considered to be within 24 hours.

(7) Each wastewater utility must provide a means by which it may be contacted at any hour in the event of a service failure or emergency or at which a customer or applicant may leave a message reporting such failure or emergency.

(8) Notices approved by the Commission shall be posted in a conspicuous place in each wastewater utility office where credit matters are transacted, setting forth the rights and responsibilities of customers under these rules. The notices shall be printed and shall be written in language that is easy to understand.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 5-2004, f. & cert. ef. 1-29-04

860-037-0020

Designation of Third Party to Receive Notices

A wastewater utility shall offer its customer or applicant the option to designate a third party to receive bills and notices set forth in these rules. When a wastewater utility receives such designation, it shall send bills and notices required under these rules to the customer's representative, with duplicate copies of disconnect notices also served on the customer.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 5-2004, f. & cert. ef. 1-29-04

860-037-0025

Dispute Resolution

(1) When a dispute occurs between a customer or applicant and a wastewater utility about any bill, charge, or service, the wastewater utility shall thoroughly investigate the matter and promptly report the results of its investigation to the customer or applicant. The wastewater utility shall prepare a written record showing the name and address of the customer or applicant involved, the date and character of the dispute, and the disposition of the matter. The utility shall retain records of the dispute pursuant to OAR 860-037-0605.

(2) The wastewater utility shall inform the customer or applicant of the right to a wastewater utility supervisory review of any dispute including, but not limited to, establishment of credit and termination of wastewater service through disconnection of water service. If a dispute is not resolved, the wastewater utility shall notify the customer or applicant of the Commission's dispute resolution procedure and its toll-free telephone number.

(3) A customer or applicant may request the Commission's assistance in resolving the dispute by contacting the Commission's Consumer Services Section at:

(a) 1-800-522-2404 or TTY 711;

(b) The Commission's mailing address: Public Utility Commission of Oregon, Consumer Services Section, PO Box 2148, Salem OR 97308-2148; or

(c) The Commission's street address: Public Utility Commission of Oregon, 550 Capitol Street NE Suite 215, Salem OR 97301-2551.

(d) The Commission shall notify the wastewater utility upon receipt of such a request.

(4) The Commission's Consumer Services Section shall assist the complainant and the wastewater utility in an effort to reach an informal resolution of the dispute.

(5) If a registered dispute cannot be resolved informally, the Commission's Consumer Services Section shall advise the complainant of the right to file a formal written complaint with the Commission. The complaint shall state the facts of the dispute and the relief requested. The wastewater utility shall answer the complaint within 15 days of service of the complaint. The matter shall then be set for hearing. A hearing may be held on less than 10 days' notice when good cause is shown.

(6) Pending resolution of the dispute, the complainant's obligation to pay undisputed amounts continues.

(7) A customer who has a registered dispute or formal complaint pending with the Commission shall be entitled to continued or restored service provided:

(a) Service was not terminated for theft of service or failure to establish credit;

(b) A bona fide dispute exists in which the facts asserted by the customer entitle the customer to service;

(c) When termination of wastewater service is based on nonpayment, the customer makes adequate arrangement to avoid future loss to the wastewater utility, such as prepaying estimated monthly wastewater utility service charges; and

(d) The customer or applicant diligently pursues conflict resolution under the Commission's rules.

(8) If the conditions in section (7) of this rule are not satisfied, the wastewater utility has no obligation to provide continued service. A wastewater utility discontinuing water service because of a customer's failure to meet the conditions of subsections (7)(c) or (7)(d) of this rule for wastewater utility service shall give the customer a five-business-day disconnect notice. The notice shall be served in the same manner as provided by OAR 860-037-0245, except that it need only describe the defect in performance, the date and time when water service will be disconnected in order to terminate wastewater service and the toll-free number of the Commission's Consumer Services Section. In deciding whether the conditions are met, the wastewater utility shall consult with the Commission's Consumer Services Section. The customer who has filed a formal complaint, the wastewater utility, or the Commission's Consumer Services Section may ask the Commission for a hearing to decide if the conditions are met. Unless extraordinary circumstances exist, the hearing will be conducted by telephone conference within three business days from the date requested. Notice of hearing will be given to the customer, the wastewater utility, and the Commission's Consumer Services Section at least 12 hours before the date and time of the hearing. Notice is effective when given in person, by telephone, or in writing delivered to the party's last known address. Mailed notice is effective two days after deposit in the U.S. mail, excluding Sundays and holidays.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.500, 756.512, 757.005 & 757.061

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 5-2004, f. & cert. ef. 1-29-04

860-037-0030

Applications for Wastewater Utility Service

(1) An application for wastewater utility service must be made when:

(a) Service is requested by an applicant who has not previously been served by the wastewater utility;

(b) Service has been involuntarily discontinued in accordance with these rules and the customer or applicant later seeks to have service restored; or

(c) Service has been voluntarily discontinued and a request to restore service has not been made within 20 days.

(2) An application is a request for wastewater utility service. The wastewater utility shall not accept an application for service until the applicant establishes credit as set forth in OAR 860-037-0035. However, the wastewater utility may refuse a service application under 860-037-0075.

(3) A wastewater utility may require an applicant to provide the following information when applying for service:

(a) The name of person(s) responsible for payment on the account;

(b) The name to be used to identify the account, if different than the actual name;

(c) The birth date of person(s) responsible for payment on the account;

(d) The social security number of person(s) responsible for payment on the account;

(e) A current valid Oregon driver license number of the person(s) responsible for payment on the account;

(f) The service address;

(g) The billing address, if different than service address; and

ADMINISTRATIVE RULES

(h) Any available telephone numbers where the applicant can be reached night and day.

(4) In lieu of providing a valid social security number or current valid Oregon driver license number under section (3) of this rule, an applicant may provide:

(a) A valid state or federal identification containing name and photograph of the person(s) responsible for payment on the account;

(b) A combination of:

(A) An original or certified true copy of his or her birth certificate;

(B) A current identification from school or employer containing a photograph; and

(C) The name, address, and telephone number of a person who can verify the applicant's identity, such as a teacher, employer, or caseworker; or

(c) Other information deemed sufficient by the utility to establish an applicant's identification.

(5) If an applicant is denied service for failure to provide an acceptable form of identification, the applicant may pursue conflict resolution under the Commission's rules.

(6) Upon request, the wastewater utility shall protect the account from access by others through the use of a personalized password or other means acceptable to both the wastewater utility and the customer.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0035

Establishing Credit for Residential Service

(1) An applicant or customer may demonstrate satisfactory credit for new or continuing service by showing any of the following, provided that a deposit is not required under section (2) of this rule:

(a) Received 12 months of continuous water or wastewater utility service type during the preceding 24 months and the new wastewater utility can verify, either by contacting the former water or wastewater utility or through an authorized letter provided by the applicant or customer, that the applicant or customer voluntarily terminated service and timely paid for all services rendered;

(b) Meets the wastewater utility's minimum credit requirements based on a third party credit report score or based on the wastewater utility's own credit scoring formula approved by the Commission; or

(c) Proof of ability to pay by providing either:

(A) Proof of employment during the entire 12 months previous to the application of service for person(s) responsible for payment on the account and a work telephone number to enable the wastewater utility to verify employment; or

(B) A statement or other documentation from the income provider or an authorized representative, that the wastewater utility can verify, indicating that the applicant or customer receives a regular source of income.

(2) An applicant or customer may be required to pay a deposit at the time of application for new or continued service when:

(a) The applicant or customer is unable to establish credit as defined in section (1) of this rule;

(b) The applicant or customer received the same type of water or wastewater utility service from it or any Oregon water or wastewater utility, as defined in ORS 757.005, within the preceding 24 months and owed an account balance that was not paid in full when service was terminated. Subsection (2)(b) of this rule does not apply to a customer who registered a dispute with the Commission within 60 days after service was terminated and who paid all undisputed or adjudicated amounts; or

(c) The applicant or customer was previously terminated for theft of service by any Oregon water or wastewater utility as defined in ORS 757.005, was found to have tampered with the meter or other water/wastewater utility facilities, or was otherwise found to have diverted water or wastewater utility service.

(3) In lieu of paying a deposit, an applicant or customer may provide the wastewater utility a written surety agreement from a responsible party to secure payment in an amount equal to two months' average usage. For purposes of section (3) of this rule, a responsible party is a customer with the same wastewater utility who meets one of the qualifying conditions outlined in section (1) of this rule. The surety agreement obligation will automatically terminate should the responsible party no longer meet the conditions set forth herein. In the event a responsible party is subsequently found not to qualify, the applicant or customer will be required to either pay a deposit or obtain a written surety agreement from another responsible party. The surety obligation ceases when the customer establishes good credit.

(4) Deposits for wastewater utility service shall not exceed one-sixth the amount of reasonable billing for 12 months at the rates then in effect. The estimate shall be based on the use of the service at the premises during the prior 12 months or on the type and size of the customer's equipment that will use the service. Each deposit shall be rounded to the nearest whole dollar.

(5) A new or additional deposit, calculated as provided by sections (4) of this rule with the most recent information available, may be required from a customer as a condition of continued service when:

(a) The wastewater utility discovers that the customer gave false information to establish an account and/or credit status;

(b) The wastewater utility discovers that the customer has stolen water or wastewater utility service, has tampered with the meter or other wastewater utility facilities, or was otherwise found to have diverted water or wastewater utility service; or

(c) A customer moves and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(6) Paying a deposit does not excuse a customer from complying with the wastewater utility's tariffs or other regulations on file with the Commission, such as the obligation to promptly pay bills.

(7) A wastewater utility may file a tariff that contains less stringent deposit requirements than those specified in this rule.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 16-2003, f. & cert. ef. 10-1-03; PUC 2-2004(Temp), f. & cert. ef. 1-9-04 thru 7-2-04; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0040

Deposit Payment Arrangements for Residential Wastewater Service

(1) When a wastewater utility requires a deposit, the customer or applicant may pay the deposit in full or in three installments. Installments shall be one-third of the deposit. The first installment is due immediately; the remaining installments are due 30 days and 60 days after the first installment payment.

(2) When a deposit installment payment or a deposit is made with a payment for wastewater utility service, the amount paid shall first be applied toward payment of the amount due for deposit.

(3) A customer who is required to pay an additional deposit shall pay one-third of the total deposit within five days. The remainder of the deposit is due under the terms of section (1) of this rule. If the customer has an existing deposit installment agreement, the remaining installment payments will be adjusted to include the additional deposit; however, two installment payments cannot be required within the same 30-day period.

(4) When a customer enters into an installment agreement for payment of a deposit under section (1) of this rule, the wastewater utility shall provide written notice explaining the deposit requirements. The notice shall specify the date each installment payment shall be due and shall include a statement printed in bold-face type informing the person that wastewater service will be terminated through disconnecting water service if payment is not received when due.

(5) If a customer or applicant fails to abide by the terms of a deposit installment agreement, the wastewater utility may disconnect water service after providing a five-business-day written notice. The notice shall comply with the requirements of OAR 860-037-0245.

(6) When good cause exists, the wastewater utility may provide, or the Commission may require, more liberal arrangements for payment of deposits than those set forth in this rule. The wastewater utility shall keep a written record of the reasons for such action.

(7) If termination of wastewater service for nonpayment of a deposit occurs, the customer or applicant disconnected shall pay the full amount of the outstanding deposit, any applicable reconnection fee, late-payment fee, and past due amount before service is restored. A customer may continue with an existing time-payment agreement by paying all past-due installments.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 5-2004, f. & cert. ef. 1-29-04

860-037-0045

Interest on Deposits for Residential and Nonresidential Service

(1) Each year, the Commission shall establish an annual interest rate that must be paid on customer deposits. The Commission will base the rate upon consideration of the effective interest rate for new issues of one-year Treasury Bills issued during the last week of October, the interest rate on the most recent issuance of one-year Treasury Bills, or the effective interest rate for the average yield of Treasury Bills of the closest term issued

ADMINISTRATIVE RULES

during the last week of October. This interest rate, rounded to the nearest one-half of one percent, shall apply to deposits held during January 1 through December 31 of the subsequent year. The Commission will advise wastewater utilities of the changes in the rate to be paid on customer deposits held as needed.

(2) Upon payment of a deposit, the wastewater utility shall provide the customer documentation showing the date, name of the customer or applicant, the service address, the amount of deposit, a statement that the deposit will accrue interest at the rate prescribed by the Commission, and an explanation of the conditions under which the deposit will be refunded.

(3) If the deposit is held beyond one year, accrued interest will be paid by a credit to the customer's account. If held less than one year, interest will be prorated. A wastewater utility shall keep a detailed record of each deposit received until the deposit is credited or refunded.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0050

Refund of Wastewater Utility Deposits

(1) A wastewater utility shall promptly refund a customer's deposit with accrued interest when service is terminated, provided a refund due shall first be applied to any unpaid balance on the customer's account.

(2) A wastewater utility may continue holding a deposit until credit is satisfactorily established or reestablished. For purposes of this rule, credit is considered established or reestablished one year after a deposit is made if:

- (a) The account is current;
- (b) Not more than two five-business-day disconnect notices were issued to the customer during the previous 12 months; and,
- (c) The customer was not disconnected for nonpayment during the previous 12 months.

(3) After satisfactory credit has been established or reestablished, the deposit plus any accrued interest must be promptly refunded or credited to the customer's account.

(4) When the customer moves to a new address within the wastewater utility's service area, the deposit and accrued interest will be transferred to the new account.

(5) Deposits plus accrued interest may be refunded or credited, in whole or in part, to the customer's account at any time earlier than prescribed in this rule, provided the wastewater utility's procedures are nondiscriminatory.

(6) Unless otherwise specified by the customer, a wastewater utility shall mail deposit refunds to the customer's last known address. The wastewater utility will honor valid claims for payment of refunds if received within one year of the date service is terminated. Funds held beyond one year after the date service is terminated will be disposed of in accordance with ORS 98.316.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 98.316, 756.040, 757.005 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0055

Installation of Wastewater Service Connection

(1) A wastewater utility shall furnish and install that portion of the sewer pipe from the sewer main to the customer's property boundary line or easement, public road, or street, under which such main is located. Such installation shall be designated as the "wastewater service connection." The wastewater utility shall own, operate, maintain, and repair or replace the wastewater service connection when necessary.

(2) A wastewater utility may require the customer to pay a reasonable wastewater service connection charge to offset its expenses listed in section (1) of this rule.

(3) The customer shall furnish, install, maintain, repair, and replace that portion of the sewer pipe from the end of the wastewater service connection to the premises served. Such installation shall be designated as the "customer service line."

(4) The utility shall not connect the customer service line until it is satisfied that the customer's plumbing is adequate.

(5) All construction and installation of the wastewater service connection and sewer pipes must comply with all applicable statutes, rules, regulations, codes, and industry standards.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0060

Installation of Main Line Extension

(1) A wastewater utility shall develop a Commission-approved uniform policy governing the amount of main line extension and applicable fee charged to the customer or applicant to receive service. This policy shall be related to the investment that can prudently be made for the probable revenue.

(2) Customers may be required to pay a reasonable, cost-based charge for any necessary main line extension to provide a service connection in accordance with the wastewater utility main line extension policy. Such policy and charges must be filed as tariffs with the Commission.

(3) Each wastewater utility shall establish a main line extension policy that includes the following:

- (a) Schedule of cost-based charges;
- (b) Advance and refund provisions that equitably collect and rebate main line extension charges to customers who contributed to the payment of the cost of the main line extension; and
- (c) The time period when advance and rebate provisions are in effect.

(4) All main line extension policies shall be applied uniformly among the wastewater utility customers and must be on file with the Commission, and made available to the public.

(5) All construction and installation of main lines and extensions shall comply with all applicable rules, regulations, codes, and industry standards.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0065

Design, Construction, and Operation

(1) The wastewater utility owner is responsible and liable for meeting the requirements for all applicable laws, rules, and codes and for the wastewater (sewage) that passes through the collection, treatment, and disposal plants.

(2) The wastewater utility owner is responsible for obtaining and maintaining all permits, licenses, approvals, design, equipment and materials selection, installation, testing, operation, and maintenance of the complete wastewater system.

(3) Each wastewater utility shall maintain and operate wastewater treatment facilities of adequate size and properly equipped to collect, transport, and treat wastewater, and discharge the effluent at the degree of purity required by the health laws of the DEQ, and all federal, state, and local regulatory agencies and authorities having jurisdiction over such matters.

(4) All materials used in construction of a wastewater system must be structurally sound, durable, and capable of withstanding normal stresses incidental to installation and operation, and will meet or exceed the industry established standards, codes, and requirements of entities having such authority.

(5) Wastewater treatment facilities shall be constructed, installed, maintained, and operated in accordance with accepted engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

(6) While prudently managing costs, the design and construction of the wastewater utility's collecting main lines, treatment plant and facilities, and all additions thereto and modifications thereof, shall meet or exceed the requirements of all regulatory authorities, construction codes, and industry standards.

(7) The capacity of the treatment facilities for the collection, treatment, and disposal of wastewater and wastewater effluent must be sufficiently sized to meet all normal demands for service and provide reasonable reserve for emergencies.

(8) Each wastewater utility shall adopt procedures for inspection of its plant and facilities to assure safe and adequate operation and shall make inspections of its plant on a regular basis. The procedures shall be filed with the Commission. The wastewater utility shall maintain a record of inspections, findings, and corrective action required and/or taken, by location and date.

(9) All components of the wastewater system must be operated and maintained so as not to create a public health hazard or cause water pollution, and without interruption, sewage spills, sewage backup, or other unhealthful conditions.

(a) The owner must establish operating procedures and maintain appropriate qualified staff and adequate inventory of necessary spare parts such as pumps, piping, electrical controls, and valves.

(b) A failing system must be immediately repaired.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061

ADMINISTRATIVE RULES

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 5-2004, f. & cert. ef. 1-29-04

860-037-0067

Wastewater Disposal

(1) The wastewater utility must ensure proper handling and treatment of all wastewater, sewage, effluent, solids, and biosolids (generated or pumped).

(2) The wastewater utility must ensure proper transport of all wastewater, sewage, effluent, solids, and biosolids (generated or pumped). Such transportation must prevent leaking or spilling of sewage onto the highways, streets, roads, waterways, or other land surfaces not approved for application or disposal.

(3) The utility must immediately clean up any ground surface sewage spills and disinfect any and all spill areas, unless exempted by federal or state law or state agency administrative rules.

(4) The wastewater utility owner is responsible for obtaining and maintaining all licenses, permits, wastewater treatment facilities, permitted pits, ponds or lagoons; or solid land application sites.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0070

Interruption of Service

(1) A wastewater utility shall keep a record of any interruption of service affecting its whole system, or a major section thereof, including a statement of the date, time, duration, and cause of interruption, remedy, and steps taken to prevent recurrence.

(2) A wastewater utility shall make all reasonable efforts to prevent interruptions of service. When such interruptions occur, the wastewater utility shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(3) Each wastewater utility shall make all reasonable efforts to notify every customer affected in advance of any scheduled work that will interrupt service, but such notice shall not be required in case of interruption due to emergency repairs or for repairs or maintenance work that results in an interruption of less than five minutes. All scheduled interruptions shall be made at a time causing minimum inconvenience to customers. In determining reasonable notice, the wastewater utility shall consider the length of the planned interruption, the type and number of customers affected, the potential impact of the interruption on customers, and other surrounding circumstances. Notice may be given in writing, either via US mail or a door hanger on the affected premises, or by contact with the customer or an adult at the residence by personal visit or by telephone.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0075

Refusal of Service

(1) A 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) When a customer or applicant whose service was terminated applies for service within 20 calendar days of the termination, the wastewater utility shall provide service to an 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;

(b) Upon failure to pay, the wastewater utility may disconnect water service after providing a written five-business-day notice. The notice shall contain the information and be served in the manner prescribed as provided in OAR 860-036-0245.

(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 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 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; and

(b) An applicant for residential 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) A 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 wastewater utility.

(5) A wastewater utility shall refuse to serve a customer or applicant, if, in the best judgment of the wastewater 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 wastewater utility shall provide written notification within 10 business days to the customer or applicant of the reasons for refusal and of the Commission's complaint process. The utility must send contemporaneously a copy of the notice to the Commission's Consumer Services Section unless service was refused for nonpayment.

(7) A 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 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 wastewater utility refuses wastewater service on the grounds of inadequate facilities or resources, the wastewater utility shall:

(A) Provide the customer or applicant with a written letter of refusal stating the reason for the refusal. The utility must send contemporaneously a copy of such refusal letter to the Commission's Consumer Services Section.

(B) Inform the customer or applicant that he/she may request the details upon which the 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 wastewater utility's refusal of wastewater service through the Commission's dispute resolution process pursuant to OAR 860-037-0025.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.035, 757.061 & 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. 9-9-02; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0080

Restrictions on Entering a Customer Residence

No wastewater utility employee shall enter the residence of a customer without proper authorization except in an emergency endangering life or property.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 5-2004, f. & cert. ef. 1-29-04

860-037-0101

Wastewater Service Charges

In general, wastewater service charges are based upon the volume of water delivered to the customer's property. The water meter serving the premises measures this volume. In cases where a significant volume of the water delivered to the premises is not returned to, or water or wastewater from another source is discharged to the wastewater system the customer may request, or the utility may require, special flow measuring devices to properly measure the volume of wastewater entering the wastewater system. Such special flow measuring devices must be furnished, installed, and maintained by and at the expense of the customer with the approval of the utility.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

Hist.: PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0105

Bill Forms

Every wastewater utility providing service shall indicate clearly on the bill the date of the billing period, the schedule number under which the bill was rendered, and any other information needed to compute the bill. Each bill shall bear on its face the delinquent date of the bill and the wastewater utility telephone number where the utility's personnel may be reached during normal business hours.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

ADMINISTRATIVE RULES

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 5-2004, f. & cert. ef. 1-29-04

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 4-2001, f. & cert. ef. 1-24-01; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0110

Due and Payable Period; Time-Payment Agreements for Residential Service

(1) Each wastewater utility shall establish procedures to ensure that the period from the billing transmittal for all current charges, including payment of the final bill, to the due date is not less than 15 days. If the bill is delivered by US mail, the due and payable period begins the day after the US Postal Service postmark or the day after the date of postage metering.

(2) A wastewater utility may not disconnect residential water service for nonpayment of wastewater service charges if a customer enters into a written time-payment plan. A wastewater utility will offer customers a choice of payment agreements. At a minimum, the customer may choose between a levelized-payment plan and an equal-pay arrearage plan.

(3) A customer who selects a levelized-payment plan will pay a down payment equal to the average annual bill including the account balance, divided by 12, and a like payment each month for 11 months thereafter:

(a) The monthly installment plan shall be reviewed by the wastewater utility periodically. If necessary, due to changing rates or variations, the installment amount may be adjusted in order to bring the account into balance within the time period specified in the original agreement;

(b) If a customer changes his/her service address at any time during the period of a time-payment agreement, provided that payments are then current and the customer pays other scheduled or tariffed charges associated with the change in residence, the wastewater utility shall recalculate the customer's deposit or monthly installment. The recalculated amount shall reflect the balance of the account at the previous service address and the average annual bill at the new service address for the months remaining in the original time-payment agreement. When installments on a time-payment agreement have not been kept current, a customer shall be required to pay all past-due installments, together with any other applicable charges before service is provided at the new residence.

(4) A customer who selects an equal-pay arrearage plan will pay a down payment equal to 1/12 the amount owed for past water/wastewater utility service (including the overdue amount and any amounts owed for a current bill or a bill being prepared but not yet delivered to the customer). Each month, for the next 11 months, an amount equal to the down payment will be added to, and payable with, the current charges due for wastewater service. If a customer changes his/her service address at any time during the period of an equal-pay arrearage plan, the plan continues. However, the customer must pay any past-due charges and all other applicable charges before the wastewater utility provides service at the new address.

(5) The wastewater utility and customer may agree in writing to an alternate payment arrangement, provided the wastewater utility first informs the customer of the availability of the payment terms set forth in sections (3) and (4) of this rule.

(6) If a customer fails to abide by the wastewater time-payment agreement, the wastewater utility may disconnect water service after serving a 15-day disconnect notice. The notice shall comply with OAR 860-037-0245, except that subsection (5)(d) shall not be applicable. Such customers shall not be eligible for a renewal or renegotiation of a time-payment plan.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

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 16-2003, f. & cert. ef. 10-1-03; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0115

Late-Payment Charge

(1) Except as provided in section (2) of this rule, a wastewater utility may apply a late-payment charge to customer accounts not paid in full each month, provided the wastewater utility has filed the late-payment charge in its tariffs.

(2) The charge will be based on a monthly late-payment rate applied to only overdue account balances at the time of preparing the subsequent month's bill for residential accounts or by the bill due date for all other accounts. The late-payment charge may not be applied to time-payment or equal-payment accounts that are current. The Commission will determine the late-payment rate based on a survey of prevailing market rates for late-payment charges of commercial enterprises and will advise all wastewater utilities of the changes in the rate they may use to determine late-payment charges on overdue customer accounts as needed. The current late-payment rate and the conditions for its application to customer accounts shall be specified on the utility bill.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005 & 757.061

860-037-0120

Adjustment of Bills

(1) When an underbilling or overbilling occurs, the wastewater utility shall provide written notice to the customer detailing the circumstances, period of time, and amount of adjustment. If it can be shown that the error was due to an identifiable cause, and the date can be fixed, then the overcharge or undercharge shall be computed back to such date. If no date can be fixed, the wastewater utility shall refund the overcharge or rebill the undercharge for no more than six months' usage. In no event shall an overbilling or underbilling be for more than three years' usage.

(2) When a customer is required to repay an underbilling, the customer shall be entitled to enter into a time-payment agreement without regard to whether the customer already participates in such an agreement. If the customer and wastewater utility cannot agree upon payment terms, the Commission shall establish terms and conditions to govern the repayment obligation. The wastewater utility shall provide written notice advising the customer of the opportunity to enter into a time-payment agreement and of the Commission's complaint process.

(3) No billing adjustment shall be allowed if a wastewater utility bases its wastewater service charges on the water meter and the water meter registers less than 2 percent error under conditions of normal operation.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.250

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 5-2004, f. & cert. ef. 1-29-04

860-037-0125

Transfer Billings

(1) If a wastewater utility identifies a balance a customer owes the wastewater utility from the customer's prior account for Oregon service, the wastewater utility shall have the option to transfer the amount to the customer's current account. The wastewater utility must give the customer prior notice of the transfer, including the amount due under the prior account, the period when the balance was incurred, and the service address under which the bill was incurred; or the wastewater utility may send a separate notice to the customer giving the same information as included in the transfer, but collecting the amount due separately from the customer's current account. If the bill is identified when a customer changes residences, the provisions of this rule apply.

(2) If the customer has an amount remaining on an existing time-payment agreement, the customer may enter into a new time-payment agreement to include the transfer.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 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 5-2004, f. & cert. ef. 1-29-04

860-037-0205

Grounds for Terminating Customer Wastewater Service by Disconnecting Water Service

A wastewater utility may disconnect water service to a wastewater customer for:

(1) Failure to establish credit by:

(a) Failing to pay a deposit or make payments in accordance with the terms of a deposit payment arrangement (OAR 860-037-0040); or
(b) Providing false identification or verification of identity.

(2) When facilities provided are unsafe or do not comply with federal, state, and municipal codes governing service or the wastewater utility's rules and regulations.

(3) When the customer does not cooperate in providing reasonable access for necessary inspections, operations, or maintenance. Necessary in this context means required by law or to determine if a health or safety hazard exists.

(4) When a customer requests the wastewater utility to disconnect water service or close an account (OAR 860-037-0210) or when a co-customer fails to reapply for service within 20 days after a joint account is closed by the other co-customer, so long as the wastewater utility has provided a notice of pending disconnection.

(5) When dangerous or emergency conditions exist at the service premises (OAR 860-037-0215).

(6) For failure to pay Oregon tariffed wastewater rates due for services rendered.

(7) For diverting service, or other theft of service.

(8) When the Commission approves the disconnection of water service.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.035, 757.061, 757.225 & 757.760
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 5-2004, f. & cert. ef. 1-29-04

860-037-0210

Voluntary Water Disconnection for Wastewater Service

A customer who wishes to have service discontinued, shall provide the wastewater utility with a five-business-day notice in advance of the requested date of discontinuance of service. Until the wastewater utility receives such notice, the customer is responsible for all service rendered.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0215

Emergency Water Disconnection for Wastewater Service

A wastewater utility may terminate water service in emergencies endangering life or property without following the procedures set forth in OAR 860-037-0245. However, the wastewater utility shall immediately thereafter notify the customer and the Commission. In such cases, when the necessity for emergency termination was through no fault of the customer, the wastewater utility will not make a charge to restore service.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.035 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0220

Disconnection of Water Service on Weekends and Holidays

Water service shall not be disconnected for non-emergencies on a weekend or a state or wastewater utility-recognized holiday. Water service shall not be disconnected for non-emergencies on a Friday or the day before a state or wastewater utility-recognized holiday unless mutually agreed upon by the customer, the wastewater utility, and the Commission's Consumer Services Section.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.760
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 5-2004, f. & cert. ef. 1-29-04

860-037-0225

Accounts Not Related to Residential Service

A wastewater utility may not deny or disconnect residential water service due to the failure to pay for nonresidential wastewater service, or to meet obligations in connection with nonresidential wastewater service.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.760
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 5-2004, f. & cert. ef. 1-29-04

860-037-0230

Disconnection of Wastewater Service to Tenants

(1) If a wastewater utility's records show that a residential billing address is different from the service address, the wastewater utility must provide a duplicate of the five-business-day water disconnect notice required under OAR 860-037-0020 to the occupants of the service address in the manner described in 860-037-0245 unless the wastewater utility has reason to believe that the service address is occupied by the customer. This requirement is satisfied by serving a notice addressed to "Tenants," as required in OAR 860-037-0245 for wastewater service. The notice to occupants need not include the dollar amount owing.

