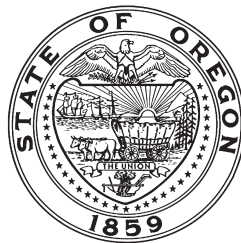


# OREGON BULLETIN

Supplements the 2004 *Oregon Administrative Rules Compilation*

**Volume 43, No. 5**  
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For March 16, 2004–April 15, 2004



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**BILL BRADBURY**  
Secretary of State  
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# INFORMATION AND PUBLICATION SCHEDULE

## General Information

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

## Background on Oregon Administrative Rules

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

## How to Cite

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

## Understanding an Administrative Rule's "History"

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

## Locating the Most Recent Version of an Administrative Rule

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

## Locating Administrative Rules Unit Publications

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

## 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.

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# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. 04-02

### JUVENILE CORRECTION POPULATION FORECASTING ADVISORY COMMITTEE

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

In 1998, Executive Order 98-06 created the Juvenile Correction Population Forecasting Advisory Committee (the "Committee"). A copy of Executive Order 98-06 is attached hereto as Exhibit A. The Committee was charged with developing projections regarding the juvenile correctional population in order to enable state policy makers to plan appropriately for the needs of that population.

#### THEREFORE, IT IS ORDERED AND DIRECTED:

1. Executive Order 98-06, attached hereto as Exhibit A, is restated and reaffirmed, with the following amendments.

2. The following is added to Executive Order 98-06 as a new paragraph 2(f):

"The Juvenile Correction Population Advisory Committee shall define the current demand for Discretionary Beds as defined in OAR 416-410-0050. The Committee will be staffed by Department of Administrative Services and may enlist other persons to assist them in this effort. The definition is intended to be used to forecast demand for the Oregon Youth Authority's Discretionary Bed allocation."

3. Paragraph 3(a) of Executive Order 98-06 is replaced with the following:

"Beginning April 15, 2004 and each subsequent April 15, ascertain by computation and project the number of Public Safety Reserve and Department of Corrections offenders anticipated to be incarcerated under existing law and current practices by the Oregon Youth Authority during each month of the next calendar year, and during the next 10 years. Beginning April 15, 2004 and each subsequent April 15, ascertain by computation and project the demand for Discretionary Beds as defined in OAR 416-410-0050 anticipated to be needed by the Oregon Youth Authority during each month of the next calendar year and during the next 10 years. Subsequent computations and projections are due not later than October 15, 2004 and each subsequent April 15 and October 15 thereafter."

4. This Executive Order and Executive Order 98-06 shall expire on December 31, 2007.

Done at Salem, Oregon, this 19th day of March 2004.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## EXECUTIVE ORDER NO. 04-03

### DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN MALHEUR COUNTY AND MORROW COUNTY DUE TO DROUGHT AND LOW WATER CONDITIONS.

Pursuant to ORS 401.055, I find that ongoing drought and low water conditions and weather patterns have the potential to cause an imminent natural and economic disaster in Malheur County and Morrow County (the "Affected Counties"). Projected weather patterns are not expected to significantly alleviate the current conditions; drought conditions are continuing. These conditions are expected to have profound consequences on the Affected Counties' agricultural, livestock, and natural resources and are likely to result in stark economic impacts.

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

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

#### IT IS HEREBY ORDERED AND DIRECTED:

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

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

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

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

V. This Executive Order expires on December 31, 2004

Done at Salem, Oregon this 31st day of March, 2004

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

# OTHER NOTICES

## OREGON DEPARTMENT OF AGRICULTURE EMERGENCY QUARANTINE ORDER: CALIFORNIA NURSERY STOCK

A plant disease called sudden oak death, *Phytophthora ramorum*, was discovered in central California in 1995. In March 2004, this disease was found in two nurseries in southern California. A federal emergency regulation covering all of California was proposed, but never enacted. The current regulatory vacuum exposes Oregon to the risk of introduction of this disease via nursery stock from unregulated California nurseries.

*P. ramorum* causes mortality in susceptible oak (*Quercus*) and tanoak (*Lithocarpus*) species, and can cause injury to rhododendron, madrone, viburnum, Douglas fir and many other species important to natural and horticultural landscapes in Oregon and the state's nursery, Christmas tree and timber industries.

The ongoing nature of these shipments from unregulated nurseries makes it impossible to follow the quarantine process provided in ORS 561.510 to 561.530 without serious danger to the health of Oregon's nursery industry and forest environment.

Therefore, in accordance with ORS 561.560, the Director of the Oregon Department of Agriculture issues the following EMERGENCY QUARANTINE ORDER:

### ORDER

**(1) Area under quarantine.** The entire state of California.

**(2) Commodities covered.** Nursery stock of federally-recognized hosts and associated hosts of *P. ramorum* including the following list and any other plants added to the federal lists during the life of this quarantine:

a) All plants, excluding tissue culture plantlets, of the following species:

<i>Abies grandis</i>	<i>Pieris floribunda x japonica</i>	<i>Rubus spectabilis</i>
<i>Acer macrophyllum</i>	<i>Pieris formosa</i>	<i>Sequoia sempervirens</i>
<i>Aesculus californica</i>	<i>Pieris formosa x japonica</i>	<i>Syringa vulgaris</i>
<i>Aesculus hippocastanum</i>	<i>Pieris formosa var. forrestii</i>	<i>Taxus baccata</i>
<i>Arbutus menziesii</i>	<i>Pieris formosa var. forrestii</i> <i>x Pieris japonica</i>	<i>Toxicodendron diversiloba</i>
<i>Arbutus unedo</i>	<i>Pieris japonica</i>	<i>Trientalis latifolia</i>
<i>Arctostaphylos manzanita</i>	<i>Pittosporum undulatum</i>	<i>Umbellularia californica</i>
<i>Camellia japonica</i>	<i>Pseudotsuga menziesii var. menziesii</i>	<i>Vaccinium ovatum</i>
<i>Camellia reticulata</i>	<i>Quercus agrifolia</i>	<i>Vaccinium vitis-idaea</i>
<i>Camellia sasanqua</i>	<i>Quercus chrysolepis</i>	<i>Viburnum x bodnantense</i>
<i>Camellia x williamsii</i>	<i>Quercus falcata</i>	<i>Viburnum x burkwoodii</i>
<i>Castanea sativa</i>	<i>Quercus ilex</i>	<i>Viburnum x carlcephalum x V. utile</i>
<i>Corylus cornuta</i>	<i>Quercus kelloggii</i>	<i>Viburnum x pragensis</i>
<i>Fagus sylvatica</i>	<i>Quercus parvula v. shrevei</i>	<i>Viburnum davidii</i>
<i>Hamamelis virginiana</i>	<i>Quercus rubra</i>	<i>Viburnum farreri</i> (= <i>V. fragrans</i> )
<i>Heteromeles arbutifolia</i>	<i>Quercus sativa</i>	<i>Viburnum lantana</i>
<i>Kalmia latifolia</i>	<i>Rhamnus californica</i>	<i>Viburnum opulus</i>
<i>Leucothoe fontanesiana</i>	<i>Rhamnus purshiana</i>	<i>Viburnum plicatum var. tomentosum</i>
<i>Lithocarpus densiflorus</i>	<i>Rhododendron spp.</i>	<i>Viburnum tinus</i>
<i>Lonicera hispidula</i>	<i>Rosa gymnocarpa</i>	

b) Soil and potting mixes that:

i) are associated with shipments of regulated articles designated in subsection (a) of this section, including incidental mud and soil on pots, means of conveyance, pallets, and other shipping materials, or

ii) have been within two meters of a *Phytophthora ramorum* infected plant or from a block where infected plants were present and federally-required eradication measures have not been completed.

c) All cultures and live material of *Phytophthora ramorum*.

d) Any product or article that an official inspector determines to present a risk of spreading *P. ramorum*.