(2) When a wastewater utility's records show that a residence is a master-metered, multi-unit dwelling (including rooming houses), the wastewater utility must notify the Commission's Consumer Services Section at least five business days before disconnecting the water service for wastewater service obligations. The wastewater utility will use reasonable efforts to notify occupants of the impending disconnection and alternatives available to them.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.760
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 5-2004, f. & cert. ef. 1-29-04

860-037-0235

Multilingual Disconnection Notice

(1) Except as provided in section (2) of this rule, all disconnect notices shall contain the following information translated into Spanish, Vietnamese, Cambodian, Laotian, and Russian (translations are available from the Consumer Services Section):

IMPORTANT NOTICE: Your water service will be shut off because of an unpaid

balance on your wastewater account. You must act immediately to avoid shut-off. Important information about how you can avoid shut-off is printed in English in the enclosed notice. If you cannot understand English, please find someone to translate the notice. If translation assistance is unavailable, please contact (name) at (phone number) who will try to help you. Information on customer's rights and responsibilities printed in this language is also available by calling that number. **YOU MUST ACT NOW TO AVOID SHUT-OFF.**

(2) Upon petition by a wastewater utility, the Commission shall waive the requirement to provide multilingual notice for two calendar years, which may be renewed upon a showing that the lesser of 5 percent or 500 of the wastewater utility's Oregon customers would benefit from use of multilingual notification or show other reasons why such notices are not necessary.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0240

Reconnection Fee

When a wastewater service is disconnected for wastewater service, pursuant to OAR 860-037-0245, the wastewater utility may charge the reconnection fee in its tariff.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 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 5-2004, f. & cert. ef. 1-29-04

860-037-0245

Disconnection Procedures for All Customers of Wastewater Utility Services

(1) Involuntary termination of wastewater service for all customers shall be under the provisions of this rule.

(2) Notice Requirements:

(a) At least five business days before a wastewater utility disconnects water service to terminate wastewater service, written notice of disconnection must be provided to the customer;

(b) At least 15 days before a wastewater utility disconnects water service to terminate wastewater service due to customer failure to abide by a time-payment agreement, written notice of disconnect must be provided to the customer; and

(c) The disconnection notice shall inform the person that water service will be disconnected on or after a specific date for violation of a wastewater service rule and shall explain the alternatives, in compliance with OAR 860-037-0220.

(3) The wastewater utility may serve the notice of disconnection in person or send it by first class mail to the last known addresses of the customer and the customer's designated representative. Service is complete on the date of mailing or personal delivery. If notification is made by delivery to the residence, the wastewater utility shall attempt personal contact. If personal contact cannot be made with the customer or an adult resident, the wastewater utility shall leave the notice in a conspicuous place at the residence.

(4) When a written notice is given under these rules:

(a) The notice shall conform to the requirements of OAR 860-037-0235 concerning multilingual requirements and service on any designated representative;

(b) The notice shall conform to the requirements of OAR 860-037-0230 if the wastewater utility's records show that the billing address is different than the service address or that the premise is a multi-unit dwelling. The notice may be addressed to "Tenant." The envelope shall bear a bold notice stating, "Important notice regarding disconnection of water service," or words to that effect.

(5) The notice shall be printed in bold face type and shall state in easy to understand language:

(a) The reason for the proposed termination of wastewater service by disconnection of water service;

(b) The amount to be paid to avoid disconnection;

(c) The earliest date for disconnection;

(d) An explanation of the time-payment agreement provisions of OAR 860-037-0110; and

(e) An explanation of the Commission's dispute resolution process and toll-free number.

(6) A notice of disconnection may not be sent prior to the due date for payment of a bill.

(7) At least five business days before the proposed disconnection date, the wastewater utility must mail or deliver a written disconnection notice to the customer. A fee in an amount approved by the Commission may be

ADMINISTRATIVE RULES

charged whenever a wastewater utility is required to visit a residential service address in order to serve a disconnection notice.

(8) On the day that the wastewater utility expects to disconnect water service and prior to disconnection, the wastewater utility make a good faith effort to personally contact the customer or an adult at the residence to be disconnected.

(a) If the contact is made, the wastewater utility shall advise the person of the proposed disconnection; or

(b) If contact is not made, the wastewater utility must leave a notice in a conspicuous place at the residence informing the customer that water service has been, or is about to be, disconnected to terminate wastewater service to the customer.

(9) Where personal contact is made by a wastewater utility under this rule, and the circumstances are such that a reasonable person would conclude that the customer does not understand the consequences of disconnection, the wastewater utility must:

(a) Notify the Department of Human Services and the Commission; and

(b) Delay the proposed disconnection date for five additional business days.

(10) When personal contact is made by the wastewater utility under this rule, the representative of the wastewater utility making contact shall be authorized to accept reasonable partial payment of the overdue balance in accordance with the time-payment provisions.

(11) A wastewater utility must document its efforts to provide notice under this rule and shall make that documentation available to the customer and the Commission upon request.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.750, 757.061 & 757.755
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 4-2001, f. & cert. ef. 1-24-01; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0307

Wastewater Utility Compliance Enforcement by Commission Appointment of Regent to Operate and Manage a Wastewater System

(1) In extreme circumstances where a wastewater utility owner, operator, or representative demonstrates to the Commission's satisfaction an unwillingness, incapacity, or refusal to effectively operate and manage the wastewater system to provide safe and adequate service to its customers in compliance with Oregon statutes, rules, and standards, the Commission, after consultation with affected customers, may appoint a regent to operate and manage the wastewater system. The appointment shall be accomplished under an Interim Operating Agreement until a long-term option for the provision of wastewater is available to the customers.

(2) The regent appointed to operate, maintain, and repair the system must be, or employ, a qualified wastewater operator or be a qualified wastewater utility.

(3) The appointment of the regent may also include responsibility for billing and collection, customer service, and administration of the system.

(4) The regent shall record all transactions in a general ledger and supply a copy of the ledger and bank statements to the Commission.

(5) At the end of the Interim Operating Agreement, the Commission shall approve a final accounting of all monies and disbursement of surplus funds.

Stat. Auth.: ORS Ch. 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, & 757.061
Hist.: PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0310

Maps and Records

(1) A wastewater utility shall keep on file current maps and records of the entire system showing size, location, and date of installation of the collection system and wastewater plant.

(2) Upon request, a wastewater utility shall file with the Commission an adequate description or maps to define the wastewater territory serviced. All maps and records that the Commission may require the wastewater utility to file shall be in a form satisfactory to the Commission.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.020 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0405

Relating to New Wastewater Utilities

This rule applies to newly constructed investor-owned wastewater utilities that have not previously offered wastewater service to the public during the past 12 months. A new wastewater utility shall initially and immediately file tariffs with the Commission to establish approved rates

and charges. All subsequent rate increases will comply with the requirements of OAR 860-037-0410 through 860-037-0445.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061, 757.205 & 758.300-758.320
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 5-2004, f. & cert. ef. 1-29-04

860-037-0410

Tariff Specifications

(1) Form and style of tariffs:

(a) All tariffs must be in sheet form. A loose leaf plan may be used so that changes can be made by reprinting and inserting a single leaf;

(b) The initial tariff sheets filed by a wastewater utility shall be designated as PUC Oregon No. 1, and thereafter as other tariffs are filed, they shall be designated with the next number in consecutive numerical order. Supplemental information not otherwise provided for by the tariff shall be inserted in the most appropriate location and denoted by the previous sheet numbers plus a letter, for example, 3A, 3B, etc. Revisions to tariff sheets shall be denoted by 1st Revised Sheet No. 3, 2nd Revised Sheet No. 3, etc.;

(c) The title page should be uniform. Rates, rules, and regulations shall be written only on one side of a sheet. If a single sheet is insufficient, two or more pages should be used. Sample forms will be furnished upon request; and

(d) Separate tariffs shall be filed for wastewater service or for any other service entered.

(2) Size of tariffs and copies required:

(a) Tariffs and supplements thereto must be typewritten or printed upon paper 8-1/2 x 11 inches in size; and

(b) The original and four conformed copies of each tariff, rate schedule, revision, or supplement shall be filed with the Commission.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.205
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 5-2004, f. & cert. ef. 1-29-04

860-037-0415

Tariff Contents

(1) Tariffs must explicitly state the rates and charges for each class of wastewater service rendered, designating the area or district to which they apply.

(2) Rules and regulations of the wastewater utility that in any manner affect the rates charged or to be charged or define the extent or character of the wastewater service to be given shall be included with each tariff.

Stat. Auth.: ORS 183, 330, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.205
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 5-2004, f. & cert. ef. 1-29-04

860-037-0425

Announcement of Tariff Changes

(1) Within 15 days of filing with the Commission new or revised wastewater tariff schedules that constitute a general rate revision, a wastewater utility shall inform its customers of the filing. A "general rate revision" is a filing by a wastewater utility that affects all or most of a wastewater utility's wastewater rate schedules. "General rate revision" does not include changes in an automatic adjustment clause under ORS 757.210(1) or similar changes in one rate schedule, such as for an amortization, that affect other rate schedules.

(2) A wastewater utility shall inform its customers by:

(a) Insertion of a display announcement, not less than a three column standard advertising unit (SAU) by 10 inch advertisement, at least once in a newspaper of general circulation in the communities served by the wastewater utility;

(b) An announcement inserted in the wastewater utility's regular billing to its wastewater customers; or

(c) An announcement mailed to each wastewater customer.

(3) At a minimum, the announcement shall include the following information:

(a) The approximate current and proposed average monthly wastewater service rate for each customer class, expressed in dollar terms;

(b) A brief statement of the reasons why the change is sought;

(c) Notification that copies of the wastewater utility's application, testimony, and exhibits are available for inspection at its main and district offices;

(d) The mailing address and telephone number of the wastewater utility's office that customers may contact for additional information about the filing;

ADMINISTRATIVE RULES

(e) The Commission's Consumer Services Section toll-free telephone number: 1-800-522-2404 or TTY 711; and mailing address: Public Utility Commission of Oregon, Administrative Hearings Division, PO Box 2148, Salem OR, that interested persons may contact to receive notice of the time and place of any hearing on the matter; and

(f) A statement that the purpose of the announcement is to provide customers of the wastewater utility with general information as to the proposed tariffs and their effect on customers, and that the calculations and statements contained in the announcement are not binding on the Commission.

(4) With no less notice than seven business days prior to sending the written announcement to its customers, the wastewater utility must provide the Commission with a draft copy of the written announcement for staff review.

(5) Within 20 days of issuance of the announcement, the wastewater utility shall file an affidavit with the Commission that notice has been given and include a copy of the announcement.

(6) The Commission may waive the requirements of this rule upon a showing by the wastewater utility that the notice required by this rule has been given with respect to a particular general rate revision, and upon a further showing that additional notice with respect to that rate revision would be duplicative, confusing to customers, and burdensome to the wastewater utility.

Stat. Auth.: ORS 183, 756 & ORS 757
Stats. Implemented: ORS 756.040, 757.005, & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0430

Applications to Make Tariffs or Rate Schedules Effective on Less Than Statutory Notice

Applications to make wastewater tariffs or rate schedules effective on less than statutory notice shall be made in duplicate upon prescribed forms available from the Commission.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.220
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 5-2004, f. & cert. ef. 1-29-04

860-037-0435

Requirements for Filing Tariffs or Schedules Changing Rates

(1) A wastewater utility may make wastewater tariff changes by filing an entirely new tariff or by filing revised sheets that shall refer to the sheets of the tariffs on file. Additions to the tariff on file may be made by filing additional sheets.

(2) Each wastewater utility filing wastewater tariffs or schedules changing existing tariffs or schedules shall submit therewith the following information:

(a) A statement plainly indicating the increase, decrease, or other change thereby made in existing rates, charges, tolls, or rules and regulations;

(b) A statement setting forth the number of customers affected by the proposed change and the resulting change in annual revenue; and

(c) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed change.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.205
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 5-2004, f. & cert. ef. 1-29-04

860-037-0440

Requirements for Filing Tariffs or Schedules Naming Increased Rates

(1) A wastewater utility filing tariffs or schedules that increase rates shall submit, in addition to the requirements of OAR 860-037-0435, the following information:

(a) A statement setting forth for each separate schedule the total number of customers affected, the total annual revenue derived under the existing schedule, and the amount of estimated annual revenue derived under the proposed schedule in the application;

(b) A statement setting forth for each separate schedule the monthly bills under both the existing rates and the proposed rates for characteristic customers that fairly represents the application of the proposed tariff or schedules; and

(c) A detailed statement setting forth the reasons or grounds relied upon in support of the proposed increase.

(2) Additional information may be required to be filed either prior to acceptance by the Commission of the tendered filing or at any stage in the proceeding.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.205
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 5-2004, f. & cert. ef. 1-29-04

860-037-0445

Tariff Changes Effective with Service Rendered

All tariff changes apply to service rendered on and after the effective date of the changes, unless the Commission by order provides otherwise. As used in this rule, "service rendered" means basic service provided, or likewise as the context requires.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.007, 757.061 & 757.220
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 5-2004, f. & cert. ef. 1-29-04

860-037-0450

Notice to Interested Persons

(1) This rule applies to any tariff filing that is filed under ORS 757.205.

(2) Any person who requests of the Commission, in writing, to be notified of wastewater utility tariff filings covered under section (1) of this rule shall be included on a notice list.

(3) The Commission shall notify all persons on the notice list referred to in section (2) of this rule of any applicable tariff filing. The notice shall be placed in the mail within 10 days of any tariff filing under section (1) of this rule that complies with OAR 860-037-0410 through 860-037-0440.

(4) The notice shall include the following information:

(a) Name of the wastewater utility submitting the filing;

(b) Subject;

(c) Filing date;

(d) Effective date;

(e) Date of the public meeting the tariff will be considered (when the information is available); and

(f) Customer classes affected.

(5) The Commission may periodically delete from the notice list names of persons who do not demonstrate a continued interest in receiving the notices set forth in section (2) of this rule. No person's name shall be deleted from the list without 20 days' notice before deletion.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.230
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 5-2004, f. & cert. ef. 1-29-04

860-037-0505

Form and Filing of Applications

(1) The Commission will furnish to applicant such information from the records on file as will assist in a full presentation of material facts required by OAR 860-037-0510 to 860-037-0535.

(2) When any document required to be filed under these rules has previously been filed with the Commission, it shall be sufficient if the application makes reference to such filing and the capacity in which it was filed.

(3) Where the words "none" or "not applicable" truly and completely state the fact, they should be used in answering the requirement of any particular section of this rule.

(4) The Commission may require additional information when it appears to be pertinent in a particular case.

(5) Whenever these rules require the filing of financial statements, they shall be prepared as of the latest date available. The Income Statement shall be for the most recent 12-month period.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 756.105, 757.005 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0510

Notice and Approval Requirements Relating to the Sale, Transfer, Merger, Termination, Abandonment, or Disposal of a Wastewater Utility

(1) Approval Requirements:

(a) Each wastewater utility must file an application to obtain Commission approval prior to the sale, transfer, or merger of the utility. Application requirements are found in OAR 860-037-0515;

(b) Each wastewater utility must file an application to obtain Commission approval prior to terminating, abandoning, or otherwise disposing of the wastewater utility, excluding sales, transfers, or mergers.

(2) Notice Requirements: Each wastewater utility shall provide written notification to customers and the Commission of any sale, transfer, merger, termination, abandonment, or disposal of the utility 60 days prior

ADMINISTRATIVE RULES

to the closing date of the transaction. The notice shall include the following information:

- (a) Name, address, and telephone number of the wastewater utility;
- (b) Purpose of notice;
- (c) Filing date;
- (d) Proposed effective date of the transaction.
- (e) Name, address, and telephone number of potential buyer;
- (f) Reason(s) for sale, transfer, or merger, termination, abandonment or disposal of the wastewater system;
- (g) Effect of the transaction upon customers; and
- (h) The Commission's Consumer Services Section toll free number: 1-800-522-2404 or TTY 711; mailing address: Public Utility Commission of Oregon, Consumer Services Section, PO Box 2148, Salem OR 97308-2148; and street address: Public Utility Commission of Oregon, 550 Capitol Street NE Suite 215, Salem, OR 97301-2551.

(i) In case of termination, abandonment, or disposal of utility, the utility shall also provide an explanation of any alternative water service option(s) to customers.

(3) A draft copy of the customer notice must be mailed to the Commission for Utility Division staff review seven business days prior to a customer mailing.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.480
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 5-2004, f. & cert. ef. 1-29-04

860-037-0515

Applications for Authority to Sell, Lease, Assign, Mortgage, Merge, Consolidate, or Otherwise Dispose of or Encumber its Property, or to Acquire Stock, Bonds, or Property of Another Public Utility

Requirements of this rule apply to wastewater utilities seeking authority under ORS 757.480 and 757.485. Every applicant shall at a minimum, utilize the form prescribed below and provide all required information. At its discretion, the Commission may require further or more detailed information. [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061, 757.105, 757.480, 757.485
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 5-2004, f. & cert. ef. 1-29-04

860-037-0517

Acquisition Adjustment

(1) A wastewater utility may file a petition with the Commission for approval of an acquisition adjustment for acquiring a wastewater utility. The approval and determination of an acquisition adjustment is at the sole discretion of the Commission.

(2) The Commission shall consider the merits of the utility's petition based on the benefit to the customers being acquired and the public interest on a case-by-case basis.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
Hist.: PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0520

Application by a Wastewater Utility for Authority to Issue Wastewater Stocks, Bonds, Notes, or Other Securities

(1) This rule applies to wastewater utilities seeking authority under ORS 757.495, 757.405 to 757.435 inclusive, 757.445, and 757.450. Every applicant shall set forth in this application to the Commission, in the manner and form and in the order indicated, the following information:

- (a) The applicant's exact name and the address of its principal business office;
- (b) The state in which incorporated, the date of incorporation, and the other states in which authorized to transact wastewater utility business;
- (c) The name and address of the person authorized, on behalf of applicant, to receive notices and communications in respect to the application;
- (d) The names, titles, and addresses of the principal officers of the applicant;

(e) A description of the general character of the business done and to be done, and a designation of the territories served. A map showing the territories served is desirable;

(f) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of capital stock: brief description; amount authorized (face value and number of shares); amount outstanding (exclusive of any amount held in the treasury); held amount as reacquired securities; amount pledged by applicant; amount owned by affiliated interests; and amount held in any fund;

(g) A statement, as of the date of the balance sheet submitted with the application, showing for each class and series of long-term debt or notes: brief description (amount, interest rate, and maturity); amount authorized; amount outstanding (exclusive of any amount held in the treasury); amount held as reacquired securities; amount pledged by applicant; amount held by affiliated interests; and amount in sinking and other funds;

(h) A full description of the securities proposed to be issued, showing: kind and nature of securities or liabilities; amount (face value and number of shares); interest or dividend rate, if any; date of issue and date of maturity; and voting privileges, if any;

(i) A reasonably detailed and precise description of the proposed transaction, including a statement of the reasons why it is desired to consummate the transaction and the anticipated effect thereof. If the transaction is part of a general program, describe the program and its relation to the proposed transaction. Such description shall include, but is not limited to, the following:

(A) A description of the proposed method of issuing and selling the securities;

(B) A statement of whether such securities are to be issued pro rata to existing holders of the applicant's securities or issued pursuant to any pre-emptive right or in connection with any liquidation or reorganization;

(C) A statement showing why it is in applicant's interest to issue securities in the manner proposed and the reason(s) why it selected the proposed method of sale; and

(D) A statement that exemption from the competitive bidding requirements of any federal or other state regulatory body has or has not been requested or obtained, and a copy of the action taken thereon when available.

(j) The name and address of any person receiving or entitled to a fee for service (other than attorneys, accountants, and similar technical services) in connection with the negotiation or consummation of the issuance or sale of securities, or for services in securing underwriters, sellers, or purchasers of securities, other than fees included in any competitive bid; the amount of each such fee, and facts showing the necessity for the services and that the fee does not exceed the customary fee for such services in arm's-length transactions and is reasonable in the light of the cost of rendering the service and any other relevant factors;

(k) A statement showing both in total amount and per unit the price to the public, underwriting commissions, and net proceeds to the applicant. Supply also the information (estimated if necessary) required in section (4) of this rule. If the securities are to be issued directly for property, then a full description of the property to be acquired, its location, its original cost (if known) by accounts, with the identification of the person from whom the property is to be acquired, must be furnished. If original cost is not known, an estimate of original cost based, to the extent possible, upon records or data of the seller and applicant or their predecessors must be furnished, with a full explanation of how such estimate has been made, and a description and statement of the present custody of all existing pertinent data and records. A statement showing the cost of all additions and betterments and retirements, from the date of the original cost, should also be furnished;

(l) The purposes for which the securities are to be issued. Specific information will be submitted with each filing for the issuance of bonds, stocks, or securities:

(A) For construction, completion, extension, or improvement of wastewater facilities, include a description of such facilities and the cost thereof;

(B) For reimbursement of the applicant's treasury for expenditures against securities that have not been issued, include a statement giving a general description of such expenditures, the amounts and accounts charged, the associated credits, if any, and the periods during which the expenditures were made;

(C) For refunding or discharging of wastewater obligations, include a description of the obligations to be refunded or discharged. The description shall provide the character, principal amounts discount or premium applicable thereto, date of issue and date of maturity, purposes to which the proceeds were applied and all other material facts concerning such obligations; and

(D) For improvement or maintenance of wastewater service include a description of the type of expenditure and the estimated cost in reasonable detail.

(m) A statement as to whether or not any application, registration statement, etc., with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body;

(n) The facts relied upon by the applicant to show that the issue:

ADMINISTRATIVE RULES

(A) Is for some lawful object within the corporate purposes of the applicant;

(B) Is compatible with the public interest;

(C) Is necessary or appropriate for or consistent with the proper performance by the applicant of service as a wastewater utility;

(D) Does not impair its ability to perform that service;

(E) Is reasonably necessary or appropriate for such purposes; and

(F) If filed under ORS 757.495, is fair and reasonable and not contrary to the public interest.

(o) A brief statement of all rights to be a corporation, franchises, permits, and contracts for consolidation, merger, or lease included as assets of the applicant or any predecessor thereof; the amounts actually paid as consideration therefore, respectively; and the facts relied upon to show the issuance of the securities for which approval is requested will not result in the capitalization of the right to be a corporation or of any franchise, permit, or contract for consolidation, merger, or lease in excess of the amount (exclusive of any tax or annual charge) actually paid as the consideration for such right, franchise, permit, or contract; and

(p) If filed under ORS 757.490 or 757.495:

(A) Provide a statement describing the relationship between the wastewater utility and the affiliated interest as defined in ORS 757.015 or 757.490:

(i) Set forth the amount, kind, and ratio to total voting securities held, if applicable;

(ii) List all officers and directors of the affiliated interest who are also officers and/or directors of the applicant; and

(iii) State the pecuniary interest of any officer or director in compliance with ORS 757.490(1).

(B) State the reasons, in detail, relied upon by the wastewater utility for entering into the proposed transaction and the benefits, if any, the customers receiving wastewater service and the general public will derive from the transaction.

(2) Required Exhibits. The following exhibits shall be filed as part of the application:

(a) EXHIBIT A. A copy of the applicant's charter or articles of incorporation with amendments to date;

(b) EXHIBIT B. A copy of the bylaws with amendments to date;

(c) EXHIBIT C. A copy of each resolution of directors authorizing the issue in respect to which the application is made and, if approval of stockholders has been obtained, copies of the stockholder resolutions should also be furnished;

(d) EXHIBIT D. A copy of the mortgage, indenture, or other agreement under which it is proposed to issue the securities, and a copy of any mortgage, indenture, or other agreement securing other funded obligations of the applicant;

(e) EXHIBIT E. Copies of balance sheets showing booked amounts, adjustments to record the proposed transaction and pro forma, with supporting fixed capital or plant schedules in conformity with the form in the annual report which applicant is required to file with the Commission;

(f) EXHIBIT F. A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts, as of the date of the application;

(g) EXHIBIT G. Copies of comparative income statements showing recorded results of operations, adjustments to record the proposed transaction and pro forma in conformity with the form in the annual report which applicant is required to file with the Commission;

(h) EXHIBIT H. A copy of an analysis of surplus for the period covered by the income statements referred to in Exhibit G;

(i) EXHIBIT I. A copy of the registration statement proper, if any, and financial exhibits made a part thereof, filed with the Securities and Exchange Commission;

(j) EXHIBIT J. A copy of the proposed and of the published invitation of proposals for the purchase of underwriting of the securities to be issued; of each proposal received; and of each contract, underwriting, and other arrangement entered into for the sale or marketing of the securities. When a contract or underwriting is not in final form so as to permit filing, a preliminary draft or a summary identifying parties thereto and setting forth the principal terms thereof, may be filed pending filing of the conformed copy in the form executed by final amendment to the application;

(k) EXHIBIT K. Copies of the stock certificates, notes, or other evidences of indebtedness proposed to be issued;

(l) An application for a wastewater utility to loan its funds to an affiliated interest, shall also include the following:

(A) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction;

(B) EXHIBIT M. The amount of money the applicant desires to loan to the affiliated interest, terms of said loan, rate of interest, method of repayment, security given, if any, and if said loan is to be an open account or evidenced by a promissory note; and

(C) EXHIBIT N. The use to which funds derived from this loan are to be put by the affiliated interest.

(m) An application for a wastewater utility to give credit on its books or otherwise by:

(A) Advancing cash through an open or loan account, shall also include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction;

(ii) EXHIBIT M. The amount of money the applicant proposes to receive, the rate of interest it will pay, and the date and method of repayment; and

(iii) EXHIBIT N. A definite statement of purpose for which the advance will be used.

(B) Payments by the affiliated interest of amounts owed, shall also include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction; and

(ii) EXHIBIT M. The amount of money the affiliated interest proposes to pay on the wastewater utility's behalf, with a description of the obligation, how the funds will be used, and how incurred.

(C) Credits or open accounts a wastewater utility proposes to give to an affiliated interest, shall also include the following:

(i) EXHIBIT L. Copies of all proposed or existing contracts or agreements entered into by the parties to the transaction; and

(ii) EXHIBIT M. The amount and a description of each item for which the wastewater utility proposes to give credit through its loan or open account.

(3) The following form of application may be filed by all wastewater utilities with annual revenues of less than \$100,000 seeking authority to issue promissory notes maturing more than one year after date of issue or renewal and unsecured notes on motor vehicles in the principal amount of less than \$10,000. In the instances when this provision is proper, the requirements of sections (1) and (2) of this rule do not apply. The Commission may require compliance with sections (1) and (2) of this rule if the Commission deems it necessary in a particular case. [Form not included. See ED. NOTE.]

[ED. NOTE: Forms & Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005, 757.061, 757.405-757.450 & 757.495
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 5-2004, f. & cert. ef. 1-29-04

860-037-0525

Applications for Authority to Guarantee Indebtedness

(1) The requirements of this rule apply to wastewater utilities seeking authority under ORS 757.440. Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information that should, to the extent possible, be furnished for each person, firm, or corporation involved:

(a) The information required by OAR 860-037-0520(1)(a) to (g) inclusive;

(b) A full description of the securities the applicant proposes to assume obligation or liability as guarantor, endorser, surety, or otherwise;

(c) The amount of other securities of said person, firm, or corporation now held, owned, or controlled by the applicant;

(d) A statement as to whether or not any application, with respect to the transaction or any part thereof, is required to be filed with any federal or other state regulatory body;

(e) The reasons, in detail, why it is in applicant's interest to guarantee such securities;

(f) The reasons, in detail, why it is necessary for applicant to guarantee such securities; and

(g) The facts relied upon by the applicant to show the assumption is:

(A) For some lawful object within the applicant's corporate purposes and compatible with the public interest;

(B) Necessary or appropriate for or consistent with the applicant's proper performance of service as a wastewater utility;

(C) Does not impair its ability to perform that service; and

(D) Reasonably necessary or required for such purposes.

(2) Required Exhibits. The following exhibits shall be filed as part of the application:

(a) EXHIBIT A. A copy of the applicant's charter or articles of incorporation with amendments to date;

ADMINISTRATIVE RULES

(b) EXHIBIT B. A copy of the bylaws with amendments to date;

(c) EXHIBIT C. Copies of all resolutions of directors authorizing the assumption in respect to which the application is made and, if stockholders' approval has been obtained, a copy of the stockholders' resolution should also be furnished;

(d) EXHIBIT D. A copy of any mortgage, indenture, or other agreement securing any security which it proposes to guarantee; also, a copy of any mortgage, indenture, or other agreement securing applicant's funded obligations;

(e) EXHIBIT E. Balance sheets with supporting fixed capital or plant schedules in conformity with the form set forth in the annual report the applicant is required to file with the Commission;

(f) EXHIBIT F. A statement of all known contingent liabilities, except minor items such as damage claims and similar items involving relatively small amounts at the date of the application;

(g) EXHIBIT G. Comparative income statements in conformity with the form set forth in the annual report the applicant is required to file with the Commission;

(h) EXHIBIT H. An analysis of surplus for the period covered by the income statements referred to in Exhibit G; and

(i) EXHIBIT I. A statement showing the present market value or other basis of determining the value of the securities to be guaranteed.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.440

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 5-2004, f. & cert. ef. 1-29-04

860-037-0530

Applications for Approval of Transactions Between Affiliated Interests

(1) Except as provided in section (3) of this rule, the requirements of this rule apply to all wastewater utilities seeking authority under ORS 757.490 and 757.495. An application for financing to an affiliated interest shall be made under OAR 860-037-0520.

(2) Every applicant shall set forth in its application to the Commission, in the manner and form indicated, the following information:

(a) The applicant's exact name and the address of its principal business office;

(b) The name and address of the person authorized, on the wastewater utility's behalf, to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the wastewater utility and the contracting entity as defined by ORS 757.015 and 757.490;

(d) The amount, kind, and ratio to total voting securities held, if applicable;

(e) A list of all officers and directors of the affiliated interest who are also officers or directors of the applicant;

(f) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(g) A description of the goods or services to be provided, the cost incurred in providing each of the goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(h) An estimate of the amount of money the wastewater utility expects to pay annually for the goods or services and the accounts in which the charges are recorded;

(i) The reasons, in detail, relied upon by the wastewater utility for procuring the proposed goods or services from the affiliate and benefits, if any, utility wastewater service customers and the general public will derive from the provision of goods or services;

(j) A description of the procurement process and the reasons, in pertinent detail appropriate to the complexity of the procurement, relied upon by the wastewater utility for procuring the proposed goods or services without a competitive procurement process, if such a process is not used;

(k) Transfer prices in contracts or agreements for the procurement of goods or services under competitive procurement is presumed to be the market value, subject to evaluation of the procurement process;

(l) A copy of the proposed contract or agreement between the wastewater utility and the contracting entity; and

(m) Copies of all resolutions of directors authorizing the proposed transactions and, if stockholders' approval has been obtained, copies of the resolutions approved by the stockholders.

(3) This rule shall not apply to wastewater utilities seeking to purchase or contracting to purchase, directly or indirectly, from any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in 757.490(1):

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210; or

(b) Any service provided under a rate or schedule of rates that:

(A) Has been filed with an agency charged with the regulation of utilities;

(B) Has been approved as just and reasonable or in compliance with another comparable standard; and

(C) Is available to a broad class of customers.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.005-757.495

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 5-2004, f. & cert. ef. 1-29-04

860-037-0535

Information Required Regarding Wastewater Utility Goods or Services Provided to Affiliated Interests

(1) Except as provided in section (4) of this rule, this rule applies to wastewater utilities seeking to provide, or contracting to provide, directly or indirectly, to any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in 757.490(1), service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal, or other services, or entering revenues or credits therefor on its books. This rule does not apply to transactions subject to ORS 757.490 or 757.495 and OAR 860-037-0030.

(2) A wastewater utility's failure to submit this required information shall not limit the Commission's authority to recognize or impute revenues to the wastewater utility pursuant to such contract in any rate valuation or other hearing or proceeding.

(3) For transactions provided in section (1) of this rule, every wastewater utility shall submit to the Commission, in the manner and form indicated, the following information:

(a) Its exact name and the address of its principal business office;

(b) The name of the person authorized on the wastewater utility's behalf to receive notices, inquiries, and communications regarding the information;

(c) A statement describing the relationship between the wastewater utility and the other contracting entity as defined by ORS 757.015 or 757.490;

(d) The pecuniary interest, directly or indirectly, of any officer or director who is a party to the contract;

(e) A description of the goods or services to be provided, the costs incurred in providing those goods or services, the market value of the goods or services if different from the costs, and the method or methods proposed for pricing those goods or services;

(f) An estimate of the amount the wastewater utility expects to receive annually for the goods or services and the accounts in which the payments are recorded;

(g) The reasons relied upon by the wastewater utility for providing the proposed goods or services and the benefits, if any, wastewater utility customers and the general public will derive from the provision of goods or services;

(h) A copy of the contract or agreement between the wastewater utility and the contracting entity that is the subject of this filing; and

(i) Copies of all resolutions of directors of the wastewater utility authorizing the proposed transactions and, if approval of the wastewater utility's stockholders was obtained, copies of the resolutions approved by the stockholders.

(4) This rule shall not apply to wastewater utilities seeking to provide or contracting to provide, directly or indirectly, to any person or corporation having an affiliated interest as defined in ORS 757.015 or any corporation defined in ORS 757.490(1):

(a) Any service provided under a rate or schedule of rates filed with the Commission under ORS 757.210; or

(b) Any service provided under a rate or schedule of rates that:

(A) Has been filed with an agency charged with the regulation of wastewater utilities;

(B) Has been approved as just and reasonable or in compliance with another comparable standard; and

(C) Is available to a broad class of customers.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.005-757.490

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 4-2001, f. & cert. ef. 1-24-01; PUC 5-2004, f. & cert. ef. 1-29-04

ADMINISTRATIVE RULES

860-037-0540

Timeliness of Applications Made Under OAR 860-037-0530 and Filings Made Under OAR 860-037-0535

An application made under OAR 860-037-0530 and a filing made under 860-037-0535 shall occur no later than 90 days after the execution of the contract giving rise to the application or filing. The contract is deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0545

Applications for Waiver of Requirements Under OARs 860-037-0530 and 860-037-0535

Upon petition by a wastewater utility and approval by the Commission for good cause, the requirements of OARs 860-037-0530 and 860-037-0535 may be waived for individual transactions or classes of transactions. As a general guideline, in the absence of circumstances demonstrating in advance that the transaction or transactions are fair and reasonable and not contrary to the public interest, transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues will not qualify for waiver.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0550

Special Contracts

(1) Wastewater utilities within Oregon entering into special contracts with certain customers prescribing and providing wastewater rates, services, and practices not covered by or permitted in the general tariffs, schedules, and rules filed by such wastewater utilities are in legal effect tariffs and are subject to supervision, regulation, and control as such.

(2) All special contracts designating wastewater service to be furnished at rates other than those shown in tariffs currently on file with the Commission are classified as rate schedules. True and certified copies shall be filed subject to review and approval pursuant to the requirements of OARs 860-037-0405 through 860-037-0445.

(3) Special contracts shall be filed with the Commission at least 30 days prior to the proposed effective date of the contract and are effective according to its terms the 31st day from the date of its filing unless earlier approved, suspended, or rejected by the Commission.

(4) Each special contract filed with the Commission shall be accompanied by documentation necessary to show that the terms are fair, just, and reasonable to the remaining customers, including but not limited to:

- (a) A statement summarizing the basis of the terms of the contract and an explanation of the deviation from the tariffs on file;
- (b) An explanation of all cost computations involved; and
- (c) A statement indicating the basis for use of a contract rather than a filed tariff for the specific service involved.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.007 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0555

Relating to City Fees, Taxes, and Other Assessments

(1) The aggregate amount of all business or occupation taxes, licenses, franchise or operating permit fees, or other similar exactions imposed upon wastewater utilities by any city in Oregon for engaging in wastewater business within such city or for use and occupancy of city streets and public ways, which does not exceed 3.5 percent, applied to gross revenues as defined herein, shall be allowed as operating expenses of such wastewater utilities for rate-making purposes and shall not be itemized or billed separately.

(2) Except as otherwise provided herein, "gross revenues" means revenues received from utility wastewater service operations less related net uncollectibles. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the wastewater utility purchasing the service is not the ultimate customer.

(3) Permit fees or similar charges for street opening, installations, construction, and the like to the extent such fees or charges are reasonably related to the city's costs for inspection, supervision, and regulation in exer-

cising its police powers, and the value of any wastewater utility service or use of facilities provided on November 6, 1967, to a city without charge, shall not be considered in computing the percentage levels herein set forth. Any such service may be continued within the same category or type of use. The value of any additional category of wastewater utility service or use of facilities provided after November 6, 1967, to a city without charge shall be considered in computing the percentage levels herein set forth.

(4) This rule shall not affect franchises existing on November 6, 1967, granted by a city. Payments made or value of wastewater service rendered by a wastewater utility under such franchises shall not be itemized or billed separately. When compensation different from the percentage levels in section (1) of this rule is specified in a franchise existing on November 6, 1967, such compensation shall continue to be treated by the affected wastewater utility as an operating expense during the balance of the term of such franchise. Any tax, fee, or other exaction set forth in section (1) of this rule, unilaterally imposed or increased by any city during the unexpired term of a franchise existing on November 6, 1967, and containing a provision for compensation for use and occupancy of streets and public ways, shall be charged pro rata to local users as herein provided.

(5) Except as provided in section (4) of this rule, to the extent any city tax, fee, or other exaction referred to in section (1) of this rule exceeds the percentage levels allowable as operating expenses in section (1) of this rule, such excess amount shall be charged pro rata to wastewater utility service customers within said city and shall be separately stated on the regular billings to such customers.

(6) The percentage levels in section (1) of this rule may be changed if the Commission determines after such notice and hearing, as required by law, that fair and reasonable compensation to a city or all cities should be fixed at a different level or that by law or the particular circumstances involved a different level should be established.

(7) The amount allowed as an operating expense may be described on customers' bills in a manner determined by the wastewater utility.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005 & 757.061
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 5-2004, f. & cert. ef. 1-29-04

860-037-0560

Relating to Local Government Fees, Taxes, and Other Assessments

(1) If any county in Oregon, other than a city-county, imposes upon a wastewater utility any new taxes or license, franchise, or operating permit fees, or increases any such taxes or fees, the wastewater utility required to pay such taxes or fees shall collect from its wastewater customers within the county imposing such taxes or fees the amount of the taxes or fees, or the proportional share of increase in such taxes or fees. However, if the taxes or fees cover the operations of a wastewater utility in only a portion of a county, then the affected wastewater utility shall recover the amount of the taxes or fees or increase in the amount thereof from wastewater customers in the portion of the county that is subject to the taxes or fees. "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, fees, or charges other than ad valorem taxes.

(2) The amount collected from each wastewater service customer pursuant to section (1) of this rule shall be separately stated and identified in all wastewater customer billings.

(3) This rule applies to new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date.

(4) If any county, wastewater utility, or customer affected by this rule deems the rule's application in any instance to be unjust or unreasonable, it may apply for a waiver of this rule by petition to the Commission, setting forth the reasons why the rule should not apply.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.110
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 5-2004, f. & cert. ef. 1-29-04

860-037-0565

Accounting for Director's Fees

Director's fees paid by a wastewater utility to members of its board of directors, who are also paid as officers of the utility, shall not be recognized as a charge to operating expenses in Oregon.

Stat. Auth.: ORS 183, 756 & 757
Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.110
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 5-2004, f. & cert. ef. 1-29-04

ADMINISTRATIVE RULES

860-037-0567

Accounting for Contributions in Aid of Construction (CIAC)

(1) CIAC are contributions in any form including, but not limited to, cash, services, or utility plant on a separate schedule. The utility must identify the type of contribution, original cost, and utility plant installation date.

(2) Each wastewater utility must provide an accounting of CIAC upon Commission request, and in its annual reports and rate applications. Each utility shall account for and record CIAC on a separate schedule.

(3) Each wastewater utility must keep a record as described in section (2) of this rule and record CIAC on a separate plant and depreciation schedule.

(4) As of November 1, 2002, CIAC and its resulting depreciation are excluded from wastewater utility ratemaking. CIAC must be separated from utility plant and accounted for and depreciated on a separate schedule outside the ratemaking process.

(5) In cases where previous CIAC depreciation was included in rates and removing it all at once would cause irreparable harm to the wastewater utility, the Commission may systematically remove CIAC from rates over a period of time set forth in a schedule to be approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, & 757.061

Hist.: PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0605

Preservation and Destruction of Records

The Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities, April 1974, revised May 1985, published by the National Association of Regulatory Utility Commissioners as applicable for wastewater utility service and operation is hereby adopted as modified and prescribed by the Commission for all wastewater service documents and records, with the following exceptions:

(1) Operations and Maintenance, Records of Auxiliary, and other Operations. Records of operations shall be retained for the same periods as prescribed for similar records pertaining to wastewater utility operations;

(2) Revenue Accounting and Collecting. Contracts and card files or other customer records for wastewater utility service shall be retained for at least one year after the expiration or cancellation of the agreement.

(3) Record Media. Each wastewater utility that provides service in Oregon shall allow the federally required "e-sign" as a form of accepted media.

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

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061 & 757.105

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 5-2004, f. & cert. ef. 1-29-04

860-037-0610

Uniform System of Accounts for Wastewater Utilities

The Uniform System of Accounts for Class A Water Utilities, 1996, published by the National Association of Regulatory Utility Commissioners, is hereby adopted as modified and prescribed by the Commission for all wastewater service and operations.

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

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.005, 757.061, 757.105, 757.120, 757.125 & 757.135

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 5-2004, f. & cert. ef. 1-29-04

860-037-0615

Budget of Expenditures

Each wastewater utility operating wastewater service within Oregon and having gross operating revenues of \$50,000 or more per annum is required to file with the Commission on or before the 1st day of November of each year, a copy of its proposed Budget of Expenditures, on forms approved by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005, 757.061 & 757.105

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 5-2004, f. & cert. ef. 1-29-04

860-037-0620

New Construction Budget

Each wastewater utility operating wastewater service within Oregon and having gross operating revenues of \$50,000 or more per annum is required to file annually on or before December 31, on forms approved by the Commission, information on new construction, extensions, and additions to the property of the wastewater utility.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005, 757.061 & 757.105

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 12-2002, f. & cert. ef. 3-12-02; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0625

Annual Reports

On forms approved and provided by the Commission, all wastewater utilities shall submit:

(1) A financial Result of Operations annual report for the immediate preceding year, by April 1.

(2) A report of all affiliated interest, intercompany, and intracompany transactions which occurred during the period from January 1 through December 31 of the immediately preceding year, by June 1.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005, 757.061, 757.120, 757.125 & 757.135

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 8-2001, f. & cert. ef. 3-21-01; PUC 5-2004, f. & cert. ef. 1-29-04

860-037-0630

Use of Deferred Accounting as it Applies to Wastewater Operations by Wastewater Utilities

(1) Definitions: The following definitions shall be used in this rule:

(a) "Amortization" means the inclusion in rates of an amount that has been deferred under ORS 757.259 and which is designed to eliminate, over time, the balance in an authorized deferred account. Amortization does not include the normal positive and negative fluctuations in a balancing account;

(b) "Deferred Accounting" means the recording in a balance sheet account, with Commission authorization under ORS 757.259, of a current expense or revenue associated with current service for later reflection in rates.

(2) Expiration: Any authorization to use a deferred account expires 12 months from the date the deferral is authorized to begin. If a deferral under ORS 757.259 is reauthorized, the reauthorization expires 12 months from the date the reauthorization becomes effective.

(3) Contents of Application: Application for deferred accounting by a wastewater utility, a ratepayer, or other applicant shall include:

(a) A description of the wastewater utility expense or revenue for which deferred accounting is requested;

(b) The reason(s) deferred accounting is being requested and a reference to the section(s) of ORS 757.259 under which deferral can be authorized;

(c) The account proposed for recording of the amounts to be deferred and the account which would be used for recording the amounts in the absence of approval of deferred accounting;

(d) An estimate of the amounts to be recorded in the deferred account for the 12-month period subsequent to the application; and

(e) A copy of the notice of application for deferred accounting and list of persons served with the notice.

(4) Reauthorization: Application for reauthorization to use a deferred account shall be made not more than 60 days prior to the expiration of the previous authorization for the deferral. Application for reauthorization shall include the requirements set forth in subsections (3)(a) through (3)(e) of this rule and, in addition, the following information:

(a) A description and explanation of the entries in the deferred account to the date of the application for reauthorization; and

(b) The reason(s) for continuation of deferred accounting.

(5) Exceptions: Authorization under ORS 757.259 to use a deferred account is necessary only to add amounts to an account, not to retain an existing account balance and not to amortize amounts which have been entered in an account under an authorization by the Commission. Interest, once authorized to accrue on unamortized balances in an account, may be added to the account without further authorization by the Commission, even though authorization to add other amounts to an account has expired.

(6) Notice of Application: The applicant shall serve a notice of application upon all persons who were parties in the wastewater utility's last general rate case. If the applicant is other than a wastewater utility, the applicant shall serve a copy of the application upon the affected wastewater utility. A notice of application shall include:

(a) A statement that the applicant has applied to the Commission for authorization to use deferred accounting; or for an order requiring that deferred accounting be used by a wastewater utility;

(b) A description of the wastewater utility expense or revenue for which deferred accounting is requested;

(c) The manner in which an interested person can obtain a copy of the application;

ADMINISTRATIVE RULES

(d) A statement that any person may submit to the Commission written comment on the application by the date set forth in the notice, which date can be no sooner than 25 days from the date of the application; and

(e) A statement that the granting of the application does not authorize a change in rates, but permits the Commission to consider allowing such deferred amounts in rates in a subsequent proceeding.

(7) Public Meetings: Unless otherwise ordered by the Commission, applications for use of deferred accounting will be considered at the Commission's public meetings.

(8) Reply comments: Within 10 days of the due date for comments on the application from interested persons, the applicant and the wastewater utility, if the wastewater utility is not the applicant, may file reply comments with the Commission. Those comments shall be served on persons who have filed the initial comments on the application.

(9) Amortization: Amortization in rates of a deferred amount shall only be allowed in a proceeding, whether initiated by the wastewater utility or another party. The Commission may authorize amortization of such amounts only for wastewater utility expenses or revenues for which the Commission previously has authorized deferred accounting. Upon request for amortization of a deferred account, the wastewater utility shall provide the Commission with its financial results for a 12-month period or for multiple 12-month periods to allow the Commission to perform an earnings review. The period selected for the earnings review encompasses all or part of the period during which the deferral took place or must be reasonably representative of the period of deferral. Unless authorized by the Commission to do otherwise:

(a) A wastewater utility shall request that amortizations of wastewater deferred accounts commence no later than one year from the date that deferrals cease for that particular account; and

(b) In the case of ongoing balancing accounts, the wastewater utility shall request amortization at least annually, unless amortization of the balancing account is then in effect.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 756.105, 757.005, 757.061 & 757.259

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 5-2004, f. & cert. ef. 1-29-04

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

Adm. Order No.: ELECT 1-2004

Filed with Sec. of State: 2-13-2004

Certified to be Effective: 2-13-04

Notice Publication Date: 1-1-04

Rules Amended: 165-013-0010

Subject: This rule amendment is proposed to remove from the penalty matrix the penalty for violating ORS 260.159. If a committee is required to file electronically, and fails to file a report electronically, the report will be considered late, and the committee will be penalized under ORS 260.232 and the 2004 Campaign Finance Manual. The deletion of the civil penalty for violations of ORS 260.159 clar-

ifies that committees will be penalized only under ORS 260.232 for a late report if the report is not filed electronically.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-013-0010

Penalty Matrix for Other Campaign Finance Violations

(1) This penalty matrix applies to civil penalties for campaign finance violations not covered by the penalty matrices in the Campaign Finance Manual.

(2) Mitigating Circumstances. The only mitigating circumstances that will be considered in a campaign finance violation covered by this rule include:

(a) The violation is a direct result of a valid personal emergency of the candidate or treasurer. A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate or treasurer which caused the violation to occur. Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by the elections filing officer;

(c) The violation is the direct result of clearly-established fraud, embezzlement, or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity;

(d) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight); or

(e) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax).

(3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.

(b) The penalty amount for a violation will be calculated against the same candidate or treasurer for a period based on the number of violations by the candidate or treasurer of the same offense in the two years preceding the date the violation occurs.

(c) For purposes of determining penalty amounts for violations of campaign finance violations covered by this rule Appendix A of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: The Appendix referenced is available from the agency.]