**(3) Prohibitions.** Nursery stock of *P. ramorum* susceptible plants (2)(a) grown in the area under quarantine shall not be eligible for shipment to Oregon unless

(i) the nursery or growing area has been inspected annually for the presence of *P. ramorum* as described in section (4);

(ii) each shipment of nursery stock of *P. ramorum* susceptible plants (2)(a) grown in the area under quarantine and intended for shipment into the state of Oregon has been inspected for symptoms of *P. ramorum* infection prior to shipment as described in section (5);

(iii) the nursery stock is accompanied by an official certificate that verifies the nursery stock came from a nursery that has met the above requirements (3)(i-ii). The official certificate must include the following additional declaration: "The (covered commodity) has met the *Phytophthora ramorum* quarantine requirements for shipment into Oregon;" and

(iv) recipients of covered commodities must notify the Department's Nursery Section of arrival of the shipment no later than two business days after its arrival as per OAR 603-054-0027. Notification shall be via mail, FAX or e-mail to: Nursery Program Supervisor, Plant Division, Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301; FAX 503-986-4564; <quarantine@oda.state.or.us>.

### **(4) Annual Inspection Requirements.**

(a) If the nursery or growing area contains 100 or fewer susceptible plants (2)(a), an official inspector will inspect each susceptible plant. If the nursery or growing area contains more than 100 susceptible plants, an official inspector will examine 100 of the susceptible plants and at least two percent of the number of susceptible plants in the nursery or growing area that exceeds 100. The plants inspected will be randomly selected from throughout the nursery or growing area.

(b) For the annual inspection, the official inspector must collect samples from a minimum of 40 susceptible plants. If symptomatic plants are found, the official inspector shall collect a representative sample from those plants. Samples shall be collected from asymptomatic plants if symptomatic plants are not present.

(c) Samples must be labeled and sent to an officially approved laboratory for testing. Samples must be tested using a federally-approved laboratory method. If any plants within the nursery or growing area are found to be infected with *P. ramorum* by any federally-approved laboratory method, shipment of covered commodities from that nursery or growing area into Oregon is prohibited until such time as an official inspector can determine that the nursery or growing area is free of *P. ramorum*.

(d) A copy of the results from the annual inspection shall be made available to the Oregon Department of Agriculture upon request.

### **(5) Inspection of Shipments.**

(a) The inspection rate for susceptible plants in a shipment will be the same as required in (4)(a).

(b) If no symptomatic plants are found and all other requirements of (3) and (4) are met, the shipment may be certified as per subsection (3)(iii). If symptomatic plants are found upon inspection, shipment is prohibited until the samples have been tested and found free of *P. ramorum*. Testing requirements are outlined (4)(c).

(c) A copy of the results from individual shipment inspections shall be made available to the Oregon Department of Agriculture upon request.

(d) The Department may inspect and/or test any nursery stock upon arrival in Oregon.

**(6) Special permits.** The Department, upon receipt of an application in writing, may issue a special permit allowing entry into this state and transport within this state of covered commodities. Movement of such commodities will be subject to any conditions or restriction stipulated in the permit.

**(7) Violation of quarantine.** Violation of this quarantine may result in a fine, if convicted, of not less than \$500 nor more than \$5,000, as provided by ORS 561.990. In addition, violators will be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, Chapter 390, Section 2. Commodities shipped in violation of this quarantine may be treated, destroyed or returned to their point of origin without expense or indemnity paid by the state.

## OTHER NOTICES

**(8) Quarantine Period.** This emergency quarantine will be effective for 90 days unless it is rescinded before that time or replaced by a quarantine enacted under provisions of ORS 561.510.

Dated this 7th day of April 2004.

/s/ Katy Coba  
Katy Coba, Director  
Oregon Department of Agriculture

### PROPOSED APPROVAL OF CLEANUP AT CITY OF HOOD RIVER, POLE BARN SITE HOOD RIVER OREGON

**COMMENTS DUE:** May 30, 2004

**PROJECT LOCATION:** Public works yard located at 18th and May Street, Hood River

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "No Further Action" determination based on results of an investigation and cleanup performed at the City of Hood River public works yard in the vicinity of a new pole barn that was recently constructed.