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.232

Hist.: ELECT 13-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 1-2004, f. & cert. ef. 2-13-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
101-001-0020	12-4-03	Adopt	1-1-04	123-006-0015	12-23-03	Amend(T)	2-1-04
101-005-0010	12-4-03	Adopt	1-1-04	123-006-0041	12-23-03	Adopt(T)	2-1-04
101-005-0020	12-4-03	Adopt	1-1-04	123-006-0051	12-23-03	Adopt(T)	2-1-04
101-005-0030	12-4-03	Adopt	1-1-04	123-020-0000	2-21-04	Adopt(T)	3-1-04
101-005-0040	12-4-03	Adopt	1-1-04	123-020-0005	2-21-04	Amend(T)	3-1-04
101-005-0050	12-4-03	Adopt	1-1-04	123-020-0010	2-21-04	Amend(T)	3-1-04
101-005-0060	12-4-03	Adopt	1-1-04	123-020-0015	2-21-04	Amend(T)	3-1-04
101-005-0070	12-4-03	Adopt	1-1-04	123-020-0020	2-21-04	Amend(T)	3-1-04
101-005-0080	12-4-03	Adopt	1-1-04	123-020-0025	2-21-04	Amend(T)	3-1-04
101-005-0090	12-4-03	Adopt	1-1-04	123-020-0030	2-21-04	Amend(T)	3-1-04
101-005-0100	12-4-03	Adopt	1-1-04	123-020-0035	2-21-04	Amend(T)	3-1-04
101-005-0110	12-4-03	Adopt	1-1-04	123-020-0040	2-21-04	Amend(T)	3-1-04
101-005-0120	12-4-03	Adopt	1-1-04	123-020-0050	2-21-04	Suspend	3-1-04
101-005-0130	12-4-03	Adopt	1-1-04	123-025-0005	2-3-04	Amend(T)	3-1-04
101-005-0140	12-4-03	Adopt	1-1-04	123-025-0010	2-3-04	Amend(T)	3-1-04
101-006-0010	12-4-03	Adopt	1-1-04	123-025-0012	2-3-04	Adopt(T)	3-1-04
101-006-0020	12-4-03	Adopt	1-1-04	123-025-0015	2-3-04	Amend(T)	3-1-04
101-010-0005	12-4-03	Amend	1-1-04	123-025-0017	2-3-04	Amend(T)	3-1-04
101-020-0010	12-4-03	Amend	1-1-04	123-025-0021	2-3-04	Amend(T)	3-1-04
101-020-0015	12-4-03	Amend	1-1-04	123-025-0023	2-3-04	Amend(T)	3-1-04
101-020-0018	12-4-03	Amend	1-1-04	123-025-0025	2-3-04	Amend(T)	3-1-04
101-020-0020	12-4-03	Amend	1-1-04	123-025-0030	2-3-04	Amend(T)	3-1-04
101-020-0030	12-4-03	Amend	1-1-04	123-027-0035	2-3-04	Amend(T)	3-1-04
101-020-0035	12-4-03	Amend	1-1-04	123-027-0040	2-3-04	Amend(T)	3-1-04
101-020-0040	12-4-03	Amend	1-1-04	123-027-0050	2-3-04	Amend(T)	3-1-04
101-030-0005	12-4-03	Amend	1-1-04	123-027-0055	2-3-04	Adopt(T)	3-1-04
101-030-0022	12-4-03	Adopt	1-1-04	123-027-0060	2-3-04	Amend(T)	3-1-04
101-030-0040	12-4-03	Amend	1-1-04	123-027-0070	2-3-04	Amend(T)	3-1-04
101-040-0005	12-4-03	Amend	1-1-04	123-027-0080	2-3-04	Suspend	3-1-04
101-040-0010	12-4-03	Amend	1-1-04	123-027-0105	2-3-04	Adopt(T)	3-1-04
101-040-0025	12-4-03	Amend	1-1-04	123-027-0155	2-3-04	Adopt(T)	3-1-04
101-040-0030	12-4-03	Amend	1-1-04	123-027-0160	2-3-04	Adopt(T)	3-1-04
101-040-0035	12-4-03	Amend	1-1-04	123-027-0165	2-3-04	Adopt(T)	3-1-04
101-040-0040	12-4-03	Amend	1-1-04	123-027-0170	2-3-04	Adopt(T)	3-1-04
101-040-0045	12-4-03	Amend	1-1-04	123-027-0200	2-3-04	Adopt(T)	3-1-04
101-040-0050	12-4-03	Amend	1-1-04	123-027-0210	2-3-04	Adopt(T)	3-1-04
101-040-0060	12-4-03	Repeal	1-1-04	123-030-0004	2-3-04	Amend(T)	3-1-04
101-040-0070	12-4-03	Repeal	1-1-04	123-030-0010	2-3-04	Amend(T)	3-1-04
101-040-0080	12-4-03	Adopt	1-1-04	123-030-0020	2-3-04	Amend(T)	3-1-04
101-050-0010	12-4-03	Amend	1-1-04	123-030-0030	2-3-04	Amend(T)	3-1-04
101-050-0015	12-4-03	Amend	1-1-04	123-030-0040	2-3-04	Amend(T)	3-1-04
101-050-0025	12-4-03	Amend	1-1-04	123-030-0050	2-3-04	Amend(T)	3-1-04
105-040-0030	12-20-03	Amend(T)	2-1-04	123-035-0000	2-3-04	Adopt(T)	3-1-04
105-040-0050	11-25-03	Amend(T)	1-1-04	123-035-0005	2-3-04	Adopt(T)	3-1-04
121-040-0010	12-24-03	Amend	2-1-04	123-035-0010	2-3-04	Adopt(T)	3-1-04
122-040-0040	12-30-03	Adopt	2-1-04	123-042-0010	2-3-04	Amend(T)	3-1-04
122-040-0050	12-30-03	Adopt	2-1-04	123-042-0020	2-3-04	Amend(T)	3-1-04
122-040-0060	12-30-03	Adopt	2-1-04	123-042-0030	2-3-04	Amend(T)	3-1-04
122-070-0000	12-4-03	Amend	1-1-04	123-042-0040	2-3-04	Amend(T)	3-1-04
122-070-0010	12-4-03	Amend	1-1-04	123-042-0050	2-3-04	Suspend	3-1-04
122-070-0030	12-4-03	Amend	1-1-04	123-042-0060	2-3-04	Suspend	3-1-04
122-070-0060	12-4-03	Amend	1-1-04	123-042-0070	2-3-04	Amend(T)	3-1-04
122-070-0065	12-4-03	Adopt	1-1-04	123-042-0075	2-3-04	Suspend	3-1-04
122-070-0070	12-4-03	Amend	1-1-04	123-042-0080	2-3-04	Amend(T)	3-1-04
122-070-0080	12-4-03	Amend	1-1-04	123-042-0140	2-3-04	Suspend	3-1-04
123-006-0005	12-23-03	Amend(T)	2-1-04	123-042-0150	2-3-04	Amend(T)	3-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
123-042-0160	2-3-04	Amend(T)	3-1-04	137-003-0540	1-1-04	Amend	1-1-04
123-042-0170	2-3-04	Suspend	3-1-04	137-003-0545	1-1-04	Amend	1-1-04
123-042-0180	2-3-04	Amend(T)	3-1-04	137-003-0555	1-1-04	Amend	1-1-04
123-042-0190	2-3-04	Amend(T)	3-1-04	137-003-0560	1-1-04	Amend	1-1-04
123-049-0005	2-3-04	Amend	3-1-04	137-003-0565	1-1-04	Amend	1-1-04
123-049-0010	2-3-04	Amend	3-1-04	137-003-0570	1-1-04	Amend	1-1-04
123-049-0020	2-3-04	Amend	3-1-04	137-003-0572	1-1-04	Amend	1-1-04
123-049-0030	2-3-04	Amend	3-1-04	137-003-0573	1-1-04	Amend	1-1-04
123-049-0040	2-3-04	Amend	3-1-04	137-003-0575	1-1-04	Amend	1-1-04
123-049-0050	2-3-04	Amend	3-1-04	137-003-0580	1-1-04	Amend	1-1-04
123-049-0060	2-3-04	Amend	3-1-04	137-003-0585	1-1-04	Amend	1-1-04
123-055-0100	2-3-04	Amend(T)	3-1-04	137-003-0590	1-1-04	Amend	1-1-04
123-055-0120	2-3-04	Amend(T)	3-1-04	137-003-0595	1-1-04	Amend	1-1-04
123-055-0200	2-3-04	Amend(T)	3-1-04	137-003-0600	1-1-04	Amend	1-1-04
123-055-0240	2-3-04	Amend(T)	3-1-04	137-003-0605	1-1-04	Amend	1-1-04
123-055-0300	2-3-04	Amend(T)	3-1-04	137-003-0610	1-1-04	Amend	1-1-04
123-055-0340	2-3-04	Amend(T)	3-1-04	137-003-0615	1-1-04	Amend	1-1-04
123-055-0400	2-3-04	Amend(T)	3-1-04	137-003-0625	1-1-04	Amend	1-1-04
123-055-0420	2-3-04	Amend(T)	3-1-04	137-003-0630	1-1-04	Amend	1-1-04
123-055-0440	2-3-04	Amend(T)	3-1-04	137-003-0635	1-1-04	Amend	1-1-04
123-055-0460	2-3-04	Amend(T)	3-1-04	137-003-0640	1-1-04	Amend	1-1-04
123-055-0525	2-3-04	Amend(T)	3-1-04	137-003-0645	1-1-04	Amend	1-1-04
123-055-0600	2-3-04	Amend(T)	3-1-04	137-003-0650	1-1-04	Amend	1-1-04
123-055-0620	2-3-04	Amend(T)	3-1-04	137-003-0655	1-1-04	Amend	1-1-04
123-055-0900	2-3-04	Amend(T)	3-1-04	137-003-0660	1-1-04	Amend	1-1-04
123-057-0110	2-3-04	Amend(T)	3-1-04	137-003-0665	1-1-04	Amend	1-1-04
123-057-0130	2-3-04	Amend(T)	3-1-04	137-003-0670	1-1-04	Amend	1-1-04
123-057-0170	2-3-04	Amend(T)	3-1-04	137-003-0675	1-1-04	Amend	1-1-04
123-057-0190	2-3-04	Amend(T)	3-1-04	137-003-0690	1-1-04	Amend	1-1-04
123-057-0210	2-3-04	Amend(T)	3-1-04	137-003-0695	1-1-04	Amend	1-1-04
123-057-0230	2-3-04	Amend(T)	3-1-04	137-004-0800	12-9-03	Amend	1-1-04
123-057-0310	2-3-04	Amend(T)	3-1-04	137-008-0000	12-9-03	Amend	1-1-04
123-057-0330	2-3-04	Amend(T)	3-1-04	137-008-0010	12-9-03	Amend	1-1-04
123-057-0350	2-3-04	Amend(T)	3-1-04	137-008-0010	12-10-03	Amend(T)	1-1-04
123-057-0410	2-3-04	Amend(T)	3-1-04	137-040-0017	1-2-04	Amend	2-1-04
123-057-0430	2-3-04	Amend(T)	3-1-04	137-040-0500	1-2-04	Amend	2-1-04
123-057-0450	2-3-04	Amend(T)	3-1-04	137-040-0510	1-2-04	Amend	2-1-04
123-057-0470	2-3-04	Amend(T)	3-1-04	137-040-0520	1-2-04	Amend	2-1-04
123-057-0510	2-3-04	Amend(T)	3-1-04	137-040-0550	1-2-04	Amend	2-1-04
123-057-0530	2-3-04	Amend(T)	3-1-04	137-040-0560	1-2-04	Amend	2-1-04
123-057-0710	2-3-04	Amend(T)	3-1-04	137-040-0565	1-2-04	Adopt	2-1-04
123-068-0015	12-15-03	Adopt(T)	1-1-04	137-045-0010	12-9-03	Amend	1-1-04
123-068-0105	12-15-03	Adopt(T)	1-1-04	137-045-0015	12-9-03	Amend	1-1-04
123-068-0205	12-15-03	Adopt(T)	1-1-04	137-045-0030	12-9-03	Amend	1-1-04
123-068-0305	12-15-03	Adopt(T)	1-1-04	137-045-0035	12-9-03	Amend	1-1-04
137-001-0070	12-9-03	Amend	1-1-04	137-045-0050	12-9-03	Amend	1-1-04
137-001-0085	12-9-03	Repeal	1-1-04	137-045-0055	12-9-03	Adopt	1-1-04
137-003-0000	1-1-04	Amend	1-1-04	137-045-0060	12-9-03	Amend	1-1-04
137-003-0501	1-1-04	Amend	1-1-04	137-045-0070	12-9-03	Amend	1-1-04
137-003-0510	1-1-04	Amend	1-1-04	137-045-0080	12-9-03	Amend	1-1-04
137-003-0515	1-1-04	Amend	1-1-04	137-045-0090	12-9-03	Amend	1-1-04
137-003-0520	1-1-04	Amend	1-1-04	137-055-1020	1-5-04	Amend	2-1-04
137-003-0525	1-1-04	Amend	1-1-04	137-055-1160	1-5-04	Amend	2-1-04
137-003-0528	1-1-04	Amend	1-1-04	137-055-3200	1-5-04	Adopt	2-1-04
137-003-0530	1-1-04	Amend	1-1-04	137-055-3220	1-5-04	Amend	2-1-04
137-003-0535	1-1-04	Amend	1-1-04	137-055-3360	1-5-04	Amend	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
137-055-3400	1-5-04	Amend	2-1-04	137-060-0044	2-11-04	Repeal	3-1-04
137-055-3420	1-5-04	Amend	2-1-04	137-060-0045	2-11-04	Repeal	3-1-04
137-055-3440	1-5-04	Amend	2-1-04	137-060-0100	2-11-04	Adopt	3-1-04
137-055-3490	1-5-04	Amend	2-1-04	137-060-0110	2-11-04	Adopt	3-1-04
137-055-3660	1-5-04	Adopt	2-1-04	137-060-0120	2-11-04	Adopt	3-1-04
137-055-4060	1-5-04	Amend	2-1-04	137-060-0130	2-11-04	Adopt	3-1-04
137-055-4080	1-5-04	Amend	2-1-04	137-060-0140	2-11-04	Adopt	3-1-04
137-055-4100	1-5-04	Amend	2-1-04	137-060-0150	2-11-04	Adopt	3-1-04
137-055-4110	1-5-04	Adopt	2-1-04	137-060-0160	2-11-04	Adopt	3-1-04
137-055-4120	1-5-04	Amend	2-1-04	137-060-0200	2-11-04	Adopt	3-1-04
137-055-4130	1-5-04	Amend	2-1-04	137-060-0210	2-11-04	Adopt	3-1-04
137-055-4140	1-5-04	Repeal	2-1-04	137-060-0220	2-11-04	Adopt	3-1-04
137-055-4140	1-5-04	Repeal	2-1-04	137-060-0220	2-11-04	Adopt	3-1-04
137-055-4160	1-5-04	Amend	2-1-04	137-060-0230	2-11-04	Adopt	3-1-04
137-055-4180	1-5-04	Amend	2-1-04	137-060-0240	2-11-04	Adopt	3-1-04
137-055-4200	1-5-04	Repeal	2-1-04	137-060-0250	2-11-04	Adopt	3-1-04
137-055-4220	1-5-04	Repeal	2-1-04	137-060-0260	2-11-04	Adopt	3-1-04
137-055-4240	1-5-04	Repeal	2-1-04	137-060-0300	2-11-04	Adopt	3-1-04
137-055-4260	1-5-04	Repeal	2-1-04	137-060-0310	2-11-04	Adopt	3-1-04
137-055-4280	1-5-04	Repeal	2-1-04	137-060-0320	2-11-04	Adopt	3-1-04
137-055-4440	1-5-04	Amend	2-1-04	137-060-0330	2-11-04	Adopt	3-1-04
137-055-4450	1-5-04	Adopt	2-1-04	137-060-0340	2-11-04	Adopt	3-1-04
137-055-4520	1-5-04	Amend	2-1-04	137-060-0350	2-11-04	Adopt	3-1-04
137-055-5020	1-5-04	Amend	2-1-04	137-060-0360	2-11-04	Adopt	3-1-04
137-055-5025	1-5-04	Adopt	2-1-04	137-060-0400	2-11-04	Adopt	3-1-04
137-055-5040	1-5-04	Amend	2-1-04	137-060-0410	2-11-04	Adopt	3-1-04
137-055-5110	1-5-04	Amend	2-1-04	137-060-0420	2-11-04	Adopt	3-1-04
137-055-5220	1-5-04	Amend	2-1-04	137-060-0430	2-11-04	Adopt	3-1-04
137-055-5510	1-5-04	Adopt	2-1-04	137-060-0440	2-11-04	Adopt	3-1-04
137-055-6020	1-5-04	Amend	2-1-04	137-060-0450	2-11-04	Adopt	3-1-04
137-055-6025	1-5-04	Amend	2-1-04	137-084-0001	1-29-04	Adopt	3-1-04
137-055-6110	1-5-04	Amend	2-1-04	137-084-0005	1-29-04	Adopt	3-1-04
137-060-0010	2-11-04	Repeal	3-1-04	137-084-0010	1-29-04	Adopt	3-1-04
137-060-0011	2-11-04	Repeal	3-1-04	137-084-0020	1-29-04	Adopt	3-1-04
137-060-0012	2-11-04	Repeal	3-1-04	137-084-0030	1-29-04	Adopt	3-1-04
137-060-0013	2-11-04	Repeal	3-1-04	137-085-0001	2-1-04	Adopt(T)	3-1-04
137-060-0014	2-11-04	Repeal	3-1-04	137-085-0010	2-1-04	Adopt(T)	3-1-04
137-060-0015	2-11-04	Repeal	3-1-04	137-085-0020	2-1-04	Adopt(T)	3-1-04
137-060-0016	2-11-04	Repeal	3-1-04	137-085-0030	2-1-04	Adopt(T)	3-1-04
137-060-0020	2-11-04	Repeal	3-1-04	137-085-0040	2-1-04	Adopt(T)	3-1-04
137-060-0021	2-11-04	Repeal	3-1-04	137-085-0050	2-1-04	Adopt(T)	3-1-04
137-060-0022	2-11-04	Repeal	3-1-04	141-030-0010	1-1-04	Amend	1-1-04
137-060-0023	2-11-04	Repeal	3-1-04	141-030-0015	1-1-04	Amend	1-1-04
137-060-0024	2-11-04	Repeal	3-1-04	141-030-0025	1-1-04	Amend	1-1-04
137-060-0025	2-11-04	Repeal	3-1-04	141-030-0034	1-1-04	Amend	1-1-04
137-060-0026	2-11-04	Repeal	3-1-04	141-030-0035	1-1-04	Amend	1-1-04
137-060-0030	2-11-04	Repeal	3-1-04	141-030-0036	1-1-04	Amend	1-1-04
137-060-0031	2-11-04	Repeal	3-1-04	141-030-0037	1-1-04	Amend	1-1-04
137-060-0032	2-11-04	Repeal	3-1-04	141-030-0038	1-1-04	Repeal	1-1-04
137-060-0033	2-11-04	Repeal	3-1-04	141-030-0039	1-1-04	Am. & Ren.	1-1-04
137-060-0034	2-11-04	Repeal	3-1-04	141-030-0039	1-1-04	Amend	1-1-04
137-060-0035	2-11-04	Repeal	3-1-04	141-030-0040	1-1-04	Renumber	1-1-04
137-060-0036	2-11-04	Repeal	3-1-04	141-030-0045	1-1-04	Adopt	1-1-04
137-060-0040	2-11-04	Repeal	3-1-04	141-035-0005	1-1-04	Amend	1-1-04
137-060-0041	2-11-04	Repeal	3-1-04	141-035-0010	1-1-04	Repeal	1-1-04
137-060-0042	2-11-04	Repeal	3-1-04	141-035-0011	1-1-04	Adopt	1-1-04
137-060-0043	2-11-04	Repeal	3-1-04	141-035-0012	1-1-04	Adopt	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
141-035-0013	1-1-04	Amend	1-1-04	141-085-0028	11-26-03	Amend	1-1-04
141-035-0015	1-1-04	Amend	1-1-04	141-085-0029	11-26-03	Amend	1-1-04
141-035-0016	1-1-04	Adopt	1-1-04	141-085-0075	11-26-03	Amend	1-1-04
141-035-0018	1-1-04	Adopt	1-1-04	141-085-0096	11-26-03	Amend	1-1-04
141-035-0020	1-1-04	Amend	1-1-04	141-085-0115	11-26-03	Amend	1-1-04
141-035-0025	1-1-04	Amend	1-1-04	141-085-0121	11-26-03	Amend	1-1-04
141-035-0030	1-1-04	Amend	1-1-04	141-085-0126	11-26-03	Amend	1-1-04
141-035-0035	1-1-04	Amend	1-1-04	141-085-0131	11-26-03	Amend	1-1-04
141-035-0040	1-1-04	Amend	1-1-04	141-085-0141	11-26-03	Amend	1-1-04
141-035-0045	1-1-04	Amend	1-1-04	141-085-0146	11-26-03	Amend	1-1-04
141-035-0047	1-1-04	Amend	1-1-04	141-085-0151	11-26-03	Amend	1-1-04
141-035-0048	1-1-04	Amend	1-1-04	141-085-0156	11-26-03	Amend	1-1-04
141-035-0050	1-1-04	Amend	1-1-04	141-085-0161	11-26-03	Amend	1-1-04
141-035-0055	1-1-04	Amend	1-1-04	141-085-0176	11-26-03	Amend	1-1-04
141-035-0060	1-1-04	Amend	1-1-04	141-085-0263	11-26-03	Amend	1-1-04
141-035-0065	1-1-04	Amend	1-1-04	141-085-0410	11-26-03	Amend	1-1-04
141-035-0068	1-1-04	Adopt	1-1-04	141-085-0421	11-26-03	Amend	1-1-04
141-035-0070	1-1-04	Amend	1-1-04	141-085-0430	11-26-03	Amend	1-1-04
141-035-0075	1-1-04	Adopt	1-1-04	141-085-0450	11-26-03	Adopt	1-1-04
141-040-0005	1-1-04	Amend	1-1-04	141-089-0180	11-26-03	Amend	1-1-04
141-040-0010	1-1-04	Amend	1-1-04	141-090-0020	11-26-03	Amend	1-1-04
141-040-0020	1-1-04	Amend	1-1-04	141-090-0030	11-26-03	Amend	1-1-04
141-040-0030	1-1-04	Amend	1-1-04	150-294.175(2)-(A)	12-31-03	Adopt	2-1-04
141-040-0035	1-1-04	Amend	1-1-04	150-294.175(2)-(B)	12-31-03	Adopt	2-1-04
141-040-0040	1-1-04	Amend	1-1-04	150-294.187	12-31-03	Amend	2-1-04
141-040-0200	1-1-04	Amend	1-1-04	150-294.211(26)	12-31-03	Renumber	2-1-04
141-040-0211	1-1-04	Amend	1-1-04	150-294.435(1)-(C)	12-31-03	Adopt	2-1-04
141-040-0212	1-1-04	Amend	1-1-04	150-305.220(1)	12-31-03	Amend	2-1-04
141-040-0214	1-1-04	Amend	1-1-04	150-305.220(2)	12-31-03	Amend	2-1-04
141-040-0220	1-1-04	Amend	1-1-04	150-306.115	12-31-03	Amend	2-1-04
141-045-0005	1-1-04	Amend	1-1-04	150-308.156(5)-(B)	12-31-03	Amend	2-1-04
141-045-0010	1-1-04	Amend	1-1-04	150-308.159	12-31-03	Adopt	2-1-04
141-045-0015	1-1-04	Amend	1-1-04	150-308.219	12-31-03	Amend	2-1-04
141-045-0021	1-1-04	Amend	1-1-04	150-308.250	12-31-03	Amend	2-1-04
141-045-0031	1-1-04	Amend	1-1-04	150-309.100(3)-(B)	12-31-03	Amend	2-1-04
141-045-0041	1-1-04	Amend	1-1-04	150-309.100(3)-(C)	12-31-03	Amend	2-1-04
141-045-0061	1-1-04	Amend	1-1-04	150-309.110(1)-(A)	12-31-03	Amend	2-1-04
141-045-0100	1-1-04	Amend	1-1-04	150-309.110(1)-(B)	12-31-03	Amend	2-1-04
141-045-0105	1-1-04	Amend	1-1-04	150-309.110(1)-(D)	12-31-03	Adopt	2-1-04
141-045-0115	1-1-04	Amend	1-1-04	150-309.110(1)-(E)	12-31-03	Adopt	2-1-04
141-045-0120	1-1-04	Amend	1-1-04	150-309.115(1)-(C)	12-31-03	Adopt	2-1-04
141-045-0121	1-1-04	Amend	1-1-04	150-309.115(2)-(f)	12-31-03	Renumber	2-1-04
141-045-0122	1-1-04	Amend	1-1-04	150-311.205(1)(b)	12-31-03	Renumber	2-1-04
141-045-0123	1-1-04	Amend	1-1-04	150-311.205(1)(c)-(A)	12-31-03	Renumber	2-1-04
141-045-0124	1-1-04	Amend	1-1-04	150-311.205(1)(c)-(C)	12-31-03	Am. & Ren.	2-1-04
141-045-0125	1-1-04	Amend	1-1-04	150-311.672(1)(a)	12-31-03	Amend	2-1-04
141-045-0126	1-1-04	Amend	1-1-04	150-311.708	12-31-03	Amend	2-1-04
141-045-0130	1-1-04	Amend	1-1-04	150-311.806-(A)	12-31-03	Amend	2-1-04
141-045-0150	1-1-04	Amend	1-1-04	150-312.040(1)(b)	12-31-03	Amend	2-1-04
141-045-0155	1-1-04	Amend	1-1-04	150-314.295	12-31-03	Adopt	2-1-04
141-045-0160	1-1-04	Amend	1-1-04	150-314.385(c)-(B)	12-31-03	Amend	2-1-04
141-045-0170	1-1-04	Amend	1-1-04	150-314.415(1)(b)	12-31-03	Am. & Ren.	2-1-04
141-045-0180	1-1-04	Amend	1-1-04	150-314.415(1)(c)	12-31-03	Am. & Ren.	2-1-04
141-045-0185	1-1-04	Amend	1-1-04	150-314.505-(A)	12-31-03	Amend	2-1-04
141-085-0010	11-26-03	Amend	1-1-04	150-314.610(1)-(A)	12-31-03	Amend	2-1-04
141-085-0027	11-26-03	Amend	1-1-04	150-314.610(1)-(B)	12-31-03	Amend	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
150-314.610(1)-(C)	12-31-03	Amend	2-1-04	Sec. 3	12-31-03	Adopt	2-1-04
150-314.615-(F)	12-31-03	Amend	2-1-04	150-OL 2003 Ch. 621			
150-314.655(2)-(B)	12-31-03	Amend	2-1-04	Sec. 109(1)	12-31-03	Adopt	2-1-04
150-314.665(6)(c)	12-31-03	Adopt	2-1-04	150-OR Laws 2003,			
150-314.840	12-31-03	Amend	2-1-04	Ch. 818	1-1-04	Adopt(T)	1-1-04
150-315.113	12-31-03	Adopt	2-1-04	161-002-0000	2-3-04	Amend	3-1-04
150-315.262	12-31-03	Amend	2-1-04	161-006-0160	11-24-03	Amend	1-1-04
150-316.054	12-31-03	Amend	2-1-04	161-015-0030	11-24-03	Amend	1-1-04
150-316.127-(D)	12-31-03	Amend	2-1-04	161-020-0045	11-24-03	Amend	1-1-04
150-321.005	12-31-03	Amend	2-1-04	161-020-0055	11-24-03	Amend	1-1-04
150-321.045	12-31-03	Amend	2-1-04	161-020-0140	11-24-03	Amend	1-1-04
150-321.282(1)-(C)	12-31-03	Repeal	2-1-04	161-025-0050	11-24-03	Amend	1-1-04
150-321.282(1)-(D)	12-31-03	Repeal	2-1-04	161-025-0060	2-3-04	Amend	3-1-04
150-321.282(1)-(E)	12-31-03	Repeal	2-1-04	161-050-0040	11-24-03	Amend	1-1-04
150-321.282(1)-(I)	12-31-03	Repeal	2-1-04	161-050-0050	11-24-03	Amend	1-1-04
150-321.282(2)(a)	12-31-03	Repeal	2-1-04	165-001-0090	12-31-03	Adopt	2-1-04
150-321.282(2)(c)	12-31-03	Repeal	2-1-04	165-002-0005	12-5-03	Amend	1-1-04
150-321.282(5)	12-31-03	Repeal	2-1-04	165-002-0010	12-5-03	Amend	1-1-04
150-321.282(6)(a)-(A)	12-31-03	Am. & Ren.	2-1-04	165-002-0025	12-5-03	Amend	1-1-04
150-321.282(6)(a)-(D)	12-31-03	Am. & Ren.	2-1-04	165-007-0030	12-31-03	Amend	2-1-04
150-321.358(2)(b)	12-31-03	Am. & Ren.	2-1-04	165-010-0005	12-5-03	Amend	1-1-04
150-321.358(3)(b)	12-31-03	Am. & Ren.	2-1-04	165-010-0060	12-5-03	Amend	1-1-04
150-321.358(4)	12-31-03	Am. & Ren.	2-1-04	165-010-0080	12-5-03	Amend	1-1-04
150-321.379(1)-(A)	12-31-03	Repeal	2-1-04	165-010-0090	12-5-03	Amend	1-1-04
150-321.379(1)-(B)	12-31-03	Repeal	2-1-04	165-012-0005	12-12-03	Amend	1-1-04
150-321.379(2)-(A)	12-31-03	Repeal	2-1-04	165-012-0050	12-5-03	Amend	1-1-04
150-321.379(2)-(C)	12-31-03	Repeal	2-1-04	165-012-0060	12-5-03	Amend	1-1-04
150-321.430(1)	12-31-03	Repeal	2-1-04	165-012-0230	12-5-03	Amend	1-1-04
150-321.430(3)-(A)	12-31-03	Repeal	2-1-04	165-012-0230	12-15-03	Amend(T)	1-1-04
150-321.430(3)-(B)	12-31-03	Repeal	2-1-04	165-013-0010	12-5-03	Amend	1-1-04
150-321.430(3)-(C)	12-31-03	Repeal	2-1-04	165-013-0010	2-13-04	Amend	3-1-04
150-321.430(3)-(D)	12-31-03	Repeal	2-1-04	165-013-0020	12-5-03	Amend	1-1-04
150-321.432-(A)	12-31-03	Amend	2-1-04	165-014-0005	12-5-03	Amend	1-1-04
150-321.434	12-31-03	Repeal	2-1-04	165-014-0006	12-5-03	Repeal	1-1-04
150-321.434(1)	12-31-03	Repeal	2-1-04	165-014-0080	12-5-03	Repeal	1-1-04
150-321.434(2)	12-31-03	Repeal	2-1-04	165-014-0085	12-5-03	Repeal	1-1-04
150-321.515	12-31-03	Repeal	2-1-04	165-020-0005	12-5-03	Amend	1-1-04
150-321.815(2)(b)	12-31-03	Am. & Ren.	2-1-04	166-001-0000	11-24-03	Amend	1-1-04
150-321.815(4)	12-31-03	Am. & Ren.	2-1-04	166-101-0010	11-24-03	Amend	1-1-04
150-321.950	12-31-03	Repeal	2-1-04	166-200-0130	11-24-03	Amend	1-1-04
150-570.560	12-31-03	Renumber	2-1-04	166-500-0000	11-20-03	Amend	1-1-04
150-Ch. 1078 Sec. 2 & 35				166-500-0015	11-20-03	Amend	1-1-04
1999 Session	12-31-03	Renumber	2-1-04	166-500-0040	11-20-03	Amend	1-1-04
150-Ch. 1078 Sec. 2 & 35				166-500-0045	11-20-03	Amend	1-1-04
1999 Session	12-31-03	Renumber	2-1-04	166-500-0050	11-20-03	Amend	1-1-04
150-OL 2003 Ch. 454				166-500-0055	11-20-03	Amend	1-1-04
Sec. 1(1)	12-31-03	Adopt	2-1-04	170-060-1000	1-15-04	Adopt(T)	2-1-04
150-OL 2003 Ch. 454				177-045-0000	1-5-04	Amend(T)	2-1-04
Sec. 1(12)	12-31-03	Adopt	2-1-04	177-045-0010	1-5-04	Amend(T)	2-1-04
150-OL 2003 Ch. 454				177-045-0020	1-5-04	Suspend	2-1-04
Sec. 1(13)	12-31-03	Adopt	2-1-04	177-045-0030	1-5-04	Amend(T)	2-1-04
150-OL 2003 Ch. 454				177-045-0040	1-5-04	Amend(T)	2-1-04
Sec. 4(1)(c)	12-31-03	Adopt	2-1-04	177-045-0050	1-5-04	Adopt(T)	2-1-04
150-OL 2003 Ch. 454				177-045-0060	1-5-04	Adopt(T)	2-1-04
Sec. 4(3)	12-31-03	Adopt	2-1-04	177-045-0070	1-5-04	Adopt(T)	2-1-04
150-OL 2003 Ch. 541				177-045-0080	1-5-04	Adopt(T)	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
177-082-0100	12-19-03	Repeal	2-1-04	291-001-0070	12-12-03	Repeal	1-1-04
177-091-0000	12-19-03	Adopt	2-1-04	291-013-0010	1-27-04	Amend(T)	3-1-04
177-091-0010	12-19-03	Adopt	2-1-04	291-013-0100	1-27-04	Amend(T)	3-1-04
177-091-0020	12-19-03	Adopt	2-1-04	291-013-0215	1-27-04	Amend(T)	3-1-04
177-091-0030	12-19-03	Adopt	2-1-04	291-062-0010	1-14-04	Suspend	2-1-04
177-091-0040	12-19-03	Adopt	2-1-04	291-062-0020	1-14-04	Suspend	2-1-04
177-091-0050	12-19-03	Adopt	2-1-04	291-062-0030	1-14-04	Suspend	2-1-04
177-091-0060	12-19-03	Adopt	2-1-04	291-062-0040	1-14-04	Suspend	2-1-04
177-091-0070	12-19-03	Adopt	2-1-04	291-062-0050	1-14-04	Suspend	2-1-04
177-091-0080	12-19-03	Adopt	2-1-04	291-062-0060	1-14-04	Suspend	2-1-04
177-091-0090	12-19-03	Adopt	2-1-04	291-062-0070	1-14-04	Suspend	2-1-04
177-091-0100	12-19-03	Adopt	2-1-04	291-062-0080	1-14-04	Suspend	2-1-04
177-091-0110	12-19-03	Adopt	2-1-04	291-062-0100	1-14-04	Adopt(T)	2-1-04
213-001-0000	1-1-04	Amend	2-1-04	291-062-0110	1-14-04	Adopt(T)	2-1-04
213-001-0005	1-1-04	Amend	2-1-04	291-062-0120	1-14-04	Adopt(T)	2-1-04
213-003-0001	1-1-04	Amend	2-1-04	291-062-0130	1-14-04	Adopt(T)	2-1-04
213-005-0001	1-1-04	Amend	2-1-04	291-062-0140	1-14-04	Adopt(T)	2-1-04
213-005-0004	1-1-04	Amend	2-1-04	291-062-0150	1-14-04	Adopt(T)	2-1-04
213-005-0007	1-1-04	Amend	2-1-04	291-062-0160	1-14-04	Adopt(T)	2-1-04
213-011-0003	1-1-04	Amend	2-1-04	291-064-0060	12-2-03	Amend	1-1-04
213-017-0001	1-1-04	Amend	2-1-04	291-117-0020	1-20-04	Amend(T)	3-1-04
213-017-0002	1-1-04	Amend	2-1-04	309-041-0300	1-1-04	Repeal	2-1-04
213-017-0003	1-1-04	Amend	2-1-04	309-041-0305	1-1-04	Repeal	2-1-04
213-017-0004	1-1-04	Amend	2-1-04	309-041-0310	1-1-04	Repeal	2-1-04
213-017-0005	1-1-04	Amend	2-1-04	309-041-0315	1-1-04	Repeal	2-1-04
213-017-0006	1-1-04	Amend	2-1-04	309-041-0320	1-1-04	Repeal	2-1-04
213-017-0007	1-1-04	Amend	2-1-04	309-041-0375	1-1-04	Repeal	2-1-04
213-017-0008	1-1-04	Amend	2-1-04	309-041-0400	1-1-04	Repeal	2-1-04
213-017-0009	1-1-04	Amend	2-1-04	309-041-0405	1-1-04	Repeal	2-1-04
213-017-0010	1-1-04	Amend	2-1-04	309-041-0410	1-1-04	Repeal	2-1-04
213-017-0011	1-1-04	Amend	2-1-04	309-041-0415	1-1-04	Repeal	2-1-04
213-018-0038	1-1-04	Amend	2-1-04	309-041-0435	1-1-04	Repeal	2-1-04
213-018-0047	1-1-04	Adopt	2-1-04	309-041-0445	1-1-04	Repeal	2-1-04
213-018-0048	1-1-04	Adopt	2-1-04	309-041-0450	1-1-04	Repeal	2-1-04
213-018-0050	1-1-04	Amend	2-1-04	309-041-0455	1-1-04	Repeal	2-1-04
213-018-0090	1-1-04	Amend	2-1-04	309-041-0460	1-1-04	Repeal	2-1-04
213-019-0007	1-1-04	Amend	2-1-04	309-041-0465	1-1-04	Repeal	2-1-04
213-019-0008	1-1-04	Amend	2-1-04	309-041-0470	1-1-04	Repeal	2-1-04
213-019-0010	1-1-04	Amend	2-1-04	309-041-0475	1-1-04	Repeal	2-1-04
213-019-0011	1-1-04	Amend	2-1-04	309-041-0480	1-1-04	Repeal	2-1-04
255-060-0011	1-14-04	Amend(T)	2-1-04	309-041-1750	12-28-03	Am. & Ren.	2-1-04
255-070-0001	1-14-04	Amend	2-1-04	309-041-1760	12-28-03	Am. & Ren.	2-1-04
259-008-0010	12-22-03	Amend	2-1-04	309-041-1770	12-28-03	Am. & Ren.	2-1-04
259-008-0011	1-20-04	Amend	3-1-04	309-041-1780	12-28-03	Am. & Ren.	2-1-04
259-008-0025	12-22-03	Amend	2-1-04	309-041-1790	12-28-03	Am. & Ren.	2-1-04
259-008-0060	1-20-04	Amend	3-1-04	309-041-1800	12-28-03	Am. & Ren.	2-1-04
259-008-0068	1-16-04	Adopt	3-1-04	309-041-1810	12-28-03	Am. & Ren.	2-1-04
274-020-0341	1-22-04	Amend(T)	3-1-04	309-041-1820	12-28-03	Am. & Ren.	2-1-04
274-020-0341(T)	1-22-04	Suspend	3-1-04	309-041-1830	12-28-03	Am. & Ren.	2-1-04
274-020-0388	1-15-04	Amend(T)	2-1-04	309-041-1840	12-28-03	Am. & Ren.	2-1-04
274-040-0015	12-31-03	Amend	2-1-04	309-041-1850	12-28-03	Am. & Ren.	2-1-04
274-040-0015(T)	12-31-03	Repeal	2-1-04	309-041-1860	12-28-03	Am. & Ren.	2-1-04
274-040-0030	12-31-03	Amend	2-1-04	309-041-1870	12-28-03	Am. & Ren.	2-1-04
274-040-0030(T)	12-31-03	Repeal	2-1-04	309-041-1880	12-28-03	Am. & Ren.	2-1-04
291-001-0020	12-12-03	Amend	1-1-04	309-041-1890	12-28-03	Am. & Ren.	2-1-04
291-001-0025	12-12-03	Amend	1-1-04	309-041-1900	12-28-03	Am. & Ren.	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
309-041-1910	12-28-03	Am. & Ren.	2-1-04	309-047-0120	12-28-03	Am. & Ren.	2-1-04
309-041-1920	12-28-03	Am. & Ren.	2-1-04	309-047-0125	12-28-03	Am. & Ren.	2-1-04
309-041-2000	12-28-03	Am. & Ren.	2-1-04	309-047-0130	12-28-03	Am. & Ren.	2-1-04
309-041-2010	12-28-03	Am. & Ren.	2-1-04	309-047-0133	12-28-03	Am. & Ren.	2-1-04
309-041-2020	12-28-03	Am. & Ren.	2-1-04	309-047-0135	12-28-03	Am. & Ren.	2-1-04
309-041-2030	12-28-03	Am. & Ren.	2-1-04	309-047-0140	12-28-03	Am. & Ren.	2-1-04
309-041-2040	12-28-03	Am. & Ren.	2-1-04	309-048-0000	1-1-04	Repeal	2-1-04
309-041-2050	12-28-03	Am. & Ren.	2-1-04	309-048-0005	1-1-04	Repeal	2-1-04
309-041-2060	12-28-03	Am. & Ren.	2-1-04	309-048-0010	1-1-04	Repeal	2-1-04
309-041-2070	12-28-03	Am. & Ren.	2-1-04	309-048-0015	1-1-04	Repeal	2-1-04
309-041-2080	12-28-03	Am. & Ren.	2-1-04	309-048-0020	1-1-04	Repeal	2-1-04
309-041-2090	12-28-03	Am. & Ren.	2-1-04	309-048-0025	1-1-04	Repeal	2-1-04
309-041-2110	12-28-03	Am. & Ren.	2-1-04	309-048-0030	1-1-04	Repeal	2-1-04
309-041-2120	12-28-03	Am. & Ren.	2-1-04	309-048-0035	1-1-04	Repeal	2-1-04
309-041-2130	12-28-03	Am. & Ren.	2-1-04	309-049-0030	1-1-04	Repeal	2-1-04
309-041-2140	12-28-03	Am. & Ren.	2-1-04	309-049-0035	1-1-04	Repeal	2-1-04
309-041-2150	12-28-03	Am. & Ren.	2-1-04	309-049-0040	1-1-04	Repeal	2-1-04
309-041-2160	12-28-03	Am. & Ren.	2-1-04	309-049-0045	1-1-04	Repeal	2-1-04
309-041-2170	12-28-03	Am. & Ren.	2-1-04	309-049-0050	1-1-04	Repeal	2-1-04
309-041-2180	12-28-03	Am. & Ren.	2-1-04	309-049-0055	1-1-04	Repeal	2-1-04
309-044-0100	12-11-03	Amend(T)	1-1-04	309-049-0060	1-1-04	Repeal	2-1-04
309-044-0110	12-11-03	Amend(T)	1-1-04	309-049-0065	1-1-04	Repeal	2-1-04
309-044-0120	12-11-03	Amend(T)	1-1-04	309-049-0070	1-1-04	Repeal	2-1-04
309-044-0130	12-11-03	Amend(T)	1-1-04	309-049-0075	1-1-04	Repeal	2-1-04
309-044-0140	12-11-03	Amend(T)	1-1-04	309-049-0080	1-1-04	Repeal	2-1-04
309-044-0150	12-11-03	Amend(T)	1-1-04	309-049-0085	1-1-04	Repeal	2-1-04
309-044-0160	12-11-03	Amend(T)	1-1-04	309-049-0090	1-1-04	Repeal	2-1-04
309-044-0170	12-11-03	Amend(T)	1-1-04	309-049-0095	1-1-04	Repeal	2-1-04
309-044-0180	12-11-03	Amend(T)	1-1-04	309-049-0100	1-1-04	Repeal	2-1-04
309-044-0190	12-11-03	Amend(T)	1-1-04	309-049-0105	1-1-04	Repeal	2-1-04
309-044-0200	12-11-03	Amend(T)	1-1-04	309-049-0110	1-1-04	Repeal	2-1-04
309-044-0210	12-11-03	Amend(T)	1-1-04	309-049-0115	1-1-04	Repeal	2-1-04
309-047-0000	12-28-03	Am. & Ren.	2-1-04	309-049-0120	1-1-04	Repeal	2-1-04
309-047-0005	12-28-03	Am. & Ren.	2-1-04	309-049-0130	1-1-04	Repeal	2-1-04
309-047-0010	12-28-03	Am. & Ren.	2-1-04	309-049-0135	1-1-04	Repeal	2-1-04
309-047-0015	12-28-03	Am. & Ren.	2-1-04	309-049-0140	1-1-04	Repeal	2-1-04
309-047-0018	12-28-03	Am. & Ren.	2-1-04	309-049-0145	1-1-04	Repeal	2-1-04
309-047-0025	12-28-03	Am. & Ren.	2-1-04	309-049-0150	1-1-04	Repeal	2-1-04
309-047-0030	12-28-03	Am. & Ren.	2-1-04	309-049-0155	1-1-04	Repeal	2-1-04
309-047-0035	12-28-03	Am. & Ren.	2-1-04	309-049-0160	1-1-04	Repeal	2-1-04
309-047-0040	12-28-03	Am. & Ren.	2-1-04	309-049-0165	1-1-04	Repeal	2-1-04
309-047-0045	12-28-03	Am. & Ren.	2-1-04	309-049-0170	1-1-04	Repeal	2-1-04
309-047-0050	12-28-03	Am. & Ren.	2-1-04	309-049-0175	1-1-04	Repeal	2-1-04
309-047-0055	12-28-03	Am. & Ren.	2-1-04	309-049-0180	1-1-04	Repeal	2-1-04
309-047-0060	12-28-03	Am. & Ren.	2-1-04	309-049-0185	1-1-04	Repeal	2-1-04
309-047-0065	12-28-03	Am. & Ren.	2-1-04	309-049-0190	1-1-04	Repeal	2-1-04
309-047-0070	12-28-03	Am. & Ren.	2-1-04	309-049-0193	1-1-04	Repeal	2-1-04
309-047-0075	12-28-03	Am. & Ren.	2-1-04	309-049-0195	1-1-04	Repeal	2-1-04
309-047-0080	12-28-03	Am. & Ren.	2-1-04	309-049-0200	1-1-04	Repeal	2-1-04
309-047-0085	12-28-03	Am. & Ren.	2-1-04	309-049-0205	1-1-04	Repeal	2-1-04
309-047-0090	12-28-03	Am. & Ren.	2-1-04	309-049-0207	1-1-04	Repeal	2-1-04
309-047-0095	12-28-03	Am. & Ren.	2-1-04	309-049-0210	1-1-04	Repeal	2-1-04
309-047-0100	12-28-03	Am. & Ren.	2-1-04	309-049-0215	1-1-04	Repeal	2-1-04
309-047-0105	12-28-03	Am. & Ren.	2-1-04	309-049-0220	1-1-04	Repeal	2-1-04
309-047-0110	12-28-03	Am. & Ren.	2-1-04	309-049-0225	1-1-04	Repeal	2-1-04
309-047-0115	12-28-03	Am. & Ren.	2-1-04	330-070-0010	1-21-04	Amend	3-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
330-070-0013	1-21-04	Amend	3-1-04	333-020-0135	12-16-03	Amend	2-1-04
330-070-0014	1-21-04	Amend	3-1-04	333-020-0140	12-16-03	Amend	2-1-04
330-070-0020	1-21-04	Amend	3-1-04	333-020-0145	12-16-03	Amend	2-1-04
330-070-0021	1-21-04	Amend	3-1-04	333-020-0147	12-16-03	Adopt	2-1-04
330-070-0022	1-21-04	Amend	3-1-04	333-020-0149	12-16-03	Adopt	2-1-04
330-070-0024	1-21-04	Amend	3-1-04	333-020-0150	12-16-03	Amend	2-1-04
330-070-0025	1-21-04	Amend	3-1-04	333-020-0151	12-16-03	Adopt	2-1-04
330-070-0026	1-21-04	Amend	3-1-04	333-020-0153	12-16-03	Adopt	2-1-04
330-070-0027	1-21-04	Amend	3-1-04	333-020-0155	12-16-03	Amend	2-1-04
330-070-0040	1-21-04	Amend	3-1-04	333-020-0160	12-16-03	Amend	2-1-04
330-070-0045	1-21-04	Amend	3-1-04	333-020-0165	12-16-03	Amend	2-1-04
330-070-0048	1-21-04	Amend	3-1-04	333-029-0105	2-13-04	Amend(T)	3-1-04
330-070-0055	1-21-04	Amend	3-1-04	333-029-0110	2-13-04	Amend(T)	3-1-04
330-070-0059	1-21-04	Adopt	3-1-04	333-030-0095	2-13-04	Amend(T)	3-1-04
330-070-0060	1-21-04	Amend	3-1-04	333-054-0000	1-5-04	Amend	2-1-04
330-070-0062	1-21-04	Amend	3-1-04	333-054-0000(T)	1-5-04	Repeal	2-1-04
330-070-0063	1-21-04	Amend	3-1-04	333-054-0010	1-5-04	Amend	2-1-04
330-070-0064	1-21-04	Adopt	3-1-04	333-054-0010(T)	1-5-04	Repeal	2-1-04
330-070-0070	1-21-04	Amend	3-1-04	333-054-0020	1-5-04	Amend	2-1-04
330-070-0073	1-21-04	Amend	3-1-04	333-054-0020(T)	1-5-04	Repeal	2-1-04
330-070-0085	1-21-04	Amend	3-1-04	333-054-0030	1-5-04	Amend	2-1-04
330-070-0089	1-21-04	Amend	3-1-04	333-054-0030(T)	1-5-04	Repeal	2-1-04
330-070-0091	1-21-04	Amend	3-1-04	333-054-0040	1-5-04	Amend	2-1-04
330-070-0097	1-21-04	Amend	3-1-04	333-054-0040(T)	1-5-04	Repeal	2-1-04
330-090-0105	1-21-04	Amend	3-1-04	333-054-0050	1-5-04	Amend	2-1-04
330-090-0110	1-21-04	Amend	3-1-04	333-054-0050(T)	1-5-04	Repeal	2-1-04
330-090-0120	1-21-04	Amend	3-1-04	333-054-0060	1-5-04	Amend	2-1-04
330-090-0130	1-21-04	Amend	3-1-04	333-054-0060(T)	1-5-04	Repeal	2-1-04
330-090-0135	1-21-04	Amend	3-1-04	333-054-0070	1-5-04	Amend	2-1-04
330-090-0140	1-21-04	Amend	3-1-04	333-054-0070(T)	1-5-04	Repeal	2-1-04
330-090-0150	1-21-04	Amend	3-1-04	333-054-0090	1-5-04	Repeal	2-1-04
331-001-0000	2-13-04	Adopt	3-1-04	333-054-0100	1-5-04	Adopt	2-1-04
331-001-0010	2-13-04	Adopt	3-1-04	333-054-0100(T)	1-5-04	Repeal	2-1-04
331-001-0020	2-13-04	Adopt	3-1-04	333-064-0005	12-8-03	Amend	1-1-04
331-010-0000	2-13-04	Adopt	3-1-04	333-064-0005(T)	12-8-03	Repeal	1-1-04
331-010-0010	2-13-04	Adopt	3-1-04	333-064-0010	12-8-03	Amend	1-1-04
331-010-0020	2-13-04	Adopt	3-1-04	333-064-0010(T)	12-8-03	Repeal	1-1-04
331-010-0030	2-13-04	Adopt	3-1-04	333-064-0015	12-8-03	Amend	1-1-04
331-010-0040	2-13-04	Adopt	3-1-04	333-064-0015(T)	12-8-03	Repeal	1-1-04
331-020-0000	2-13-04	Adopt	3-1-04	333-064-0025	12-8-03	Amend	1-1-04
331-020-0010	2-13-04	Adopt	3-1-04	333-064-0025(T)	12-8-03	Repeal	1-1-04
331-020-0020	2-13-04	Adopt	3-1-04	333-064-0030	12-8-03	Amend	1-1-04
331-020-0030	2-13-04	Adopt	3-1-04	333-064-0030(T)	12-8-03	Repeal	1-1-04
331-020-0040	2-13-04	Adopt	3-1-04	333-064-0035	12-8-03	Amend	1-1-04
331-020-0050	2-13-04	Adopt	3-1-04	333-064-0035(T)	12-8-03	Repeal	1-1-04
331-020-0060	2-13-04	Adopt	3-1-04	333-064-0040	12-8-03	Amend	1-1-04
331-020-0070	2-13-04	Adopt	3-1-04	333-064-0040(T)	12-8-03	Repeal	1-1-04
331-030-0000	2-13-04	Adopt	3-1-04	333-064-0060	12-8-03	Amend	1-1-04
331-030-0010	2-13-04	Adopt	3-1-04	333-064-0060(T)	12-8-03	Repeal	1-1-04
331-030-0020	2-13-04	Adopt	3-1-04	333-064-0065	12-8-03	Amend	1-1-04
331-030-0030	2-13-04	Adopt	3-1-04	333-064-0065(T)	12-8-03	Repeal	1-1-04
333-013-0006	1-2-04	Repeal	2-1-04	333-064-0070	12-8-03	Adopt	1-1-04
333-013-0026	1-2-04	Repeal	2-1-04	333-064-0070(T)	12-8-03	Repeal	1-1-04
333-020-0125	12-16-03	Amend	2-1-04	333-150-0000	2-13-04	Amend(T)	3-1-04
333-020-0127	12-16-03	Adopt	2-1-04	333-157-0045	2-13-04	Amend(T)	3-1-04
333-020-0130	12-16-03	Amend	2-1-04	333-157-0050	2-13-04	Suspend	3-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
333-157-0060	2-13-04	Suspend	3-1-04	340-011-0122	12-12-03	Renumber	1-1-04
333-157-0090	2-13-04	Suspend	3-1-04	340-011-0124	12-12-03	Am. & Ren.	1-1-04
333-162-0300	2-13-04	Amend(T)	3-1-04	340-011-0131	12-12-03	Am. & Ren.	1-1-04
333-162-0930	2-13-04	Amend(T)	3-1-04	340-011-0132	12-12-03	Am. & Ren.	1-1-04
333-162-1005	2-13-04	Adopt(T)	3-1-04	340-011-0136	12-12-03	Am. & Ren.	1-1-04
333-170-0010	2-13-04	Amend(T)	3-1-04	340-011-0520	12-12-03	Adopt	1-1-04
333-170-0020	2-13-04	Amend(T)	3-1-04	340-011-0535	12-12-03	Adopt	1-1-04
333-170-0030	2-13-04	Amend(T)	3-1-04	340-011-0545	12-12-03	Adopt	1-1-04
333-170-0040	2-13-04	Amend(T)	3-1-04	340-011-0550	12-12-03	Adopt	1-1-04
333-170-0050	2-13-04	Amend(T)	3-1-04	340-011-0555	12-12-03	Adopt	1-1-04
333-170-0060	2-13-04	Amend(T)	3-1-04	340-011-0580	12-12-03	Adopt	1-1-04
333-170-0070	2-13-04	Amend(T)	3-1-04	340-011-0585	12-12-03	Adopt	1-1-04
333-170-0080	2-13-04	Amend(T)	3-1-04	340-041-0001	12-9-03	Amend	1-1-04
333-170-0090	2-13-04	Amend(T)	3-1-04	340-041-0002	12-9-03	Adopt	1-1-04
333-170-0100	2-13-04	Amend(T)	3-1-04	340-041-0004	12-9-03	Adopt	1-1-04
333-170-0120	2-13-04	Amend(T)	3-1-04	340-041-0006	12-9-03	Repeal	1-1-04
333-170-0130	2-13-04	Amend(T)	3-1-04	340-041-0007	12-9-03	Adopt	1-1-04
333-505-0007	2-6-04	Amend	3-1-04	340-041-0009	12-9-03	Adopt	1-1-04
333-536-0000	2-6-04	Adopt(T)	3-1-04	340-041-0016	12-9-03	Adopt	1-1-04
333-536-0005	2-6-04	Adopt(T)	3-1-04	340-041-0021	12-9-03	Adopt	1-1-04
333-536-0010	2-6-04	Adopt(T)	3-1-04	340-041-0026	12-9-03	Repeal	1-1-04
333-536-0015	2-6-04	Adopt(T)	3-1-04	340-041-0027	12-9-03	Am. & Ren.	1-1-04
333-536-0020	2-6-04	Adopt(T)	3-1-04	340-041-0028	12-9-03	Adopt	1-1-04
333-536-0025	2-6-04	Adopt(T)	3-1-04	340-041-0031	12-9-03	Adopt	1-1-04
333-536-0030	2-6-04	Adopt(T)	3-1-04	340-041-0032	12-9-03	Adopt	1-1-04
333-536-0035	2-6-04	Adopt(T)	3-1-04	340-041-0033	12-9-03	Adopt	1-1-04
333-536-0040	2-6-04	Adopt(T)	3-1-04	340-041-0034	12-9-03	Repeal	1-1-04
333-536-0045	2-6-04	Adopt(T)	3-1-04	340-041-0036	12-9-03	Adopt	1-1-04
333-536-0050	2-6-04	Adopt(T)	3-1-04	340-041-0046	12-9-03	Adopt	1-1-04
333-536-0055	2-6-04	Adopt(T)	3-1-04	340-041-0053	12-9-03	Adopt	1-1-04
333-536-0060	2-6-04	Adopt(T)	3-1-04	340-041-0057	12-9-03	Adopt	1-1-04
333-536-0065	2-6-04	Adopt(T)	3-1-04	340-041-0061	12-9-03	Adopt	1-1-04
333-536-0070	2-6-04	Adopt(T)	3-1-04	340-041-0101	12-9-03	Adopt	1-1-04
333-536-0075	2-6-04	Adopt(T)	3-1-04	340-041-0103	12-9-03	Adopt	1-1-04
333-536-0080	2-6-04	Adopt(T)	3-1-04	340-041-0104	12-9-03	Adopt	1-1-04
333-536-0085	2-6-04	Adopt(T)	3-1-04	340-041-0120	12-9-03	Repeal	1-1-04
333-536-0090	2-6-04	Adopt(T)	3-1-04	340-041-0121	12-9-03	Adopt	1-1-04
333-536-0095	2-6-04	Adopt(T)	3-1-04	340-041-0122	12-9-03	Adopt	1-1-04
333-536-0100	2-6-04	Adopt(T)	3-1-04	340-041-0124	12-9-03	Adopt	1-1-04
333-560-0010	1-16-04	Amend	3-1-04	340-041-0130	12-9-03	Adopt	1-1-04
333-635-0000	1-16-04	Repeal	3-1-04	340-041-0133	12-9-03	Adopt	1-1-04
333-635-0010	1-16-04	Repeal	3-1-04	340-041-0135	12-9-03	Adopt	1-1-04
333-635-0020	1-16-04	Repeal	3-1-04	340-041-0140	12-9-03	Adopt	1-1-04
333-635-0030	1-16-04	Repeal	3-1-04	340-041-0143	12-9-03	Adopt	1-1-04
335-005-0025	2-6-04	Amend	3-1-04	340-041-0145	12-9-03	Adopt	1-1-04
335-070-0030	2-6-04	Amend	3-1-04	340-041-0150	12-9-03	Am. & Ren.	1-1-04
335-070-0060	2-6-04	Amend	3-1-04	340-041-0151	12-9-03	Adopt	1-1-04
335-095-0020	2-6-04	Amend	3-1-04	340-041-0154	12-9-03	Adopt	1-1-04
335-095-0030	2-6-04	Amend	3-1-04	340-041-0156	12-9-03	Adopt	1-1-04
340-011-0005	12-12-03	Amend	1-1-04	340-041-0160	12-9-03	Adopt	1-1-04
340-011-0035	12-12-03	Am. & Ren.	1-1-04	340-041-0164	12-9-03	Adopt	1-1-04
340-011-0097	12-12-03	Am. & Ren.	1-1-04	340-041-0165	12-9-03	Adopt	1-1-04
340-011-0098	12-12-03	Am. & Ren.	1-1-04	340-041-0170	12-9-03	Adopt	1-1-04
340-011-0103	12-12-03	Am. & Ren.	1-1-04	340-041-0174	12-9-03	Adopt	1-1-04
340-011-0106	12-12-03	Renumber	1-1-04	340-041-0175	12-9-03	Adopt	1-1-04
340-011-0107	12-12-03	Am. & Ren.	1-1-04	340-041-0180	12-9-03	Adopt	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
340-041-0184	12-9-03	Adopt	1-1-04	340-041-0365	12-9-03	Repeal	1-1-04
340-041-0185	12-9-03	Adopt	1-1-04	340-041-0375	12-9-03	Repeal	1-1-04
340-041-0190	12-9-03	Adopt	1-1-04	340-041-0385	12-9-03	Repeal	1-1-04
340-041-0194	12-9-03	Adopt	1-1-04	340-041-0442	12-9-03	Repeal	1-1-04
340-041-0195	12-9-03	Adopt	1-1-04	340-041-0445	12-9-03	Repeal	1-1-04
340-041-0201	12-9-03	Adopt	1-1-04	340-041-0455	12-9-03	Repeal	1-1-04
340-041-0202	12-9-03	Repeal	1-1-04	340-041-0470	12-9-03	Repeal	1-1-04
340-041-0204	12-9-03	Adopt	1-1-04	340-041-0482	12-9-03	Repeal	1-1-04
340-041-0205	12-9-03	Repeal	1-1-04	340-041-0485	12-9-03	Repeal	1-1-04
340-041-0207	12-9-03	Adopt	1-1-04	340-041-0495	12-9-03	Repeal	1-1-04
340-041-0215	12-9-03	Repeal	1-1-04	340-041-0522	12-9-03	Repeal	1-1-04
340-041-0220	12-9-03	Adopt	1-1-04	340-041-0525	12-9-03	Repeal	1-1-04
340-041-0224	12-9-03	Adopt	1-1-04	340-041-0535	12-9-03	Repeal	1-1-04
340-041-0225	12-9-03	Adopt	1-1-04	340-041-0562	12-9-03	Repeal	1-1-04
340-041-0230	12-9-03	Adopt	1-1-04	340-041-0565	12-9-03	Repeal	1-1-04
340-041-0234	12-9-03	Adopt	1-1-04	340-041-0575	12-9-03	Repeal	1-1-04
340-041-0235	12-9-03	Adopt	1-1-04	340-041-0580	12-9-03	Repeal	1-1-04
340-041-0242	12-9-03	Repeal	1-1-04	340-041-0602	12-9-03	Repeal	1-1-04
340-041-0245	12-9-03	Repeal	1-1-04	340-041-0605	12-9-03	Repeal	1-1-04
340-041-0250	12-9-03	Adopt	1-1-04	340-041-0615	12-9-03	Repeal	1-1-04
340-041-0254	12-9-03	Adopt	1-1-04	340-041-0642	12-9-03	Repeal	1-1-04
340-041-0255	12-9-03	Repeal	1-1-04	340-041-0645	12-9-03	Repeal	1-1-04
340-041-0256	12-9-03	Adopt	1-1-04	340-041-0655	12-9-03	Repeal	1-1-04
340-041-0260	12-9-03	Adopt	1-1-04	340-041-0682	12-9-03	Repeal	1-1-04
340-041-0264	12-9-03	Adopt	1-1-04	340-041-0765	12-9-03	Repeal	1-1-04
340-041-0265	12-9-03	Adopt	1-1-04	340-041-0775	12-9-03	Repeal	1-1-04
340-041-0270	12-9-03	Repeal	1-1-04	340-041-0802	12-9-03	Repeal	1-1-04
340-041-0271	12-9-03	Adopt	1-1-04	340-041-0805	12-9-03	Repeal	1-1-04
340-041-0274	12-9-03	Adopt	1-1-04	340-041-0815	12-9-03	Repeal	1-1-04
340-041-0275	12-9-03	Adopt	1-1-04	340-041-0842	12-9-03	Repeal	1-1-04
340-041-0282	12-9-03	Repeal	1-1-04	340-041-0845	12-9-03	Repeal	1-1-04
340-041-0285	12-9-03	Repeal	1-1-04	340-041-0855	12-9-03	Repeal	1-1-04
340-041-0286	12-9-03	Adopt	1-1-04	340-041-0882	12-9-03	Repeal	1-1-04
340-041-0289	12-9-03	Adopt	1-1-04	340-041-0885	12-9-03	Repeal	1-1-04
340-041-0290	12-9-03	Adopt	1-1-04	340-041-0895	12-9-03	Repeal	1-1-04
340-041-0295	12-9-03	Repeal	1-1-04	340-041-0922	12-9-03	Repeal	1-1-04
340-041-0300	12-9-03	Adopt	1-1-04	340-041-0925	12-9-03	Repeal	1-1-04
340-041-0304	12-9-03	Adopt	1-1-04	340-041-0935	12-9-03	Repeal	1-1-04
340-041-0305	12-9-03	Adopt	1-1-04	340-041-0962	12-9-03	Repeal	1-1-04
340-041-0310	12-9-03	Adopt	1-1-04	340-041-0965	12-9-03	Repeal	1-1-04
340-041-0314	12-9-03	Adopt	1-1-04	340-041-0975	12-9-03	Repeal	1-1-04
340-041-0315	12-9-03	Adopt	1-1-04	340-200-0040	12-12-03	Amend	1-1-04
340-041-0320	12-9-03	Adopt	1-1-04	340-214-0400	12-12-03	Adopt	1-1-04
340-041-0322	12-9-03	Repeal	1-1-04	340-214-0410	12-12-03	Adopt	1-1-04
340-041-0324	12-9-03	Adopt	1-1-04	340-214-0420	12-12-03	Adopt	1-1-04
340-041-0325	12-9-03	Repeal	1-1-04	340-214-0430	12-12-03	Adopt	1-1-04
340-041-0326	12-9-03	Adopt	1-1-04	340-228-0400	12-12-03	Adopt	1-1-04
340-041-0330	12-9-03	Adopt	1-1-04	340-228-0410	12-12-03	Adopt	1-1-04
340-041-0334	12-9-03	Adopt	1-1-04	340-228-0420	12-12-03	Adopt	1-1-04
340-041-0335	12-9-03	Repeal	1-1-04	340-228-0430	12-12-03	Adopt	1-1-04
340-041-0336	12-9-03	Adopt	1-1-04	340-228-0440	12-12-03	Adopt	1-1-04
340-041-0340	12-9-03	Adopt	1-1-04	340-228-0450	12-12-03	Adopt	1-1-04
340-041-0344	12-9-03	Adopt	1-1-04	340-228-0460	12-12-03	Adopt	1-1-04
340-041-0345	12-9-03	Adopt	1-1-04	340-228-0470	12-12-03	Adopt	1-1-04
340-041-0350	12-9-03	Adopt	1-1-04	340-228-0480	12-12-03	Adopt	1-1-04
340-041-0362	12-9-03	Repeal	1-1-04	340-228-0490	12-12-03	Adopt	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
340-228-0500	12-12-03	Adopt	1-1-04	411-320-0170	1-1-04	Adopt	2-1-04
340-228-0510	12-12-03	Adopt	1-1-04	411-320-0180	1-1-04	Adopt	2-1-04
340-228-0520	12-12-03	Adopt	1-1-04	411-320-0190	1-1-04	Adopt	2-1-04
340-228-0530	12-12-03	Adopt	1-1-04	411-320-0200	1-1-04	Adopt	2-1-04
410-120-1195	1-1-04	Amend	2-1-04	411-325-0010	1-1-04	Adopt	2-1-04
410-121-0021	12-1-03	Adopt	1-1-04	411-325-0020	1-1-04	Adopt	2-1-04
410-121-0033	2-1-04	Adopt	3-1-04	411-325-0030	1-1-04	Adopt	2-1-04
410-121-0040	12-1-03	Amend	1-1-04	411-325-0040	1-1-04	Adopt	2-1-04
410-121-0040	12-15-03	Amend(T)	1-1-04	411-325-0050	1-1-04	Adopt	2-1-04
410-121-0140	12-1-03	Amend	1-1-04	411-325-0060	1-1-04	Adopt	2-1-04
410-121-0146	3-15-04	Amend	3-1-04	411-325-0070	1-1-04	Adopt	2-1-04
410-121-0157	4-4-04	Amend(T)	3-1-04	411-325-0080	1-1-04	Adopt	2-1-04
410-121-0160	3-15-04	Amend	3-1-04	411-325-0090	1-1-04	Adopt	2-1-04
410-121-0300	2-1-04	Amend	3-1-04	411-325-0100	1-1-04	Adopt	2-1-04
410-121-0300	12-1-03	Amend(T)	1-1-04	411-325-0110	1-1-04	Adopt	2-1-04
410-121-0320	2-1-04	Amend	3-1-04	411-325-0120	1-1-04	Adopt	2-1-04
410-122-0040	3-15-04	Amend	3-1-04	411-325-0130	1-1-04	Adopt	2-1-04
410-125-0141	1-1-04	Amend	2-1-04	411-325-0140	1-1-04	Adopt	2-1-04
410-125-0181	1-1-04	Amend	2-1-04	411-325-0150	1-1-04	Adopt	2-1-04
410-125-0195	1-1-04	Amend	2-1-04	411-325-0160	1-1-04	Adopt	2-1-04
410-127-0080	1-1-04	Amend	2-1-04	411-325-0170	1-1-04	Adopt	2-1-04
410-129-0080	12-1-03	Amend	1-1-04	411-325-0180	1-1-04	Adopt	2-1-04
410-131-0160	1-1-04	Amend	2-1-04	411-325-0190	1-1-04	Adopt	2-1-04
410-132-0100	1-1-04	Amend	2-1-04	411-325-0200	1-1-04	Adopt	2-1-04
410-133-0090	12-15-03	Amend(T)	1-1-04	411-325-0210	1-1-04	Adopt	2-1-04
410-133-0090	2-1-04	Amend	3-1-04	411-325-0220	1-1-04	Adopt	2-1-04
410-141-0480	1-1-04	Amend	2-1-04	411-325-0230	1-1-04	Adopt	2-1-04
410-141-0500	1-1-04	Amend	2-1-04	411-325-0240	1-1-04	Adopt	2-1-04
410-141-0520	1-1-04	Amend	2-1-04	411-325-0250	1-1-04	Adopt	2-1-04
410-142-0300	12-1-03	Amend	1-1-04	411-325-0260	1-1-04	Adopt	2-1-04
411-030-0020	12-11-03	Amend(T)	1-1-04	411-325-0270	1-1-04	Adopt	2-1-04
411-030-0033	12-11-03	Amend(T)	1-1-04	411-325-0280	1-1-04	Adopt	2-1-04
411-030-0040	12-11-03	Amend(T)	1-1-04	411-325-0290	1-1-04	Adopt	2-1-04
411-030-0060	12-11-03	Amend(T)	1-1-04	411-325-0300	1-1-04	Adopt	2-1-04
411-030-0065	12-11-03	Amend(T)	1-1-04	411-325-0310	1-1-04	Adopt	2-1-04
411-055-0000	2-4-04	Amend	3-1-04	411-325-0320	1-1-04	Adopt	2-1-04
411-055-0003	2-4-04	Amend	3-1-04	411-325-0330	1-1-04	Adopt	2-1-04
411-056-0005	2-4-04	Amend	3-1-04	411-325-0340	1-1-04	Adopt	2-1-04
411-056-0007	2-4-04	Amend	3-1-04	411-325-0350	1-1-04	Adopt	2-1-04
411-300-0110	12-11-03	Amend(T)	1-1-04	411-325-0360	1-1-04	Adopt	2-1-04
411-320-0010	1-1-04	Adopt	2-1-04	411-325-0370	1-1-04	Adopt	2-1-04
411-320-0020	1-1-04	Adopt	2-1-04	411-325-0380	1-1-04	Adopt	2-1-04
411-320-0030	1-1-04	Adopt	2-1-04	411-325-0390	1-1-04	Adopt	2-1-04
411-320-0040	1-1-04	Adopt	2-1-04	411-325-0400	1-1-04	Adopt	2-1-04
411-320-0050	1-1-04	Adopt	2-1-04	411-325-0410	1-1-04	Adopt	2-1-04
411-320-0060	1-1-04	Adopt	2-1-04	411-325-0420	1-1-04	Adopt	2-1-04
411-320-0070	1-1-04	Adopt	2-1-04	411-325-0430	1-1-04	Adopt	2-1-04
411-320-0080	1-1-04	Adopt	2-1-04	411-325-0440	1-1-04	Adopt	2-1-04
411-320-0090	1-1-04	Adopt	2-1-04	411-325-0450	1-1-04	Adopt	2-1-04
411-320-0100	1-1-04	Adopt	2-1-04	411-325-0460	1-1-04	Adopt	2-1-04
411-320-0110	1-1-04	Adopt	2-1-04	411-325-0470	1-1-04	Adopt	2-1-04
411-320-0120	1-1-04	Adopt	2-1-04	411-325-0480	1-1-04	Adopt	2-1-04
411-320-0130	1-1-04	Adopt	2-1-04	411-330-0010	12-28-03	Adopt	2-1-04
411-320-0140	1-1-04	Adopt	2-1-04	411-330-0020	12-28-03	Adopt	2-1-04
411-320-0150	1-1-04	Adopt	2-1-04	411-330-0030	12-28-03	Adopt	2-1-04
411-320-0160	1-1-04	Adopt	2-1-04	411-330-0040	12-28-03	Adopt	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
411-330-0050	12-28-03	Adopt	2-1-04	413-050-0240	12-12-03	Amend	1-1-04
411-330-0060	12-28-03	Adopt	2-1-04	413-050-0250	12-12-03	Amend	1-1-04
411-330-0070	12-28-03	Adopt	2-1-04	413-050-0260	12-12-03	Amend	1-1-04
411-330-0080	12-28-03	Adopt	2-1-04	413-050-0270	12-12-03	Amend	1-1-04
411-330-0090	12-28-03	Adopt	2-1-04	413-050-0280	12-12-03	Amend	1-1-04
411-330-0100	12-28-03	Adopt	2-1-04	413-050-0290	12-12-03	Amend	1-1-04
411-330-0110	12-28-03	Adopt	2-1-04	413-050-0300	12-12-03	Amend	1-1-04
411-330-0120	12-28-03	Adopt	2-1-04	413-070-0500	1-1-04	Amend	2-1-04
411-330-0130	12-28-03	Adopt	2-1-04	413-070-0505	1-1-04	Amend	2-1-04
411-330-0140	12-28-03	Adopt	2-1-04	413-070-0510	1-1-04	Amend	2-1-04
411-330-0150	12-28-03	Adopt	2-1-04	413-070-0515	1-1-04	Amend	2-1-04
411-330-0160	12-28-03	Adopt	2-1-04	413-070-0517	1-1-04	Amend	2-1-04
411-330-0170	12-28-03	Adopt	2-1-04	413-070-0915	1-1-04	Amend(T)	2-1-04
413-010-0700	1-1-04	Amend	2-1-04	413-070-0935	1-1-04	Amend(T)	2-1-04
413-010-0705	1-1-04	Amend	2-1-04	413-070-0937	1-1-04	Amend(T)	2-1-04
413-010-0712	1-1-04	Amend	2-1-04	413-070-0980	1-1-04	Amend(T)	2-1-04
413-010-0714	1-1-04	Amend	2-1-04	413-070-0981	1-1-04	Amend(T)	2-1-04
413-010-0715	1-1-04	Amend	2-1-04	413-070-0981(T)	1-1-04	Suspend	2-1-04
413-010-0716	1-1-04	Amend	2-1-04	413-070-0982	1-1-04	Adopt(T)	2-1-04
413-010-0717	1-1-04	Amend	2-1-04	413-100-0020	2-10-04	Amend	3-1-04
413-010-0718	1-1-04	Amend	2-1-04	413-100-0030	2-10-04	Amend	3-1-04
413-010-0719	1-1-04	Repeal	2-1-04	413-100-0030(T)	2-10-04	Repeal	3-1-04
413-010-0720	1-1-04	Amend	2-1-04	413-100-0040	2-10-04	Amend	3-1-04
413-010-0721	1-1-04	Amend	2-1-04	413-100-0040(T)	2-10-04	Repeal	3-1-04
413-010-0722	1-1-04	Amend	2-1-04	413-100-0050	2-10-04	Amend	3-1-04
413-010-0723	1-1-04	Amend	2-1-04	413-100-0050(T)	2-10-04	Repeal	3-1-04
413-010-0732	1-1-04	Amend	2-1-04	413-100-0070	2-10-04	Amend	3-1-04
413-010-0735	1-1-04	Amend	2-1-04	413-100-0070(T)	2-10-04	Repeal	3-1-04
413-010-0738	1-1-04	Amend	2-1-04	413-100-0080	2-10-04	Amend	3-1-04
413-010-0740	1-1-04	Amend	2-1-04	413-100-0080(T)	2-10-04	Repeal	3-1-04
413-010-0743	1-1-04	Amend	2-1-04	413-100-0110	2-10-04	Amend	3-1-04
413-010-0745	1-1-04	Amend	2-1-04	413-100-0110(T)	2-10-04	Repeal	3-1-04
413-010-0746	1-1-04	Amend	2-1-04	413-100-0130	2-10-04	Amend	3-1-04
413-010-0748	1-1-04	Adopt	2-1-04	413-100-0130(T)	2-10-04	Repeal	3-1-04
413-010-0750	1-1-04	Amend	2-1-04	413-100-0135	2-10-04	Amend	3-1-04
413-040-0200	1-1-04	Amend	2-1-04	413-100-0135(T)	2-10-04	Repeal	3-1-04
413-040-0205	1-1-04	Adopt	2-1-04	413-100-0150	2-10-04	Amend	3-1-04
413-040-0210	1-1-04	Amend	2-1-04	413-100-0150(T)	2-10-04	Repeal	3-1-04
413-040-0215	1-1-04	Adopt	2-1-04	413-100-0160	2-10-04	Amend	3-1-04
413-040-0220	1-1-04	Repeal	2-1-04	413-100-0160(T)	2-10-04	Repeal	3-1-04
413-040-0230	1-1-04	Amend	2-1-04	413-100-0240	2-10-04	Amend	3-1-04
413-040-0240	1-1-04	Amend	2-1-04	413-100-0240(T)	2-10-04	Repeal	3-1-04
413-040-0250	1-1-04	Am. & Ren.	2-1-04	413-100-0276	2-10-04	Amend	3-1-04
413-040-0260	1-1-04	Amend	2-1-04	413-100-0276(T)	2-10-04	Repeal	3-1-04
413-040-0265	1-1-04	Adopt	2-1-04	413-100-0290	2-10-04	Amend	3-1-04
413-040-0270	1-1-04	Amend	2-1-04	413-100-0290(T)	2-10-04	Repeal	3-1-04
413-040-0280	1-1-04	Amend	2-1-04	413-110-0000	1-1-04	Amend	2-1-04
413-040-0290	1-1-04	Amend	2-1-04	413-110-0010	1-1-04	Amend	2-1-04
413-040-0300	1-1-04	Amend	2-1-04	413-110-0020	1-1-04	Amend	2-1-04