**HIGHLIGHTS:** DEQ's Voluntary Cleanup Program has reviewed an investigation and cleanup performed at the site by the City of Hood River. In early December 2003 oil contaminated soil was discovered by a contractor drilling shallow footing holes for the construction of a new pole barn. After performing an initial investigation it was determined that the contamination was related to past petroleum releases at the site and could be addressed by removal and offsite disposal. Approximately 75 tons of contaminated soil were removed from the area and disposed at an offsite permitted landfill. Soil and groundwater samples were taken. The results were compared to site specific or generic Risk Based Concentrations (RBCs or cleanup levels). Soil samples achieved the RBCs for a residential site. All compounds detected in groundwater samples were less than occupational RBCs.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Eastern Regional Office at The DEQ Dalles Office located at Columbia Gorge Community College, 400 East Scenic Drive, Suite 2.307, The Dalles, OR 97058. To schedule an appointment to review the file or to ask questions, please contact Brian McClure at (541) 298-7255 ext 32. Written comments should be received by May 30, 2004 and sent to Brian McClure, 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.

### DEQ ISSUES NO FURTHER ACTION FOR A FORMER RESIN RELEASE AT NORTH RIVER JET BOATS IN ROSEBURG

**PROJECT LOCATION:** 7800 Old Highway 99 North in Roseburg, Oregon.

**FINAL DECISION:** The Oregon Department of Environmental Quality (DEQ) Voluntary Cleanup Program has approved the cleanup actions for a former resin release at the North River Jet Boats (NRJB) site.

**HIGHLIGHTS:** NRJB is a manufacturer and retail seller of aluminum boats and has operated at this site since 1984. In 1997, DEQ cited NRJB for a polyurethane resin release to the surface soil that resulted from the storage of resin disposal containers. Environmental investigations and cleanup completed by NRJB in February, 1997 for the resin release confirmed the presence of lead in the soil. Based on the review of the investigative data, in April, 1997 DEQ con-

cluded that confirmatory sampling for lead was required in order to determine if the residual lead in the soil posed a risk to human health and the environment. In December 2003, the follow-up confirmatory sampling for the residual lead was conducted by NRJB. In March 2004, North River Jet Boats requested DEQ's assistance in reviewing the environmental investigation data for the former resin release at the site. Based on the review of this environmental work, DEQ concluded that there are no threats to human health and the environment and no additional investigation is required for the resin release at the site. DEQ issued the no further action letter for the former resin release in April 2004.

**ADDITIONAL INFORMATION:** For additional information regarding the site cleanup, contact DEQ Project Manager, Nancy Gramlich at (503) 378-8240 extension 259 or by email at gramlich.nancy@deq.state.or.us.

### CLEANUP ACTION COMPLETED AND DEQ RECOMMENDS NO FURTHER ACTION AT THE ARIKI-OREGON UNDEVELOPED PROPERTY IN FLORENCE, OREGON

**COMMENTS DUE:** May 30, 2004

**PROJECT LOCATION:** Ariki-Oregon Undeveloped Property, Township 18S, Range 12W, Section 15, Tax Lot 100 Florence, Oregon

**PROPOSAL:** Oregon Department of Environmental Quality (DEQ) invites public comments from May 1, 2004 through May 30, 2004. DEQ will consider all comments before issuing a no further action determination.

**HIGHLIGHTS:** The staff report will be available for public review at DEQ's Eugene office from May 1, 2004 through May 30, 2004.

The Ariki-Oregon Undeveloped Property is located in a partially wooded dunal area north of Florence. Portions of the site are wooded and with the balance being fine dune sand and native grasses. The property was undeveloped until the early 1990s when it was used for equipment staging and fueling. There are no structures on the property, nor have there been any historically.