413-040-0310	1-1-04	Amend	2-1-04	413-110-0030	1-1-04	Amend	2-1-04
413-040-0320	1-1-04	Amend	2-1-04	413-110-0040	1-1-04	Amend	2-1-04
413-040-0330	1-1-04	Amend	2-1-04	413-110-0100	1-1-04	Amend	2-1-04
413-050-0200	12-12-03	Amend	1-1-04	413-110-0110	1-1-04	Amend	2-1-04
413-050-0210	12-12-03	Amend	1-1-04	413-110-0120	1-1-04	Amend	2-1-04
413-050-0220	12-12-03	Amend	1-1-04	413-110-0130	1-1-04	Amend	2-1-04
413-050-0230	12-12-03	Amend	1-1-04	413-110-0140	1-1-04	Amend	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
413-110-0300	1-1-04	Amend	2-1-04	414-300-0005	12-28-03	Amend	2-1-04
413-110-0310	1-1-04	Amend	2-1-04	414-300-0010	12-28-03	Amend	2-1-04
413-110-0320	1-1-04	Amend	2-1-04	414-300-0180	12-28-03	Amend	2-1-04
413-110-0330	1-1-04	Amend	2-1-04	414-300-0190	12-28-03	Amend	2-1-04
413-110-0340	1-1-04	Amend	2-1-04	414-300-0200	12-28-03	Amend	2-1-04
413-110-0350	1-1-04	Amend	2-1-04	414-300-0210	12-28-03	Amend	2-1-04
413-110-0360	1-1-04	Amend	2-1-04	414-300-0280	12-28-03	Amend	2-1-04
413-120-0115	11-25-03	Amend(T)	1-1-04	414-300-0360	12-28-03	Amend	2-1-04
413-120-0175	11-25-03	Amend(T)	1-1-04	414-350-0010	12-28-03	Amend	2-1-04
413-120-0500	1-1-04	Amend	2-1-04	414-350-0010	12-28-03	Amend	2-1-04
413-120-0510	1-1-04	Amend	2-1-04	414-350-0020	12-28-03	Amend	2-1-04
413-120-0520	1-1-04	Amend	2-1-04	414-350-0210	12-28-03	Amend	2-1-04
413-120-0530	1-1-04	Amend	2-1-04	414-350-0235	12-28-03	Amend	2-1-04
413-120-0540	1-1-04	Amend	2-1-04	414-500-0030	12-28-03	Amend	2-1-04
413-120-0550	1-1-04	Adopt	2-1-04	414-600-0000	12-7-03	Suspend	1-1-04
413-130-0125	11-19-03	Amend(T)	1-1-04	414-600-0010	12-7-03	Suspend	1-1-04
413-210-0800	1-9-04	Amend	2-1-04	414-600-0020	12-7-03	Suspend	1-1-04
413-210-0806	1-9-04	Amend	2-1-04	414-600-0030	12-7-03	Suspend	1-1-04
413-210-0821	1-9-04	Amend	2-1-04	414-600-0040	12-7-03	Suspend	1-1-04
413-330-0085	12-17-03	Amend(T)	2-1-04	414-600-0050	12-7-03	Suspend	1-1-04
413-330-0087	12-17-03	Amend(T)	2-1-04	414-600-0060	12-7-03	Suspend	1-1-04
413-330-0090	12-17-03	Amend(T)	2-1-04	414-600-0070	12-7-03	Suspend	1-1-04
413-330-0095	12-17-03	Amend(T)	2-1-04	414-600-0080	12-7-03	Suspend	1-1-04
413-330-0097	12-17-03	Adopt(T)	2-1-04	414-600-0090	12-7-03	Suspend	1-1-04
413-330-0098	12-17-03	Adopt(T)	2-1-04	414-600-0100	12-7-03	Suspend	1-1-04
413-330-0900	1-1-04	Amend(T)	2-1-04	414-700-0000	12-7-03	Adopt	1-1-04
413-330-0910	1-1-04	Amend(T)	2-1-04	414-700-0010	12-7-03	Adopt	1-1-04
413-330-0920	1-1-04	Amend(T)	2-1-04	414-700-0020	12-7-03	Adopt	1-1-04
413-330-0930	1-1-04	Amend(T)	2-1-04	414-700-0030	12-7-03	Adopt	1-1-04
413-330-0940	1-1-04	Amend(T)	2-1-04	414-700-0040	12-7-03	Adopt	1-1-04
413-330-0950	1-1-04	Amend(T)	2-1-04	414-700-0050	12-7-03	Adopt	1-1-04
413-330-0960	1-1-04	Suspend	2-1-04	414-700-0060	12-7-03	Adopt	1-1-04
413-330-0970	1-1-04	Amend(T)	2-1-04	414-700-0070	12-7-03	Adopt	1-1-04
413-330-0980	1-1-04	Amend(T)	2-1-04	414-700-0080	12-7-03	Adopt	1-1-04
413-330-0990	1-1-04	Amend(T)	2-1-04	414-700-0090	12-7-03	Adopt	1-1-04
413-330-1000	1-1-04	Amend(T)	2-1-04	436-001-0265	1-1-04	Amend(T)	1-1-04
413-330-1010	1-1-04	Amend(T)	2-1-04	436-009-0008	1-1-04	Amend(T)	1-1-04
414-050-0010	12-28-03	Adopt(T)	2-1-04	436-009-0015	1-1-04	Amend(T)	1-1-04
414-061-0000	12-7-03	Amend	1-1-04	436-009-0060	1-1-04	Amend(T)	1-1-04
414-061-0010	12-7-03	Amend	1-1-04	436-009-0070	1-1-04	Amend(T)	1-1-04
414-061-0020	12-7-03	Amend	1-1-04	436-009-0080	1-1-04	Amend(T)	1-1-04
414-061-0030	12-7-03	Amend	1-1-04	436-010-0005	1-1-04	Amend(T)	1-1-04
414-061-0040	12-7-03	Amend	1-1-04	436-010-0008	1-1-04	Amend(T)	1-1-04
414-061-0050	12-7-03	Amend	1-1-04	436-010-0210	1-1-04	Amend(T)	1-1-04
414-061-0060	12-7-03	Amend	1-1-04	436-010-0220	1-1-04	Amend(T)	1-1-04
414-061-0070	12-7-03	Amend	1-1-04	436-010-0230	1-1-04	Amend(T)	1-1-04
414-061-0080	12-7-03	Amend	1-1-04	436-010-0240	1-1-04	Amend(T)	1-1-04
414-061-0090	12-7-03	Amend	1-1-04	436-010-0250	1-1-04	Amend(T)	1-1-04
414-061-0100	12-7-03	Amend	1-1-04	436-010-0265	1-1-04	Amend(T)	1-1-04
414-061-0110	12-7-03	Amend	1-1-04	436-010-0270	1-1-04	Amend(T)	1-1-04
414-061-0120	12-7-03	Amend	1-1-04	436-010-0275	1-1-04	Amend(T)	1-1-04
414-150-0055	12-28-03	Amend	2-1-04	436-010-0280	1-1-04	Amend(T)	1-1-04
414-150-0080	12-28-03	Amend	2-1-04	436-010-0340	1-1-04	Amend(T)	1-1-04
414-150-0120	12-28-03	Amend	2-1-04	436-015-0008	1-1-04	Amend(T)	1-1-04
414-205-0000	12-28-03	Amend	2-1-04	436-015-0030	1-1-04	Amend(T)	1-1-04
414-300-0000	12-28-03	Amend	2-1-04	436-015-0050	1-1-04	Amend(T)	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
436-015-0060	1-1-04	Amend(T)	1-1-04	436-060-0008	1-1-04	Amend	1-1-04
436-015-0070	1-1-04	Amend(T)	1-1-04	436-060-0010	1-1-04	Amend(T)	1-1-04
436-015-0090	1-1-04	Amend(T)	1-1-04	436-060-0010(T)	1-1-04	Suspend	1-1-04
436-030-0003	1-1-04	Amend(T)	1-1-04	436-060-0019	1-1-04	Amend(T)	1-1-04
436-030-0005	1-1-04	Amend(T)	1-1-04	436-060-0019(T)	1-1-04	Suspend	1-1-04
436-030-0007	1-1-04	Amend(T)	1-1-04	436-060-0020	1-1-04	Amend(T)	1-1-04
436-030-0009	1-1-04	Amend(T)	1-1-04	436-060-0030	1-1-04	Amend(T)	1-1-04
436-030-0010	1-1-04	Amend(T)	1-1-04	436-060-0035	1-1-04	Amend(T)	1-1-04
436-030-0034	1-1-04	Amend(T)	1-1-04	436-060-0035(T)	1-1-04	Suspend	1-1-04
436-030-0035	1-1-04	Amend(T)	1-1-04	436-060-0095	1-1-04	Amend(T)	1-1-04
436-030-0115	1-1-04	Amend(T)	1-1-04	436-060-0105	1-1-04	Amend(T)	1-1-04
436-030-0125	1-1-04	Amend(T)	1-1-04	436-060-0140	1-1-04	Amend(T)	1-1-04
436-030-0135	1-1-04	Amend(T)	1-1-04	436-060-0150	1-1-04	Amend(T)	1-1-04
436-030-0145	1-1-04	Amend(T)	1-1-04	436-070-0008	1-1-04	Amend	1-1-04
436-030-0165	1-1-04	Amend(T)	1-1-04	436-075-0008	1-1-04	Amend	1-1-04
436-030-0185	1-1-04	Amend(T)	1-1-04	436-080-0001	1-1-04	Amend	1-1-04
436-035-0500	1-21-04	Amend(T)	3-1-04	436-080-0002	1-1-04	Amend	1-1-04
436-045-0008	1-1-04	Amend	1-1-04	436-080-0003	1-1-04	Amend	1-1-04
436-050-0003	1-1-04	Amend	1-1-04	436-080-0005	1-1-04	Amend	1-1-04
436-050-0005	1-1-04	Amend	1-1-04	436-080-0006	1-1-04	Amend	1-1-04
436-050-0006	1-1-04	Amend	1-1-04	436-080-0010	1-1-04	Amend	1-1-04
436-050-0008	1-1-04	Amend	1-1-04	436-080-0020	1-1-04	Amend	1-1-04
436-050-0020	1-1-04	Repeal	1-1-04	436-080-0030	1-1-04	Amend	1-1-04
436-050-0040	1-1-04	Amend	1-1-04	436-080-0040	1-1-04	Amend	1-1-04
436-050-0050	1-1-04	Amend	1-1-04	436-080-0050	1-1-04	Repeal	1-1-04
436-050-0055	1-1-04	Amend	1-1-04	436-080-0060	1-1-04	Amend	1-1-04
436-050-0060	1-1-04	Amend	1-1-04	436-080-0065	1-1-04	Amend	1-1-04
436-050-0080	1-1-04	Amend	1-1-04	436-080-0070	1-1-04	Amend	1-1-04
436-050-0090	1-1-04	Amend	1-1-04	436-080-0080	1-1-04	Amend	1-1-04
436-050-0100	1-1-04	Amend	1-1-04	436-085-0008	1-1-04	Amend	1-1-04
436-050-0110	1-1-04	Amend	1-1-04	436-120-0008	1-1-04	Amend(T)	1-1-04
436-050-0120	1-1-04	Amend	1-1-04	436-150-0008	1-1-04	Amend	1-1-04
436-050-0150	1-1-04	Amend	1-1-04	436-160-0003	1-1-04	Amend	1-1-04
436-050-0150(T)	1-1-04	Repeal	1-1-04	436-160-0310	1-1-04	Amend	1-1-04
436-050-0160	1-1-04	Amend	1-1-04	436-160-0320	1-1-04	Amend	1-1-04
436-050-0160(T)	1-1-04	Repeal	1-1-04	436-160-0340	1-1-04	Amend	1-1-04
436-050-0165	1-1-04	Adopt	1-1-04	436-160-0350	1-1-04	Amend	1-1-04
436-050-0165(T)	1-1-04	Repeal	1-1-04	436-160-0360	1-1-04	Amend	1-1-04
436-050-0170	1-1-04	Amend	1-1-04	437-001-0015	11-26-03	Amend	1-1-04
436-050-0175	1-1-04	Amend	1-1-04	437-001-0096	11-26-03	Amend	1-1-04
436-050-0180	1-1-04	Amend	1-1-04	437-001-0171	11-26-03	Amend	1-1-04
436-050-0185	1-1-04	Amend	1-1-04	437-001-0203	11-26-03	Amend	1-1-04
436-050-0190	1-1-04	Amend	1-1-04	437-001-0265	11-26-03	Amend	1-1-04
436-050-0195	1-1-04	Amend	1-1-04	437-001-0270	11-26-03	Amend	1-1-04
436-050-0200	1-1-04	Amend	1-1-04	437-001-0430	11-26-03	Amend	1-1-04
436-050-0210	1-1-04	Amend	1-1-04	437-001-0700	11-26-03	Amend	1-1-04
436-050-0220	1-1-04	Amend	1-1-04	437-001-0765	11-26-03	Amend	1-1-04
436-050-0260	1-1-04	Amend	1-1-04	437-002-0220	12-5-03	Amend	1-1-04
436-050-0270	1-1-04	Amend	1-1-04	437-003-0001	12-5-03	Amend	1-1-04
436-050-0280	1-1-04	Amend	1-1-04	437-003-0001	1-1-04	Amend	2-1-04
436-050-0290	1-1-04	Amend	1-1-04	437-003-0754	1-1-04	Repeal	2-1-04
436-050-0400	1-1-04	Amend	1-1-04	437-003-1754	1-1-04	Adopt	2-1-04
436-050-0440	1-1-04	Amend	1-1-04	437-003-1760	1-1-04	Repeal	2-1-04
436-050-0480	1-1-04	Adopt	1-1-04	438-006-0064	1-1-04	Adopt	1-1-04
436-055-0008	1-1-04	Amend	1-1-04	438-015-0110	1-1-04	Adopt	1-1-04
436-060-0005	1-1-04	Amend(T)	1-1-04	440-020-0010	1-1-04	Adopt	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
440-020-0015	1-1-04	Adopt	2-1-04	441-860-0020	1-1-04	Amend	2-1-04
440-055-0000	1-1-04	Repeal	2-1-04	441-860-0050	1-1-04	Amend	2-1-04
440-055-0005	1-1-04	Repeal	2-1-04	441-880-0050	1-1-04	Adopt	2-1-04
440-055-0008	1-1-04	Adopt	2-1-04	445-050-0005	2-15-04	Amend	2-1-04
440-100-0010	1-1-04	Adopt	2-1-04	445-050-0020	2-15-04	Amend	2-1-04
441-001-0005	1-1-04	Adopt	2-1-04	445-050-0030	2-15-04	Amend	2-1-04
441-001-0010	1-1-04	Adopt	2-1-04	445-050-0040	2-15-04	Amend	2-1-04
441-001-0020	1-1-04	Adopt	2-1-04	445-050-0050	2-15-04	Amend	2-1-04
441-001-0030	1-1-04	Adopt	2-1-04	445-050-0060	2-15-04	Amend	2-1-04
441-001-0040	1-1-04	Adopt	2-1-04	445-050-0080	2-15-04	Amend	2-1-04
441-001-0050	1-1-04	Adopt	2-1-04	445-050-0090	2-15-04	Amend	2-1-04
441-002-0005	1-1-04	Adopt	2-1-04	445-050-0155	2-15-04	Amend	2-1-04
441-002-0010	1-1-04	Adopt	2-1-04	459-005-0001	11-20-03	Amend	1-1-04
441-002-0020	1-1-04	Adopt	2-1-04	459-005-0001	12-15-03	Amend	1-1-04
441-002-0030	1-1-04	Adopt	2-1-04	459-005-0001(T)	11-20-03	Repeal	1-1-04
441-002-0040	1-1-04	Adopt	2-1-04	459-005-0250	1-1-04	Adopt	1-1-04
441-035-0045	11-26-03	Amend(T)	1-1-04	459-005-0320	1-22-04	Repeal	3-1-04
441-049-1001	11-26-03	Adopt(T)	1-1-04	459-007-0001	12-15-03	Amend	1-1-04
441-049-1021	11-26-03	Amend(T)	1-1-04	459-007-0001(T)	12-15-03	Repeal	1-1-04
441-049-1031	11-26-03	Amend(T)	1-1-04	459-007-0003	12-15-03	Adopt	1-1-04
441-049-1041	11-26-03	Amend(T)	1-1-04	459-007-0040	12-15-03	Amend	1-1-04
441-049-1051	11-26-03	Amend(T)	1-1-04	459-007-0040(T)	12-15-03	Repeal	1-1-04
441-065-0001	11-26-03	Adopt(T)	1-1-04	459-007-0050	12-15-03	Amend	1-1-04
441-065-0015	11-26-03	Amend(T)	1-1-04	459-007-0050(T)	12-15-03	Repeal	1-1-04
441-065-0020	11-26-03	Amend(T)	1-1-04	459-007-0060	12-15-03	Amend	1-1-04
441-065-0035	11-26-03	Amend(T)	1-1-04	459-007-0060(T)	12-15-03	Repeal	1-1-04
441-065-0170	11-26-03	Amend(T)	1-1-04	459-007-0070	4-1-04	Amend	1-1-04
441-065-0180	11-26-03	Amend(T)	1-1-04	459-007-0080	4-1-04	Amend	1-1-04
441-065-0270	11-26-03	Amend(T)	1-1-04	459-007-0090	4-1-04	Amend	1-1-04
441-075-0020	11-26-03	Amend(T)	1-1-04	459-007-0095	12-15-03	Adopt	1-1-04
441-095-0030	11-26-03	Amend(T)	1-1-04	459-007-0100	12-15-03	Repeal	1-1-04
441-175-0002	11-26-03	Adopt(T)	1-1-04	459-009-0100	1-1-04	Amend	2-1-04
441-175-0010	1-1-04	Amend	2-1-04	459-009-0110	1-1-04	Repeal	2-1-04
441-175-0015	11-26-03	Amend(T)	1-1-04	459-011-0100	1-22-04	Amend	3-1-04
441-175-0035	1-1-04	Repeal	2-1-04	459-011-0110	1-22-04	Amend	3-1-04
441-175-0055	1-1-04	Amend	2-1-04	459-013-0300	12-15-03	Adopt	1-1-04
441-175-0060	11-26-03	Amend(T)	1-1-04	459-017-0060	12-15-03	Amend(T)	1-1-04
441-175-0080	11-26-03	Amend(T)	1-1-04	459-035-0050	1-1-04	Amend	1-1-04
441-175-0085	11-26-03	Amend(T)	1-1-04	459-045-0001	11-20-03	Amend	1-1-04
441-175-0100	11-26-03	Amend(T)	1-1-04	459-045-0001(T)	11-20-03	Repeal	1-1-04
441-175-0120	11-26-03	Amend(T)	1-1-04	459-060-0001	12-15-03	Amend	1-1-04
441-175-0130	11-26-03	Amend(T)	1-1-04	459-060-0010	12-15-03	Amend	1-1-04
441-175-0130	1-1-04	Amend	2-1-04	459-060-0020	12-15-03	Amend	1-1-04
441-175-0160	11-26-03	Amend(T)	1-1-04	459-070-0100	1-1-04	Adopt	2-1-04
441-175-0165	11-26-03	Amend(T)	1-1-04	459-070-0110	1-1-04	Adopt	2-1-04
441-175-0171	11-26-03	Amend(T)	1-1-04	459-075-0030	1-1-04	Adopt	2-1-04
441-195-0035	1-1-04	Repeal	2-1-04	459-075-0100	1-22-04	Adopt	3-1-04
441-730-0030	1-1-04	Amend	2-1-04	459-080-0010	1-1-04	Adopt	1-1-04
441-740-0030	1-1-04	Adopt	2-1-04	459-080-0100	1-22-04	Adopt	3-1-04
441-810-0200	1-1-04	Adopt	2-1-04	459-080-0200	1-1-04	Adopt(T)	1-1-04
441-810-0210	1-1-04	Adopt	2-1-04	459-080-0500	1-1-04	Adopt	1-1-04
441-810-0220	1-1-04	Adopt	2-1-04	461-025-0311	1-1-04	Amend	2-1-04
441-810-0230	1-1-04	Adopt	2-1-04	461-110-0330	1-1-04	Amend	2-1-04
441-810-0240	1-1-04	Adopt	2-1-04	461-110-0350	12-17-03	Amend(T)	2-1-04
441-810-0250	1-1-04	Adopt	2-1-04	461-115-0015	1-1-04	Amend	2-1-04
441-810-0260	1-1-04	Adopt	2-1-04	461-115-0705	1-1-04	Amend	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
461-120-0120	1-1-04	Amend	2-1-04	471-012-0010	12-14-03	Amend	1-1-04
461-120-0125	1-1-04	Amend(T)	2-1-04	471-012-0015	12-14-03	Amend	1-1-04
461-120-0125(T)	1-1-04	Suspend	2-1-04	471-012-0020	12-14-03	Amend	1-1-04
461-120-0340	1-1-04	Amend	2-1-04	471-015-0005	12-14-03	Amend	1-1-04
461-120-0345	1-1-04	Amend	2-1-04	471-015-0010	12-14-03	Amend	1-1-04
461-120-0345	1-1-04	Amend	2-1-04	471-015-0015	12-14-03	Amend	1-1-04
461-135-0010	1-1-04	Amend	2-1-04	471-015-0020	12-14-03	Amend	1-1-04
461-135-0180	1-1-04	Repeal	2-1-04	471-030-0040	12-14-03	Amend	1-1-04
461-135-0301	12-1-03	Amend(T)	1-1-04	471-030-0045	12-14-03	Amend	1-1-04
461-135-0400	1-1-04	Amend	2-1-04	471-030-0125	1-4-04	Adopt	2-1-04
461-135-0401	1-1-04	Amend	2-1-04	471-030-0130	1-4-04	Repeal	2-1-04
461-135-0700	1-1-04	Amend(T)	2-1-04	471-030-0135	1-4-04	Repeal	2-1-04
461-135-0700(T)	1-1-04	Suspend	2-1-04	471-030-0140	1-4-04	Repeal	2-1-04
461-135-0730	1-1-04	Amend	2-1-04	471-030-0145	1-4-04	Repeal	2-1-04
461-135-0780	1-1-04	Amend	2-1-04	471-031-0076	12-14-03	Amend	1-1-04
461-135-0830	1-1-04	Amend	2-1-04	471-031-0077	12-14-03	Adopt	1-1-04
461-135-0832	1-1-04	Amend	2-1-04	471-031-0140	12-14-03	Amend	1-1-04
461-135-0845	2-5-04	Amend(T)	3-1-04	471-031-0141	12-14-03	Amend	1-1-04
461-135-0847	1-1-04	Adopt	2-1-04	471-031-0142	12-14-03	Adopt	1-1-04
461-135-1120	1-1-04	Amend	2-1-04	471-060-0005	1-4-04	Amend	2-1-04
461-135-1130	12-1-03	Amend(T)	1-1-04	543-050-0000	1-1-04	Repeal	1-1-04
461-135-1130	1-1-04	Amend	2-1-04	543-050-0020	1-1-04	Repeal	1-1-04
461-135-1130	1-1-04	Amend	2-1-04	543-050-0030	1-1-04	Repeal	1-1-04
461-135-1130(T)	12-1-03	Suspend	1-1-04	543-050-0040	1-1-04	Repeal	1-1-04
461-155-0020	1-1-04	Amend	2-1-04	543-050-0050	1-1-04	Repeal	1-1-04
461-155-0030	1-1-04	Amend	2-1-04	543-060-0000	1-1-04	Adopt	1-1-04
461-155-0035	1-1-04	Amend	2-1-04	543-060-0010	1-1-04	Adopt	1-1-04
461-155-0150	1-1-04	Amend	2-1-04	543-060-0020	1-1-04	Adopt	1-1-04
461-155-0150	1-1-04	Amend	2-1-04	543-060-0030	1-1-04	Adopt	1-1-04
461-155-0225	2-13-04	Amend(T)	3-1-04	543-060-0040	1-1-04	Adopt	1-1-04
461-155-0250	1-1-04	Amend	2-1-04	543-060-0060	1-1-04	Adopt	1-1-04
461-155-0270	1-1-04	Amend	2-1-04	575-030-0005	2-12-04	Amend	3-1-04
461-155-0300	1-1-04	Amend	2-1-04	575-031-0015	2-12-04	Amend	3-1-04
461-155-0526	1-1-04	Amend	2-1-04	577-060-0020	11-18-03	Amend(T)	1-1-04
461-155-0526	1-1-04	Amend	2-1-04	580-010-0029	12-3-03	Amend	1-1-04
461-155-0680	1-1-04	Amend	2-1-04	580-010-0030	12-3-03	Amend	1-1-04
461-160-0580	1-1-04	Amend	2-1-04	580-010-0031	12-3-03	Amend	1-1-04
461-160-0620	1-1-04	Amend	2-1-04	580-010-0033	12-3-03	Amend	1-1-04
461-165-0030	1-1-04	Amend	2-1-04	580-010-0035	12-3-03	Amend	1-1-04
461-170-0010	1-1-04	Amend	2-1-04	580-010-0037	12-3-03	Amend	1-1-04
461-175-0200	1-1-04	Amend	2-1-04	580-010-0040	12-3-03	Amend	1-1-04
461-180-0070	1-1-04	Amend	2-1-04	580-010-0041	12-3-03	Amend	1-1-04
461-180-0105	12-1-03	Amend(T)	1-1-04	580-010-0045	12-3-03	Amend	1-1-04
461-180-0105	1-1-04	Amend	2-1-04	580-020-0006	12-1-03	Adopt(T)	1-1-04
461-190-0110	1-1-04	Amend	2-1-04	580-021-0044	12-1-03	Adopt(T)	1-1-04
461-190-0161	1-1-04	Amend	2-1-04	580-040-0035	12-24-03	Amend	2-1-04
461-190-0191	1-1-04	Repeal	2-1-04	581-015-0075	1-15-04	Amend	2-1-04
461-190-0211	1-1-04	Amend	2-1-04	581-015-0126	1-15-04	Amend	2-1-04
461-190-0360	1-1-04	Amend	2-1-04	581-015-0900	1-15-04	Amend	2-1-04
461-193-0560	1-1-04	Amend	2-1-04	581-015-0935	1-15-04	Amend	2-1-04
461-195-0501	1-1-04	Amend	2-1-04	581-015-0938	1-15-04	Amend	2-1-04
461-195-0561	1-1-04	Amend	2-1-04	581-015-0940	1-15-04	Amend	2-1-04
471-010-0050	1-4-04	Amend	2-1-04	581-015-0960	1-15-04	Amend	2-1-04
471-010-0051	1-4-04	Amend	2-1-04	581-015-0964	1-15-04	Amend	2-1-04
471-010-0054	1-4-04	Amend	2-1-04	581-015-0968	1-15-04	Amend	2-1-04
471-010-0057	1-4-04	Adopt	2-1-04	581-015-0970	1-15-04	Amend	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
581-015-0972	1-15-04	Amend	2-1-04	603-016-0471	2-13-04	Repeal	3-1-04
581-015-0980	1-15-04	Amend	2-1-04	603-016-0476	2-13-04	Repeal	3-1-04
581-015-0990	1-15-04	Amend	2-1-04	603-016-0481	2-13-04	Repeal	3-1-04
581-021-0023	1-15-04	Adopt	2-1-04	603-016-0486	2-13-04	Repeal	3-1-04
581-022-1730	1-15-04	Amend	2-1-04	603-016-0491	2-13-04	Repeal	3-1-04
581-045-0001	1-1-04	Amend	2-1-04	603-016-0496	2-13-04	Repeal	3-1-04
581-045-0012	1-1-04	Amend	2-1-04	603-016-0500	2-13-04	Repeal	3-1-04
581-045-0018	1-1-04	Amend	2-1-04	603-016-0505	2-13-04	Repeal	3-1-04
581-045-0019	1-1-04	Amend	2-1-04	603-016-0510	2-13-04	Repeal	3-1-04
581-045-0023	1-1-04	Amend	2-1-04	603-051-0801	2-13-04	Repeal	3-1-04
581-045-0026	1-1-04	Amend	2-1-04	603-051-0802	2-13-04	Repeal	3-1-04
581-045-0032	1-1-04	Amend	2-1-04	603-051-0810	2-13-04	Repeal	3-1-04
581-045-0065	1-1-04	Amend	2-1-04	603-051-0812	2-13-04	Repeal	3-1-04
581-045-0068	1-1-04	Amend	2-1-04	603-051-0814	2-13-04	Repeal	3-1-04
581-045-0200	1-1-04	Amend	2-1-04	603-051-0816	2-13-04	Repeal	3-1-04
582-010-0005	12-31-03	Amend	2-1-04	603-051-0818	2-13-04	Repeal	3-1-04
582-010-0010	12-31-03	Amend	2-1-04	603-051-0819	2-13-04	Repeal	3-1-04
582-010-0015	12-31-03	Amend	2-1-04	603-051-0821	2-13-04	Repeal	3-1-04
582-010-0020	12-31-03	Amend	2-1-04	603-051-0823	2-13-04	Repeal	3-1-04
582-010-0025	12-31-03	Amend	2-1-04	603-051-0825	2-13-04	Repeal	3-1-04
582-010-0030	12-31-03	Adopt	2-1-04	603-051-0827	2-13-04	Repeal	3-1-04
582-020-0005	1-30-04	Adopt	3-1-04	603-051-0829	2-13-04	Repeal	3-1-04
582-020-0010	1-30-04	Amend	3-1-04	603-051-0950	2-13-04	Repeal	3-1-04
582-020-0015	1-30-04	Adopt	3-1-04	603-052-0325	2-13-04	Repeal	3-1-04
582-020-0020	1-30-04	Amend	3-1-04	603-052-0326	2-13-04	Repeal	3-1-04
582-020-0030	1-30-04	Amend	3-1-04	603-052-0327	2-13-04	Repeal	3-1-04
582-020-0040	1-30-04	Amend	3-1-04	603-052-0331	2-13-04	Repeal	3-1-04
582-020-0050	1-30-04	Amend	3-1-04	603-052-0332	2-13-04	Repeal	3-1-04
582-020-0060	1-30-04	Amend	3-1-04	603-052-0333	2-13-04	Repeal	3-1-04
582-020-0070	1-30-04	Amend	3-1-04	603-052-0335	2-13-04	Repeal	3-1-04
582-020-0080	1-30-04	Amend	3-1-04	603-052-0340	2-13-04	Repeal	3-1-04
582-020-0090	1-30-04	Amend	3-1-04	603-052-0345	2-13-04	Repeal	3-1-04
582-020-0100	1-30-04	Amend	3-1-04	603-052-0400	2-13-04	Repeal	3-1-04
582-020-0110	1-30-04	Amend	3-1-04	603-052-0425	2-13-04	Repeal	3-1-04
582-020-0120	1-30-04	Amend	3-1-04	603-052-0810	2-13-04	Repeal	3-1-04
582-020-0125	1-30-04	Adopt	3-1-04	603-052-1000	2-13-04	Repeal	3-1-04
582-070-0020	12-31-03	Amend	2-1-04	603-052-1010	2-13-04	Repeal	3-1-04
582-080-0020	12-31-03	Amend	2-1-04	603-054-0010	2-13-04	Repeal	3-1-04
582-085-0020	12-31-03	Amend	2-1-04	603-057-0006	12-23-03	Amend	2-1-04
583-030-0010	2-11-04	Amend(T)	3-1-04	603-057-0006(T)	12-23-03	Repeal	2-1-04
583-030-0020	2-11-04	Amend(T)	3-1-04	603-095-0140	1-23-03	Amend	3-1-04
583-030-0021	1-14-04	Amend	2-1-04	603-095-3600	1-12-04	Adopt	2-1-04
583-030-0030	1-14-04	Amend	2-1-04	603-095-3620	1-12-04	Adopt	2-1-04
583-030-0035	2-11-04	Amend(T)	3-1-04	603-095-3640	1-12-04	Adopt	2-1-04
583-030-0041	2-11-04	Amend(T)	3-1-04	603-095-3660	1-12-04	Adopt	2-1-04
583-030-0042	2-11-04	Amend(T)	3-1-04	603-095-3700	1-23-04	Adopt	3-1-04
583-030-0045	1-14-04	Amend	2-1-04	603-095-3720	1-23-04	Adopt	3-1-04
583-030-0046	2-11-04	Amend(T)	3-1-04	603-095-3740	1-23-04	Adopt	3-1-04
583-040-0025	2-13-04	Amend	3-1-04	603-095-3760	1-23-04	Adopt	3-1-04
589-020-0220	11-20-03	Adopt(T)	1-1-04	604-030-0010	11-21-03	Adopt	1-1-04
603-001-0001	2-10-04	Amend	3-1-04	604-030-0020	11-21-03	Adopt	1-1-04
603-013-0600	2-13-04	Amend	3-1-04	604-030-0030	11-21-03	Adopt	1-1-04
603-013-0602	2-13-04	Amend	3-1-04	604-030-0040	11-21-03	Adopt	1-1-04
603-013-0604	2-13-04	Amend	3-1-04	605-030-0010	1-15-04	Adopt	2-1-04
603-013-0616	2-13-04	Amend	3-1-04	605-030-0020	1-15-04	Adopt	2-1-04
603-014-0016	1-23-04	Amend	3-1-04	605-030-0030	1-15-04	Adopt	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
605-030-0040	1-15-04	Adopt	2-1-04	635-004-0018	1-1-04	Amend	1-1-04
606-010-0025	1-15-04	Amend	2-1-04	635-004-0027	1-1-04	Amend(T)	1-1-04
606-030-0010	1-15-04	Adopt	2-1-04	635-004-0036	1-1-04	Amend	1-1-04
606-030-0020	1-15-04	Adopt	2-1-04	635-005-0045	12-1-03	Amend(T)	1-1-04
606-030-0040	1-15-04	Adopt	2-1-04	635-005-0048	12-1-03	Adopt(T)	1-1-04
607-030-0010	11-26-03	Adopt	1-1-04	635-005-0048	2-13-04	Adopt	3-1-04
607-030-0020	11-26-03	Adopt	1-1-04	635-005-0048(T)	2-13-04	Repeal	3-1-04
607-030-0030	11-26-03	Adopt	1-1-04	635-005-0205	11-21-03	Amend(T)	1-1-04
607-030-0040	11-26-03	Adopt	1-1-04	635-006-0140	1-1-04	Amend	1-1-04
608-010-0015	1-2-04	Amend	2-1-04	635-006-0150	1-1-04	Amend	1-1-04
608-010-0020	1-2-04	Amend	2-1-04	635-006-0210	12-1-03	Amend(T)	1-1-04
608-030-0010	1-2-04	Adopt	2-1-04	635-006-0210	2-13-04	Amend	3-1-04
608-030-0020	1-2-04	Adopt	2-1-04	635-006-0210(T)	2-13-04	Repeal	3-1-04
608-030-0030	1-2-04	Adopt	2-1-04	635-006-0232	2-1-04	Amend	2-1-04
608-030-0040	1-2-04	Adopt	2-1-04	635-006-0850	1-1-04	Amend	1-1-04
611-030-0010	1-15-04	Adopt	2-1-04	635-006-0910	1-31-04	Amend(T)	3-1-04
611-030-0020	1-15-04	Adopt	2-1-04	635-011-0100	1-1-04	Amend	1-1-04
611-030-0030	1-15-04	Adopt	2-1-04	635-011-0101	1-1-04	Amend	1-1-04
611-030-0040	1-15-04	Adopt	2-1-04	635-013-0003	1-1-04	Amend	1-1-04
617-010-0090	1-16-04	Adopt	2-1-04	635-013-0004	1-1-04	Amend	1-1-04
617-030-0010	1-16-04	Adopt	2-1-04	635-014-0080	1-1-04	Amend	1-1-04
617-030-0020	1-16-04	Adopt	2-1-04	635-014-0090	12-11-03	Amend(T)	1-1-04
617-030-0030	1-16-04	Adopt	2-1-04	635-014-0090	1-1-04	Amend	1-1-04
617-030-0040	1-16-04	Adopt	2-1-04	635-014-0090	1-1-04	Amend(T)	1-1-04
620-010-0050	1-14-04	Adopt	2-1-04	635-014-0090(T)	12-11-03	Suspend	1-1-04
620-030-0010	1-14-04	Adopt	2-1-04	635-014-0090(T)	1-1-04	Repeal	1-1-04
620-030-0020	1-14-04	Adopt	2-1-04	635-016-0080	1-1-04	Amend	1-1-04
620-030-0030	1-14-04	Adopt	2-1-04	635-016-0090	1-1-04	Amend	1-1-04
620-030-0040	1-14-04	Adopt	2-1-04	635-017-0080	1-1-04	Amend	1-1-04
623-030-0010	12-8-03	Adopt	1-1-04	635-017-0090	1-1-04	Amend	1-1-04
623-030-0020	12-8-03	Adopt	1-1-04	635-018-0080	1-1-04	Amend	1-1-04
623-030-0030	12-8-03	Adopt	1-1-04	635-018-0090	1-1-04	Amend	1-1-04
624-010-0000	1-16-04	Amend	2-1-04	635-019-0080	1-1-04	Amend	1-1-04
624-010-0020	1-16-04	Amend	2-1-04	635-019-0090	1-1-04	Amend	1-1-04
624-010-0030	1-16-04	Amend	2-1-04	635-021-0080	1-1-04	Amend	1-1-04
624-010-0050	1-16-04	Adopt	2-1-04	635-021-0090	1-1-04	Amend	1-1-04
624-010-0060	1-16-04	Adopt	2-1-04	635-023-0080	1-1-04	Amend	1-1-04
624-030-0010	1-16-04	Adopt	2-1-04	635-023-0090	1-1-04	Amend	1-1-04
624-030-0020	1-16-04	Adopt	2-1-04	635-023-0090	2-1-04	Amend(T)	3-1-04
624-030-0030	1-16-04	Adopt	2-1-04	635-023-0100	2-13-04	Repeal	3-1-04
624-030-0040	1-16-04	Adopt	2-1-04	635-023-0125	2-13-04	Adopt	3-1-04
629-001-0015	2-10-04	Amend	3-1-04	635-039-0080	1-1-04	Amend	1-1-04
629-001-0025	2-10-04	Amend	3-1-04	635-039-0090	11-21-03	Amend(T)	1-1-04
629-001-0040	2-10-04	Amend	3-1-04	635-039-0090	1-1-04	Amend	1-1-04
629-001-0045	2-10-04	Amend	3-1-04	635-039-0090	1-1-04	Amend	1-1-04
629-001-0055	2-10-04	Adopt	3-1-04	635-04-0033	1-1-04	Amend	1-1-04
629-001-0055(T)	2-10-04	Repeal	3-1-04	635-041-0060	12-1-03	Amend(T)	1-1-04
629-043-0041	1-30-04	Amend	3-1-04	635-041-0065	1-1-04	Amend(T)	2-1-04
629-670-0300	2-10-04	Amend	3-1-04	635-041-0065	2-2-04	Amend(T)	3-1-04
629-670-0310	2-10-04	Amend	3-1-04	635-042-0022	2-13-04	Adopt	3-1-04
629-670-0315	2-10-04	Amend	3-1-04	635-042-0110	2-13-04	Amend	3-1-04
629-672-0210	2-10-04	Amend	3-1-04	635-042-0130	1-1-04	Amend(T)	2-1-04
629-672-0220	2-10-04	Amend	3-1-04	635-042-0135	1-1-04	Amend(T)	2-1-04
629-672-0310	2-10-04	Amend	3-1-04	635-042-0135	2-2-04	Amend(T)	3-1-04
635-001-0105	1-1-04	Amend	1-1-04	635-042-0145	2-13-04	Amend	3-1-04
635-004-0005	1-1-04	Amend	1-1-04	635-042-0160	2-13-04	Amend	3-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
635-042-0180	2-13-04	Amend	3-1-04	635-078-0008	1-1-04	Amend	1-1-04
635-045-0000	1-1-04	Amend	1-1-04	635-080-0030	1-1-04	Amend	1-1-04
635-045-0002	1-1-04	Amend	1-1-04	635-080-0031	1-1-04	Amend	1-1-04
635-050-0045	2-11-04	Amend	3-1-04	635-500-1820	12-15-03	Amend	1-1-04
635-053-0000	1-16-04	Amend(T)	2-1-04	635-500-1830	12-15-03	Amend	1-1-04
635-053-0015	1-16-04	Amend(T)	2-1-04	635-500-1850	12-15-03	Amend	1-1-04
635-053-0025	1-16-04	Amend(T)	2-1-04	635-500-1920	12-15-03	Amend	1-1-04
635-060-0000	1-1-04	Amend	1-1-04	635-500-1930	12-15-03	Amend	1-1-04
635-060-0005	1-1-04	Amend	1-1-04	635-500-3120	12-15-03	Amend	1-1-04
635-060-0008	1-1-04	Amend	1-1-04	635-500-6000	12-15-03	Adopt	1-1-04
635-060-0030	1-1-04	Amend	1-1-04	635-500-6010	12-15-03	Adopt	1-1-04
635-060-0046	1-1-04	Amend	1-1-04	635-500-6020	12-15-03	Adopt	1-1-04
635-060-0055	4-1-04	Amend	1-1-04	635-500-6030	12-15-03	Adopt	1-1-04
635-065-0001	1-1-04	Amend	1-1-04	635-500-6040	12-15-03	Adopt	1-1-04
635-065-0015	1-1-04	Amend	1-1-04	635-500-6050	12-15-03	Adopt	1-1-04
635-065-0401	1-1-04	Amend	1-1-04	635-500-6060	12-15-03	Adopt	1-1-04
635-065-0501	1-1-04	Amend	1-1-04	641-030-0010	1-15-04	Adopt	1-1-04
635-065-0625	1-1-04	Amend	1-1-04	641-030-0020	1-15-04	Adopt	1-1-04
635-065-0705	1-1-04	Amend	1-1-04	641-030-0030	1-15-04	Adopt	1-1-04
635-065-0720	1-1-04	Amend	1-1-04	642-010-0020	1-15-04	Amend	1-1-04
635-065-0740	1-1-04	Amend	1-1-04	642-030-0010	1-15-04	Adopt	1-1-04
635-065-0760	11-25-03	Amend(T)	1-1-04	642-030-0020	1-15-04	Adopt	1-1-04
635-065-0760	6-16-04	Amend	1-1-04	642-030-0030	1-15-04	Adopt	1-1-04
635-065-0765	1-1-04	Amend	1-1-04	643-010-0030	1-16-04	Adopt	3-1-04
635-066-0000	1-1-04	Amend	1-1-04	643-030-0010	1-16-04	Adopt	3-1-04
635-066-0010	1-1-04	Amend	1-1-04	643-030-0020	1-16-04	Adopt	3-1-04
635-067-0000	1-1-04	Amend	1-1-04	643-030-0030	1-16-04	Adopt	3-1-04
635-067-0015	1-1-04	Amend	1-1-04	643-030-0040	1-16-04	Adopt	3-1-04
635-067-0024	1-1-04	Amend	1-1-04	644-010-0005	1-8-04	Amend	2-1-04
635-067-0028	1-1-04	Adopt	1-1-04	644-010-0010	1-8-04	Amend	2-1-04
635-067-0029	1-1-04	Adopt	1-1-04	644-010-0015	1-8-04	Amend	2-1-04
635-067-0032	1-1-04	Amend	1-1-04	644-010-0020	1-8-04	Amend	2-1-04
635-067-0034	1-1-04	Amend	1-1-04	644-010-0025	1-8-04	Amend	2-1-04
635-067-0041	1-1-04	Adopt	1-1-04	644-030-0010	1-8-04	Adopt	2-1-04
635-068-0000	1-19-04	Amend	1-1-04	644-030-0020	1-8-04	Adopt	2-1-04
635-069-0000	2-2-04	Amend	1-1-04	644-030-0030	1-8-04	Adopt	2-1-04
635-070-0000	12-24-03	Amend(T)	2-1-04	644-030-0040	1-8-04	Adopt	2-1-04
635-070-0000	2-2-04	Amend(T)	3-1-04	645-010-0020	1-16-04	Amend	2-1-04
635-070-0000	4-1-04	Amend	1-1-04	645-030-0010	1-16-04	Adopt	2-1-04
635-070-0005	2-2-04	Amend(T)	3-1-04	645-030-0020	1-16-04	Adopt	2-1-04
635-070-0010	12-24-03	Amend(T)	2-1-04	645-030-0030	1-16-04	Adopt	2-1-04
635-071-0000	1-1-04	Amend	1-1-04	645-030-0040	1-16-04	Adopt	2-1-04
635-071-0000	1-13-04	Amend(T)	2-1-04	646-010-0030	1-16-04	Adopt	2-1-04
635-071-0005	1-13-04	Amend(T)	2-1-04	646-030-0010	1-16-04	Adopt	2-1-04
635-072-0000	1-1-04	Amend	1-1-04	646-030-0020	1-16-04	Adopt	2-1-04
635-073-0000	12-24-03	Amend(T)	2-1-04	646-030-0030	1-16-04	Adopt	2-1-04
635-073-0000	2-2-04	Amend	1-1-04	646-030-0040	1-16-04	Adopt	2-1-04
635-073-0060	12-24-03	Amend(T)	2-1-04	647-010-0020	1-16-04	Amend	2-1-04
635-073-0070	1-1-04	Amend	1-1-04	647-015-0010	1-16-04	Adopt	2-1-04
635-073-0090	1-1-04	Amend	1-1-04	647-015-0020	1-16-04	Adopt	2-1-04
635-075-0005	1-1-04	Amend	1-1-04	647-015-0030	1-16-04	Adopt	2-1-04
635-075-0015	1-1-04	Amend	1-1-04	655-015-0010	1-16-04	Adopt	2-1-04
635-075-0020	1-1-04	Amend	1-1-04	655-015-0020	1-16-04	Adopt	2-1-04
635-075-0029	1-1-04	Amend	1-1-04	655-015-0030	1-16-04	Adopt	2-1-04
635-078-0001	1-1-04	Amend	1-1-04	656-030-0010	1-1-04	Adopt	1-1-04
635-078-0005	1-1-04	Amend	1-1-04	656-030-0020	1-1-04	Adopt	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
656-030-0030	1-1-04	Adopt	1-1-04	695-020-0095	1-26-04	Amend	3-1-04
656-030-0040	1-1-04	Adopt	1-1-04	695-020-0096	1-26-04	Amend	3-1-04
657-030-0010	1-15-04	Adopt	1-1-04	695-020-0097	1-26-04	Amend	3-1-04
657-030-0020	1-15-04	Adopt	1-1-04	695-020-0098	1-26-04	Adopt	3-1-04
657-030-0030	1-15-04	Adopt	1-1-04	731-001-0000	12-11-03	Amend	1-1-04
658-010-0005	12-4-03	Amend	1-1-04	731-007-0050	1-20-04	Amend	3-1-04
658-010-0006	12-4-03	Amend	1-1-04	731-007-0050(T)	1-20-04	Repeal	3-1-04
658-010-0007	12-4-03	Adopt	1-1-04	734-017-0005	1-20-04	Amend	3-1-04
658-030-0010	12-4-03	Adopt	1-1-04	734-060-0025	1-1-04	Amend	1-1-04
658-030-0020	12-4-03	Adopt	1-1-04	735-010-0070	1-1-04	Amend	1-1-04
658-030-0030	12-4-03	Adopt	1-1-04	735-018-0020	12-15-03	Amend	1-1-04
664-010-0020	1-15-04	Amend	1-1-04	735-018-0070	12-15-03	Amend	1-1-04
664-015-0010	1-15-04	Adopt	1-1-04	735-018-0080	12-15-03	Amend	1-1-04
664-015-0020	1-15-04	Adopt	1-1-04	735-018-0110	12-15-03	Amend	1-1-04
664-015-0030	1-15-04	Adopt	1-1-04	735-018-0120	1-1-04	Adopt(T)	1-1-04
668-010-0010	1-15-04	Amend	2-1-04	735-020-0070	1-1-04	Adopt(T)	1-1-04
668-030-0010	1-15-04	Adopt	2-1-04	735-020-0080	1-1-04	Adopt(T)	1-1-04
668-030-0020	1-15-04	Adopt	2-1-04	735-024-0010	1-1-04	Amend(T)	1-1-04
668-030-0030	1-15-04	Adopt	2-1-04	735-024-0020	1-1-04	Amend(T)	1-1-04
668-030-0040	1-15-04	Adopt	2-1-04	735-024-0045	1-1-04	Adopt(T)	1-1-04
669-010-0015	1-13-04	Amend	2-1-04	735-032-0010	1-1-04	Amend(T)	1-1-04
669-010-0020	1-13-04	Amend	2-1-04	735-034-0010	1-1-04	Amend(T)	1-1-04
669-010-0025	1-13-04	Amend	2-1-04	735-040-0050	1-1-04	Amend(T)	1-1-04
669-010-0030	1-13-04	Amend	2-1-04	735-040-0055	1-1-04	Amend(T)	1-1-04
669-010-0040	1-13-04	Amend	2-1-04	735-040-0061	1-1-04	Amend(T)	1-1-04
669-010-0050	1-13-04	Adopt	2-1-04	735-040-0080	1-1-04	Amend(T)	1-1-04
669-030-0010	1-13-04	Adopt	2-1-04	735-040-0095	1-1-04	Amend(T)	1-1-04
669-030-0020	1-13-04	Adopt	2-1-04	735-040-0097	1-1-04	Amend(T)	1-1-04
669-030-0030	1-13-04	Adopt	2-1-04	735-040-0100	1-1-04	Amend(T)	1-1-04
669-030-0040	1-13-04	Adopt	2-1-04	735-050-0060	1-1-04	Amend	1-1-04
670-010-0020	1-15-04	Amend	2-1-04	735-050-0062	1-1-04	Amend	1-1-04
670-030-0010	1-15-04	Adopt	2-1-04	735-050-0064	1-1-04	Amend	1-1-04
670-030-0020	1-15-04	Adopt	2-1-04	735-050-0070	1-1-04	Amend	1-1-04
670-030-0030	1-15-04	Adopt	2-1-04	735-050-0080	1-1-04	Amend	1-1-04
679-010-0000	1-20-04	Amend	3-1-04	735-050-0120	1-1-04	Amend	1-1-04
679-010-0010	1-20-04	Amend	3-1-04	735-060-0000	11-18-03	Amend	1-1-04
679-010-0030	1-20-04	Amend	3-1-04	735-060-0015	11-18-03	Am. & Ren.	1-1-04
679-010-0050	1-20-04	Adopt	3-1-04	735-060-0017	11-18-03	Am. & Ren.	1-1-04
679-010-0060	1-20-04	Adopt	3-1-04	735-060-0030	11-18-03	Amend	1-1-04
679-030-0010	1-20-04	Adopt	3-1-04	735-060-0040	11-18-03	Amend	1-1-04
679-030-0020	1-20-04	Adopt	3-1-04	735-060-0050	11-18-03	Amend	1-1-04
679-030-0030	1-20-04	Adopt	3-1-04	735-060-0050(10),			
679-030-0040	1-20-04	Adopt	3-1-04	(11))&(12)	11-18-03	Am. & Ren.	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0050(9)&(13)	11-18-03	Am. & Ren.	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0060	11-18-03	Amend	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0065	11-18-03	Adopt	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0070	11-18-03	Repeal	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0080	11-18-03	Repeal	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0090	11-18-03	Amend	1-1-04
690-502-0160	12-4-03	Am. & Ren.	1-1-04	735-060-0095	11-18-03	Amend	1-1-04
690-502-0160	12-4-03	Amend	1-1-04	735-060-0100	11-18-03	Amend	1-1-04
690-502-0210	12-4-03	Adopt	1-1-04	735-060-0100(8), (9) & (10)	11-18-03	Am. & Ren.	1-1-04
695-020-0020	1-26-04	Amend	3-1-04	735-060-0110	11-18-03	Amend	1-1-04
695-020-0092	1-26-04	Amend	3-1-04	735-060-0115	11-18-03	Adopt	1-1-04
695-020-0093	1-26-04	Amend	3-1-04	735-060-0120	11-18-03	Amend	1-1-04
695-020-0094	1-26-04	Amend	3-1-04	735-060-0130	11-18-03	Amend	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
735-060-0140	11-18-03	Am. & Ren.	1-1-04	735-174-0020	1-1-04	Amend	1-1-04
735-060-0150	11-18-03	Am. & Ren.	1-1-04	735-174-0030	1-1-04	Amend	1-1-04
735-060-0160	11-18-03	Am. & Ren.	1-1-04	735-174-0040	1-1-04	Adopt(T)	1-1-04
735-060-0170	11-18-03	Am. & Ren.	1-1-04	735-176-0000	1-15-04	Amend	2-1-04
735-061-0010	1-15-04	Repeal	2-1-04	735-176-0010	1-15-04	Amend	2-1-04
735-061-0020	1-15-04	Repeal	2-1-04	735-176-0015	1-15-04	Adopt	2-1-04
735-061-0030	1-15-04	Repeal	2-1-04	735-176-0018	1-15-04	Adopt	2-1-04
735-061-0040	1-15-04	Repeal	2-1-04	735-176-0020	1-15-04	Amend	2-1-04
735-061-0050	1-15-04	Repeal	2-1-04	735-176-0030	1-15-04	Amend	2-1-04
735-061-0060	1-15-04	Repeal	2-1-04	735-176-0040	1-15-04	Amend	2-1-04
735-061-0070	1-15-04	Repeal	2-1-04	736-001-0000	1-15-04	Amend	2-1-04
735-061-0080	1-15-04	Repeal	2-1-04	736-002-0020	1-15-04	Adopt	2-1-04
735-061-0090	1-15-04	Repeal	2-1-04	736-002-0030	1-15-04	Adopt	2-1-04
735-061-0100	1-15-04	Repeal	2-1-04	736-002-0040	1-15-04	Adopt	2-1-04
735-061-0110	1-15-04	Repeal	2-1-04	736-002-0060	1-15-04	Adopt	2-1-04
735-061-0120	1-15-04	Repeal	2-1-04	736-002-0070	1-15-04	Adopt	2-1-04
735-061-0130	1-15-04	Repeal	2-1-04	736-002-0080	1-15-04	Adopt	2-1-04
735-061-0140	1-15-04	Repeal	2-1-04	736-002-0090	1-15-04	Adopt	2-1-04
735-061-0150	1-15-04	Repeal	2-1-04	736-002-0100	1-15-04	Adopt	2-1-04
735-061-0160	1-15-04	Repeal	2-1-04	736-010-0022	1-15-04	Amend(T)	2-1-04
735-061-0170	1-15-04	Repeal	2-1-04	740-060-0030	1-1-04	Amend(T)	1-1-04
735-061-0180	1-15-04	Repeal	2-1-04	740-060-0050	1-1-04	Amend(T)	1-1-04
735-061-0190	1-15-04	Repeal	2-1-04	740-060-0055	1-1-04	Adopt(T)	1-1-04
735-061-0200	1-15-04	Repeal	2-1-04	740-100-0010	1-1-04	Amend	1-1-04
735-062-0005	1-1-04	Amend	1-1-04	740-100-0015	1-15-04	Adopt	2-1-04
735-062-0020	1-1-04	Amend	1-1-04	740-100-0060	1-1-04	Amend	1-1-04
735-062-0030	1-1-04	Amend(T)	1-1-04	740-100-0070	1-1-04	Amend	1-1-04
735-062-0075	1-1-04	Amend	1-1-04	740-100-0080	1-1-04	Amend	1-1-04
735-062-0095	1-1-04	Amend	1-1-04	740-100-0090	1-1-04	Amend	1-1-04
735-062-0110	1-1-04	Amend	1-1-04	740-110-0010	1-1-04	Amend	1-1-04
735-064-0020	1-1-04	Amend	1-1-04	740-115-0010	1-1-04	Repeal	1-1-04
735-064-0060	1-1-04	Amend	1-1-04	740-115-0020	1-1-04	Repeal	1-1-04
735-064-0220	1-1-04	Amend(T)	1-1-04	740-115-0030	1-1-04	Repeal	1-1-04
735-070-0130	1-1-04	Amend	1-1-04	740-115-0040	1-1-04	Repeal	1-1-04
735-080-0010	11-18-03	Amend	1-1-04	740-115-0050	1-1-04	Repeal	1-1-04
735-080-0030	11-18-03	Amend	1-1-04	740-115-0060	1-1-04	Repeal	1-1-04
735-116-0000	1-15-04	Amend	2-1-04	740-115-0070	1-1-04	Repeal	1-1-04
735-150-0040	1-1-04	Amend(T)	1-1-04	740-120-0010	1-1-04	Repeal	1-1-04
735-150-0070	1-1-04	Amend(T)	1-1-04	740-120-0020	1-1-04	Repeal	1-1-04
735-150-0250	12-15-03	Adopt(T)	1-1-04	740-120-0030	1-1-04	Repeal	1-1-04
735-150-0260	12-15-03	Adopt(T)	1-1-04	740-120-0040	1-1-04	Repeal	1-1-04
735-154-0005	1-1-04	Adopt(T)	1-1-04	740-125-0010	1-1-04	Repeal	1-1-04
735-170-0000	1-1-04	Amend	1-1-04	740-125-0020	1-1-04	Repeal	1-1-04
735-170-0010	1-1-04	Amend	1-1-04	740-125-0030	1-1-04	Repeal	1-1-04
735-170-0020	1-1-04	Amend	1-1-04	740-125-0040	1-1-04	Repeal	1-1-04
735-170-0030	1-1-04	Amend	1-1-04	740-130-0010	1-1-04	Repeal	1-1-04
735-170-0050	1-1-04	Amend	1-1-04	740-130-0020	1-1-04	Repeal	1-1-04
735-170-0060	1-1-04	Amend	1-1-04	740-130-0030	1-1-04	Repeal	1-1-04
735-170-0070	1-1-04	Amend	1-1-04	740-130-0040	1-1-04	Repeal	1-1-04
735-170-0090	1-1-04	Amend	1-1-04	740-130-0050	1-1-04	Repeal	1-1-04
735-170-0100	1-1-04	Amend	1-1-04	740-130-0060	1-1-04	Repeal	1-1-04
735-170-0110	1-1-04	Adopt	1-1-04	740-130-0070	1-1-04	Repeal	1-1-04
735-170-0120	1-1-04	Adopt	1-1-04	740-130-0080	1-1-04	Repeal	1-1-04
735-170-0140	1-1-04	Adopt	1-1-04	740-130-0090	1-1-04	Repeal	1-1-04
735-174-0000	1-1-04	Amend	1-1-04	740-135-0010	1-1-04	Repeal	1-1-04
735-174-0010	1-1-04	Amend	1-1-04	740-135-0020	1-1-04	Repeal	1-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
740-135-0030	1-1-04	Repeal	1-1-04	801-010-0110	1-1-04	Amend	2-1-04
740-135-0040	1-1-04	Repeal	1-1-04	801-010-0115	1-1-04	Amend	2-1-04
740-140-0010	1-1-04	Repeal	1-1-04	801-010-0125	1-1-04	Amend	2-1-04
740-140-0020	1-1-04	Repeal	1-1-04	801-010-0345	1-1-04	Amend	2-1-04
740-140-0030	1-1-04	Repeal	1-1-04	801-020-0700	1-1-04	Amend	2-1-04
740-140-0040	1-1-04	Repeal	1-1-04	801-030-0005	1-1-04	Amend	2-1-04
740-140-0050	1-1-04	Repeal	1-1-04	801-030-0015	1-1-04	Amend	2-1-04
740-140-0060	1-1-04	Repeal	1-1-04	801-030-0020	1-1-04	Amend	2-1-04
740-145-0010	1-1-04	Repeal	1-1-04	801-040-0070	1-1-04	Amend	2-1-04
740-145-0020	1-1-04	Repeal	1-1-04	801-040-0090	1-1-04	Amend	2-1-04
740-145-0030	1-1-04	Repeal	1-1-04	801-040-0100	1-1-04	Amend	2-1-04
740-145-0040	1-1-04	Repeal	1-1-04	801-040-0160	1-1-04	Amend	2-1-04
740-145-0050	1-1-04	Repeal	1-1-04	801-050-0080	1-1-04	Amend	2-1-04
740-145-0060	1-1-04	Repeal	1-1-04	806-020-0080	1-28-04	Amend	3-1-04
740-150-0010	1-1-04	Repeal	1-1-04	808-002-0100	2-1-04	Amend	3-1-04
740-150-0020	1-1-04	Repeal	1-1-04	808-002-0200	2-1-04	Amend	3-1-04
740-150-0030	1-1-04	Repeal	1-1-04	808-002-0210	2-1-04	Adopt	3-1-04
740-150-0040	1-1-04	Repeal	1-1-04	808-002-0220	2-1-04	Amend	3-1-04
740-150-0050	1-1-04	Repeal	1-1-04	808-002-0298	2-1-04	Adopt	3-1-04
740-155-0010	1-1-04	Repeal	1-1-04	808-002-0448	2-1-04	Repeal	3-1-04
740-155-0020	1-1-04	Repeal	1-1-04	808-002-0500	2-1-04	Amend	3-1-04
740-155-0030	1-1-04	Repeal	1-1-04	808-002-0540	1-1-04	Amend(T)	2-1-04
740-155-0040	1-1-04	Repeal	1-1-04	808-002-0620	2-1-04	Amend	3-1-04
740-155-0050	1-1-04	Repeal	1-1-04	808-002-0665	2-1-04	Amend	3-1-04
740-155-0060	1-1-04	Repeal	1-1-04	808-002-0880	2-1-04	Amend	3-1-04
740-160-0010	1-1-04	Repeal	1-1-04	808-002-0890	2-1-04	Adopt	3-1-04
740-160-0020	1-1-04	Repeal	1-1-04	808-002-0920	2-1-04	Amend	3-1-04
740-160-0030	1-1-04	Repeal	1-1-04	808-003-0010	2-1-04	Amend	3-1-04
740-160-0040	1-1-04	Repeal	1-1-04	808-003-0015	2-1-04	Amend	3-1-04
740-160-0050	1-1-04	Repeal	1-1-04	808-003-0018	2-1-04	Amend	3-1-04
740-160-0060	1-1-04	Repeal	1-1-04	808-003-0030	2-1-04	Amend	3-1-04
740-160-0070	1-1-04	Repeal	1-1-04	808-003-0035	2-1-04	Amend	3-1-04
740-165-0010	1-1-04	Repeal	1-1-04	808-003-0040	12-1-03	Amend(T)	1-1-04
740-165-0020	1-1-04	Repeal	1-1-04	808-003-0040	2-1-04	Amend	3-1-04
740-165-0030	1-1-04	Repeal	1-1-04	808-003-0040(T)	2-1-04	Repeal	3-1-04
740-165-0040	1-1-04	Repeal	1-1-04	808-003-0045	2-1-04	Amend	3-1-04
740-200-0010	1-1-04	Amend	1-1-04	808-003-0050	2-1-04	Amend	3-1-04
740-200-0020	1-1-04	Amend	1-1-04	808-003-0055	2-1-04	Amend	3-1-04
740-200-0040	1-1-04	Amend	1-1-04	808-003-0060	2-1-04	Amend	3-1-04
740-300-0035	1-1-04	Adopt(T)	1-1-04	808-003-0065	2-1-04	Amend	3-1-04
800-025-0025	2-1-04	Amend	3-1-04	808-003-0070	2-1-04	Amend	3-1-04
800-030-0025	2-1-04	Amend	3-1-04	808-003-0080	2-1-04	Amend	3-1-04
801-001-0005	1-1-04	Amend	2-1-04	808-003-0081	2-1-04	Amend	3-1-04
801-001-0010	1-1-04	Amend	2-1-04	808-003-0085	2-1-04	Amend	3-1-04
801-001-0015	1-1-04	Amend	2-1-04	808-003-0112	2-1-04	Adopt	3-1-04
801-001-0020	1-1-04	Amend	2-1-04	808-003-0125	2-1-04	Amend	3-1-04
801-001-0035	1-1-04	Adopt	2-1-04	808-003-0130	2-1-04	Amend	3-1-04
801-001-0050	1-1-04	Adopt	2-1-04	808-004-0210	1-1-04	Adopt	2-1-04
801-005-0010	1-1-04	Amend	2-1-04	808-004-0320	2-1-04	Amend	3-1-04
801-010-0010	1-1-04	Amend	2-1-04	808-004-0400	2-1-04	Amend	3-1-04
801-010-0045	1-1-04	Amend	2-1-04	808-005-0020	2-1-04	Amend	3-1-04
801-010-0050	1-1-04	Amend	2-1-04	808-008-0020	1-1-04	Amend(T)	2-1-04
801-010-0060	1-1-04	Amend	2-1-04	808-008-0030	1-1-04	Amend(T)	2-1-04
801-010-0075	1-1-04	Amend	2-1-04	808-008-0050	1-1-04	Adopt	2-1-04
801-010-0080	1-1-04	Amend	2-1-04	808-008-0060	1-1-04	Amend(T)	2-1-04
801-010-0085	1-1-04	Amend	2-1-04	808-008-0085	1-1-04	Amend(T)	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
808-008-0140	1-1-04	Amend(T)	2-1-04	812-010-0140	12-5-03	Amend	1-1-04
808-008-0240	1-1-04	Suspend	2-1-04	812-010-0240	12-5-03	Repeal	1-1-04
808-008-0280	1-1-04	Amend(T)	2-1-04	812-010-0280	12-5-03	Amend	1-1-04
808-008-0290	1-1-04	Adopt(T)	2-1-04	812-010-0290	12-5-03	Adopt	1-1-04
808-008-0400	1-1-04	Amend(T)	2-1-04	812-010-0400	12-5-03	Amend	1-1-04
808-008-0420	1-1-04	Amend(T)	2-1-04	812-010-0420	12-5-03	Amend	1-1-04
808-008-0425	1-1-04	Amend(T)	2-1-04	812-010-0425	12-5-03	Amend	1-1-04
808-008-0430	1-1-04	Amend(T)	2-1-04	812-010-0430	12-5-03	Amend	1-1-04
808-008-0440	1-1-04	Amend(T)	2-1-04	812-010-0440	12-5-03	Amend	1-1-04
808-008-0460	1-1-04	Amend(T)	2-1-04	812-010-0460	12-5-03	Amend	1-1-04
808-008-0500	1-1-04	Amend(T)	2-1-04	812-010-0500	12-5-03	Amend	1-1-04
808-008-0510	1-1-04	Adopt(T)	2-1-04	812-010-0510	12-5-03	Adopt	1-1-04
808-008-0520	1-1-04	Adopt(T)	2-1-04	812-010-0520	12-5-03	Adopt	1-1-04
808-009-0020	2-1-04	Amend	3-1-04	813-300-0010	12-19-03	Amend	2-1-04
811-010-0085	12-11-03	Amend	1-1-04	813-300-0120	12-19-03	Amend	2-1-04
811-010-0095	12-11-03	Amend	1-1-04	820-010-0010	1-26-04	Amend	3-1-04
811-015-0010	12-11-03	Amend	1-1-04	820-010-0200	1-26-04	Amend	3-1-04
811-035-0005	12-11-03	Amend	1-1-04	820-010-0225	1-26-04	Amend	3-1-04
811-035-0015	12-11-03	Amend	1-1-04	820-010-0450	1-26-04	Amend	3-1-04
812-001-0020	12-5-03	Amend	1-1-04	820-010-0500	1-26-04	Amend	3-1-04
812-001-0020	12-9-03	Amend(T)	1-1-04	820-010-0623	1-26-04	Adopt	3-1-04
812-001-0020	1-1-04	Amend(T)	2-1-04	820-015-0026	1-26-04	Amend	3-1-04
812-001-0022	1-1-04	Adopt(T)	2-1-04	836-009-0007	12-19-03	Amend	1-1-04
812-002-0130	12-5-03	Adopt	1-1-04	836-011-0000	12-3-03	Amend	1-1-04
812-002-0200	12-5-03	Amend	1-1-04	836-031-0755	1-1-04	Amend	2-1-04
812-002-0240	12-5-03	Repeal	1-1-04	836-031-0760	1-1-04	Amend	2-1-04
812-002-0240(T)	12-5-03	Repeal	1-1-04	836-031-0855	11-26-03	Adopt(T)	1-1-04
812-002-0380	2-2-04	Amend	3-1-04	836-042-0045	1-1-04	Amend	1-1-04
812-002-0420	12-5-03	Amend	1-1-04	836-051-0101	1-1-04	Amend	2-1-04
812-002-0420(T)	12-5-03	Repeal	1-1-04	836-051-0106	1-1-04	Adopt	2-1-04
812-002-0440	12-5-03	Amend	1-1-04	836-052-0700	2-3-04	Amend	3-1-04
812-002-0540	12-5-03	Amend	1-1-04	836-071-0180	12-19-03	Amend	1-1-04
812-002-0540(T)	12-5-03	Repeal	1-1-04	837-012-0645	1-14-04	Amend	2-1-04
812-003-0000	12-5-03	Amend	1-1-04	837-012-0720	1-14-04	Amend	2-1-04
812-003-0000(T)	12-5-03	Repeal	1-1-04	837-012-0830	1-14-04	Amend	2-1-04
812-003-0015	2-2-04	Amend	3-1-04	837-012-0850	1-14-04	Amend	2-1-04
812-003-0020	12-5-03	Amend	1-1-04	837-012-1210	1-14-04	Amend	2-1-04
812-003-0020(T)	12-5-03	Repeal	1-1-04	837-012-1220	1-14-04	Amend	2-1-04
812-003-0025	12-5-03	Amend	1-1-04	837-012-1260	1-14-04	Amend	2-1-04
812-003-0025(T)	12-5-03	Repeal	1-1-04	837-012-1290	1-14-04	Amend	2-1-04
812-004-0110	12-5-03	Adopt	1-1-04	837-012-1300	1-14-04	Amend	2-1-04
812-004-0110	1-1-04	Amend(T)	2-1-04	837-012-1320	1-14-04	Amend	2-1-04
812-004-0210	12-5-03	Adopt	1-1-04	837-012-1340	1-14-04	Amend	2-1-04
812-004-0250	1-1-04	Amend(T)	2-1-04	837-030-0130	1-14-04	Amend	2-1-04
812-004-0320	12-5-03	Amend	1-1-04	837-030-0220	1-14-04	Amend	2-1-04
812-004-0340	12-5-03	Amend	1-1-04	837-030-0230	1-14-04	Amend	2-1-04
812-004-0400	12-5-03	Amend	1-1-04	837-030-0240	1-14-04	Amend	2-1-04
812-004-0440	1-1-04	Amend(T)	2-1-04	837-030-0250	1-14-04	Amend	2-1-04
812-004-0535	12-5-03	Amend	1-1-04	837-030-0280	1-14-04	Amend	2-1-04
812-005-0005	12-5-03	Amend	1-1-04	839-001-0200	1-1-04	Adopt	2-1-04
812-006-0020	12-5-03	Amend	1-1-04	839-001-0420	1-1-04	Amend	2-1-04
812-010-0020	12-5-03	Amend	1-1-04	839-001-0470	1-1-04	Amend	2-1-04
812-010-0030	12-5-03	Amend	1-1-04	839-001-0490	1-1-04	Adopt	2-1-04
812-010-0050	12-5-03	Adopt	1-1-04	839-016-0700	1-5-04	Amend	2-1-04
812-010-0060	12-5-03	Amend	1-1-04	839-017-0004	1-1-04	Amend	2-1-04
812-010-0085	12-5-03	Amend	1-1-04	839-017-0500	1-1-04	Adopt	2-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
839-017-0505	1-1-04	Adopt	2-1-04	851-062-0070	2-12-04	Amend	3-1-04
839-017-0510	1-1-04	Adopt	2-1-04	851-062-0075	2-12-04	Adopt	3-1-04
839-017-0515	1-1-04	Adopt	2-1-04	851-062-0080	2-12-04	Amend	3-1-04
839-017-0520	1-1-04	Adopt	2-1-04	851-062-0090	2-12-04	Amend	3-1-04
839-020-0027	1-1-04	Adopt	2-1-04	851-062-0100	2-12-04	Amend	3-1-04
839-020-0030	1-1-04	Amend	2-1-04	851-062-0110	2-12-04	Amend	3-1-04
839-020-0115	1-1-04	Amend	2-1-04	851-062-0120	2-12-04	Amend	3-1-04
839-020-0125	1-1-04	Amend	2-1-04	851-062-0130	2-12-04	Amend	3-1-04
839-020-0150	2-1-04	Amend	2-1-04	851-063-0010	2-12-04	Amend	3-1-04
845-003-0590	2-10-04	Amend	1-1-04	851-063-0020	2-12-04	Amend	3-1-04
845-003-0670	12-1-03	Amend	1-1-04	851-063-0030	2-12-04	Amend	3-1-04
845-005-0304	1-1-04	Amend	2-1-04	851-063-0040	2-12-04	Amend	3-1-04
845-005-0445	1-1-04	Amend(T)	2-1-04	851-063-0050	2-12-04	Amend	3-1-04
845-006-0441	12-1-03	Amend	1-1-04	851-063-0060	2-12-04	Amend	3-1-04
845-009-0015	12-1-03	Amend	1-1-04	851-063-0070	2-12-04	Amend	3-1-04
845-015-0140	3-21-04	Amend	3-1-04	851-063-0080	2-12-04	Amend	3-1-04
847-008-0015	1-27-04	Amend	3-1-04	851-063-0100	2-12-04	Amend	3-1-04
847-008-0050	12-8-03	Amend	1-1-04	853-010-0060	1-30-04	Amend	3-1-04
847-008-0055	1-27-04	Amend	3-1-04	855-043-0210	12-31-03	Adopt(T)	2-1-04
847-012-0000	1-27-04	Amend	3-1-04	860-012-0100	1-8-04	Adopt	2-1-04
847-020-0170	1-27-04	Amend	3-1-04	860-012-0190	1-8-04	Adopt	2-1-04
847-020-0180	1-27-04	Amend	3-1-04	860-021-0200	1-9-04	Amend(T)	2-1-04
847-035-0030	1-27-04	Amend	3-1-04	860-024-0020	11-28-03	Amend	1-1-04
850-010-0130	2-11-04	Amend	3-1-04	860-024-0021	11-28-03	Amend	1-1-04
850-010-0225	12-5-03	Amend	1-1-04	860-027-0048	12-11-03	Adopt	1-1-04
850-010-0226	12-5-03	Amend	1-1-04	860-028-0895	11-28-03	Adopt(T)	1-1-04
851-021-0010	12-9-03	Amend	1-1-04	860-032-0510	1-15-04	Adopt	2-1-04
851-031-0010	12-9-03	Amend	1-1-04	860-032-0520	1-15-04	Adopt	2-1-04
851-050-0131	12-9-03	Amend	1-1-04	860-034-0010	1-9-04	Amend(T)	2-1-04
851-050-0133	12-23-03	Amend(T)	2-1-04	860-034-0140	1-9-04	Amend(T)	2-1-04
851-050-0134	12-23-03	Amend(T)	2-1-04	860-035-0010	1-15-04	Repeal	2-1-04
851-050-0145	12-23-03	Amend(T)	2-1-04	860-035-0020	1-15-04	Repeal	2-1-04
851-050-0150	12-23-03	Suspend	2-1-04	860-035-0030	1-15-04	Repeal	2-1-04
851-050-0155	12-23-03	Amend(T)	2-1-04	860-035-0040	1-15-04	Repeal	2-1-04
851-050-0161	12-23-03	Adopt(T)	2-1-04	860-035-0050	1-15-04	Repeal	2-1-04
851-050-0170	12-23-03	Amend(T)	2-1-04	860-035-0060	1-15-04	Repeal	2-1-04
851-061-0010	2-12-04	Amend	3-1-04	860-035-0070	1-15-04	Repeal	2-1-04
851-061-0020	2-12-04	Amend	3-1-04	860-035-0080	1-15-04	Repeal	2-1-04
851-061-0030	2-12-04	Amend	3-1-04	860-035-0090	1-15-04	Repeal	2-1-04
851-061-0040	2-12-04	Amend	3-1-04	860-035-0100	1-15-04	Repeal	2-1-04
851-061-0050	2-12-04	Amend	3-1-04	860-035-0110	1-15-04	Repeal	2-1-04
851-061-0070	2-12-04	Amend	3-1-04	860-035-0120	1-15-04	Repeal	2-1-04
851-061-0080	2-12-04	Amend	3-1-04	860-035-0130	1-15-04	Repeal	2-1-04
851-061-0090	2-12-04	Amend	3-1-04	860-036-0010	12-10-03	Amend(T)	1-1-04
851-061-0100	2-12-04	Amend	3-1-04	860-036-0040	1-9-04	Amend(T)	2-1-04
851-061-0110	2-12-04	Amend	3-1-04	860-036-0330	12-10-03	Suspend	1-1-04
851-061-0130	2-12-04	Adopt	3-1-04	860-036-0370	12-10-03	Adopt(T)	1-1-04
851-062-0005	2-12-04	Adopt	3-1-04	860-036-0380	12-10-03	Adopt(T)	1-1-04
851-062-0010	2-12-04	Amend	3-1-04	860-036-0412	12-10-03	Adopt(T)	1-1-04
851-062-0015	2-12-04	Adopt	3-1-04	860-036-0420	12-10-03	Adopt(T)	1-1-04
851-062-0016	2-12-04	Adopt	3-1-04	860-036-0757	12-10-03	Adopt(T)	1-1-04
851-062-0020	2-12-04	Amend	3-1-04	860-036-0900	12-10-03	Amend(T)	1-1-04
851-062-0040	2-12-04	Repeal	3-1-04	860-036-0905	12-10-03	Amend(T)	1-1-04
851-062-0050	2-12-04	Amend	3-1-04	860-036-0910	12-10-03	Amend(T)	1-1-04
851-062-0055	2-12-04	Adopt	3-1-04	860-036-0915	12-10-03	Amend(T)	1-1-04
851-062-0060	2-12-04	Repeal	3-1-04	860-037-0001	1-29-04	Amend	3-1-04