In January of 2004, EGR & Associates performed a Phase I Environmental Site Assessment on the property. The assessment revealed the presence of a 10,000-gallon above Ground Storage Tank (AST). EGR & Associates observed stained soils near the south end of the tank. Hand auger sampling of the area revealed diesel contamination ranging from "non-detect" to 18,400 ppm diesel. Very low levels of Toluene, Ethylbenzene, and Xylenes were also detected. The AST was removed and approximately 67 tons of petroleum contaminated soil were excavated and disposed of at Coffin Butte Landfill in Corvallis, Oregon.

The final excavation measured 18 feet by 16 feet to a total depth of approximately 11 feet below ground surface. No groundwater was encountered in the excavation. EGR & Associates collected six confirmation soil samples from the excavation and had them analyzed for diesel by DEQ Method NWTPH-Dx. No diesel was detected in five of the six samples. The sixth sample, collected from the bottom of the excavation, contained 286 parts per million diesel.

At 286 ppm diesel, contaminants remaining in soils at the base of the excavation are well below the most stringent Risk Based Concentrations (RBC) identified in DEQs *Risk Based Decision Making for the Remediation of Petroleum-Contaminated Site* guidance.

The low concentrations of diesel remaining in the soil do not pose a leaching risk to the underlying aquifer. Additionally, there is no current or likely future beneficial use for the aquifer in the site vicinity, aside from irrigation.

DEQ has concluded that the remaining contamination poses no risk to human health.

There is no risk to ecological receptors posed by the remaining contamination.

## OTHER NOTICES

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**HOW TO COMMENT:** The staff report, project files, investigation reports, administrative record, etc. are available for public review at DEQ's Eugene office. Please call (800)844-8467 extension 272 to schedule an appointment to view files. Written comments should be sent to Geoff Brown, 1102 Lincoln Street, Suite 210, Eugene, Oregon 97402 by 5:00 p.m. April 30, 2004. A public meeting will be held to receive verbal comments if requested by 10 or more persons or by a group with a membership of 10 or more.

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

# 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.

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**Board of Chiropractic Examiners  
Chapter 811**

**Date:** 5-20-04      **Time:** 1 p.m.      **Location:** OBCE Large Conf. Rm.  
3218 Pringle Rd. SE  
Portland, OR 97230

**Hearing Officer:** Dave McTeague, Exec. Director  
**Stat. Auth.:** ORS 684.100; Other Auth.: ORS 684.100(1)(g)(A), 684.155, 684.040, 684.050, 684.052 & 684.054  
**Stats. Implemented:** ORS 684.040, 684.050, 684.052, 684.054 & 684.100 (1)(g)(A)

**Proposed Amendments:** 811-010-0085, 811-035-0015  
**Last Date for Comment:** 5-20-04

**Summary:** 811-035-0015 Proposed language adds charging clearly excessive fees as unprofessional conduct and lists criteria to determine what is an excessive fee.

811-010-0085 Proposed language clarifies that all applicants will always have to take the Ethics and Jurisprudence exam even if they have taken and passed it in a previous application within the last five years.

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

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

.....  
**Date:** 5-20-04      **Time:** 1 p.m.      **Location:** OBCE Large Conf. Rm.  
3218 Pringle Rd. SE  
Portland, OR 97302

**Hearing Officer:** Dave McTeague, Exec. Director  
**Stat. Auth.:** ORS 183; Other Auth.: ORS 684  
**Stats. Implemented:** ORS 183.341  
**Proposed Amendments:** 811-001-0005  
**Last Date for Comment:** 5-20-04

**Summary:** 811-001-0005 -- Proposed language effectively adopts the newly issued Oregon Attorney General Model Rules of Procedure dated January 15, 2004. The Model Rules of Procedure govern the adoption of administrative rules, conduct of contested case hearings and other rulings of the board.