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
860-037-0010	1-29-04	Amend	3-1-04	860-037-0535	1-29-04	Amend	3-1-04
860-037-0015	1-29-04	Amend	3-1-04	860-037-0540	1-29-04	Amend	3-1-04
860-037-0020	1-29-04	Amend	3-1-04	860-037-0545	1-29-04	Amend	3-1-04
860-037-0025	1-29-04	Amend	3-1-04	860-037-0547	12-10-03	Adopt(T)	1-1-04
860-037-0030	1-29-04	Amend	3-1-04	860-037-0550	1-29-04	Amend	3-1-04
860-037-0035	1-9-04	Amend(T)	2-1-04	860-037-0555	1-29-04	Amend	3-1-04
860-037-0035	1-29-04	Amend	3-1-04	860-037-0560	1-29-04	Amend	3-1-04
860-037-0040	1-29-04	Amend	3-1-04	860-037-0565	1-29-04	Amend	3-1-04
860-037-0045	1-29-04	Amend	3-1-04	860-037-0567	1-29-04	Adopt	3-1-04
860-037-0050	1-29-04	Amend	3-1-04	860-037-0570	12-10-03	Adopt(T)	1-1-04
860-037-0055	1-29-04	Amend	3-1-04	860-037-0605	1-29-04	Amend	3-1-04
860-037-0060	1-29-04	Amend	3-1-04	860-037-0610	1-29-04	Amend	3-1-04
860-037-0065	1-29-04	Amend	3-1-04	860-037-0615	1-29-04	Amend	3-1-04
860-037-0067	1-29-04	Adopt	3-1-04	860-037-0620	1-29-04	Amend	3-1-04
860-037-0070	1-29-04	Amend	3-1-04	860-037-0625	1-29-04	Amend	3-1-04
860-037-0075	1-29-04	Amend	3-1-04	860-037-0630	1-29-04	Amend	3-1-04
860-037-0080	1-29-04	Amend	3-1-04	860-038-0540	1-15-04	Amend	2-1-04
860-037-0101	1-29-04	Adopt	3-1-04	860-038-0580	12-11-03	Amend	1-1-04
860-037-0105	1-29-04	Amend	3-1-04	863-015-0015	1-1-04	Amend(T)	2-1-04
860-037-0110	1-29-04	Amend	3-1-04	863-015-0055	1-15-04	Amend(T)	2-1-04
860-037-0115	1-29-04	Amend	3-1-04	863-015-0080	1-1-04	Amend(T)	2-1-04
860-037-0120	1-29-04	Amend	3-1-04	863-015-0200	1-1-04	Amend(T)	2-1-04
860-037-0125	1-29-04	Amend	3-1-04	863-050-0000	1-1-04	Adopt	2-1-04
860-037-0205	1-29-04	Amend	3-1-04	863-050-0015	1-1-04	Amend	2-1-04
860-037-0210	1-29-04	Amend	3-1-04	863-050-0020	1-1-04	Amend	2-1-04
860-037-0215	1-29-04	Amend	3-1-04	863-050-0025	1-1-04	Amend	2-1-04
860-037-0220	1-29-04	Amend	3-1-04	863-050-0035	1-15-04	Adopt(T)	2-1-04
860-037-0225	1-29-04	Amend	3-1-04	863-050-0040	1-1-04	Adopt	2-1-04
860-037-0230	1-29-04	Amend	3-1-04	863-050-0050	1-1-04	Amend	2-1-04
860-037-0235	1-29-04	Amend	3-1-04	863-050-0055	1-1-04	Amend	2-1-04
860-037-0240	1-29-04	Amend	3-1-04	863-050-0060	1-1-04	Amend	2-1-04
860-037-0245	1-29-04	Amend	3-1-04	863-050-0065	1-1-04	Amend	2-1-04
860-037-0305	1-29-04	Repeal	3-1-04	863-050-0100	1-1-04	Amend	2-1-04
860-037-0307	1-29-04	Adopt	3-1-04	863-050-0108	1-1-04	Repeal	2-1-04
860-037-0308	12-10-03	Adopt(T)	1-1-04	863-050-0110	1-1-04	Repeal	2-1-04
860-037-0309	12-10-03	Adopt(T)	1-1-04	863-050-0115	1-1-04	Amend	2-1-04
860-037-0310	1-29-04	Amend	3-1-04	863-050-0150	1-1-04	Amend	2-1-04
860-037-0315	1-29-04	Repeal	3-1-04	877-020-0020	12-1-03	Amend	1-1-04
860-037-0405	1-29-04	Amend	3-1-04	918-008-0030	1-29-04	Amend(T)	3-1-04
860-037-0407	12-10-03	Adopt(T)	1-1-04	918-030-0100	4-1-04	Adopt	3-1-04
860-037-0410	1-29-04	Amend	3-1-04	918-030-0900	4-1-04	Adopt	3-1-04
860-037-0415	1-29-04	Amend	3-1-04	918-050-0010	1-1-04	Amend	2-1-04
860-037-0425	1-29-04	Amend	3-1-04	918-050-0020	1-1-04	Amend	2-1-04
860-037-0430	1-29-04	Amend	3-1-04	918-440-0015	1-1-04	Amend	1-1-04
860-037-0435	1-29-04	Amend	3-1-04	918-440-0040	1-1-04	Amend	1-1-04
860-037-0440	1-29-04	Amend	3-1-04	918-440-0050	1-1-04	Amend	1-1-04
860-037-0445	1-29-04	Amend	3-1-04	918-674-0025	1-1-04	Amend	1-1-04
860-037-0450	1-29-04	Amend	3-1-04	918-674-0033	1-1-04	Amend	1-1-04
860-037-0505	1-29-04	Amend	3-1-04	918-780-0035	1-1-04	Adopt	2-1-04
860-037-0510	1-29-04	Amend	3-1-04	918-780-0120	1-1-04	Repeal	2-1-04
860-037-0515	1-29-04	Amend	3-1-04	972-010-0030	1-16-04	Adopt	2-1-04
860-037-0517	1-29-04	Adopt	3-1-04	972-030-0010	1-16-04	Adopt	2-1-04
860-037-0520	1-29-04	Amend	3-1-04	972-030-0020	1-16-04	Adopt	2-1-04
860-037-0525	1-29-04	Amend	3-1-04	972-030-0030	1-16-04	Adopt	2-1-04
860-037-0530	1-29-04	Amend	3-1-04	972-030-0040	1-16-04	Adopt	2-1-04