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

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

.....  
**Board of Geologist Examiners  
Chapter 809**

**Stat. Auth.:** ORS 36.224 & 670.310  
**Stats. Implemented:** ORS 36.220 - 36.238  
**Proposed Adoptions:** 809-001-0035  
**Last Date for Comment:** 6-1-04

**Summary:** This rule is identical to the rule on confidentiality of mediation communications, developed by the Attorney General pursuant to ORS 36.224(2). The rule covers all mediations involving the Oregon Board of Geologist Examiners, except those express exclusions. The rule limits information that the mediator may disclose and allows the parties to agree in writing to limit what may be disclosed or used in a subsequent administrative proceeding.

**Rules Coordinator:** Susanna R. Knight  
**Address:** Board of Geologist Examiners, Sunset Center South, 1193 Royvonne Ave. SE, #24, Salem, OR 97302  
**Telephone:** (503) 566-2837

.....  
**Stat. Auth.:** ORS 183, 192, 670.310 & 672  
**Stats. Implemented:** ORS 183.341, 183.355, 183, 192 & 672.525  
**Proposed Amendments:** 809-003-0000  
**Last Date for Comment:** 6-1-04

**Summary:** HB2893 of 2003 Legislation added ORS 672.525(9) to the Board's statute. In ORS 672.525(9), the term "public proceeding" is used. The term "public proceeding" is now being defined in rule.

**Rules Coordinator:** Susanna R. Knight  
**Address:** Board of Geologist Examiners, Sunset Center South, 1193 Royvonne Ave. SE, #24, Salem, OR 97302  
**Telephone:** (503) 566-2837

.....  
**Stat. Auth.:** ORS 183.335(5), 192, 670.310(1) & 672  
**Stats. Implemented:** ORS 183.335  
**Proposed Amendments:** 809-001-0000  
**Last Date for Comment:** 6-1-04

**Summary:** Because temporary rules do not have the same notice requirements as permanent rules, the word permanent is being added to the text for 809-001-0000 to distinguish requirements for permanent rule making from those for temporary rulemaking.

**Rules Coordinator:** Susanna R. Knight  
**Address:** Board of Geologist Examiners, Sunset Center South, 1193 Royvonne Ave. SE, #24, Salem, OR 97302  
**Telephone:** (503) 566-2837

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

**Date:** 5-21-04      **Time:** 2 p.m.      **Location:** 1500 SW 1st Ave.  
Portland, OR 97201

**Hearing Officer:** Kathleen Haley, Executive Director  
**Stat. Auth.:** ORS 677.265  
**Stats. Implemented:** ORS 677.830(2)  
**Proposed Amendments:** 847-080-0010  
**Last Date for Comment:** 5-21-04

**Summary:** The Board is proposing to add Part III of the National Board of Podiatric Medical Examiners (NBPME) examination to the examination sequence that already includes Part I and Part II. Part III examines a candidate's clinical skills and is taken once the podiatric physician has made application to a state for licensure. NBPME's Part III examination is comparable to the United States



# NOTICES OF PROPOSED RULEMAKING

Medical Licensing Examination (USMLE) Step 3 taken by MD/DO applicants, and the National Board of Osteopathic Medical Examiners (NBOME) examination Level III taken by DO applicants.

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

**Rules Coordinator:** Diana M. Dolstra

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

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

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

**Stat. Auth.:** ORS 183

**Stats. Implemented:** ORS 685

**Proposed Amendments:** 850-001-0000

**Last Date for Comment:** 5-25-04

**Summary:** Makes current the information provided for notice of rule making by the Board.

**Rules Coordinator:** Anne Walsh

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

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

\*\*\*\*\*  
**Stat. Auth.:** ORS 685.125

**Stats. Implemented:** ORS 685.106

**Proposed Amendments:** 850-010-0210

**Last Date for Comment:** 5-25-04

**Summary:** This amendment explains approved continuing education.

**Rules Coordinator:** Anne Walsh

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

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

\*\*\*\*\*  
**Stat. Auth.:** ORS 685.125

**Stats. Implemented:** ORS 685.145

**Proposed Amendments:** 850-010-0225, 850-010-0226

**Last Date for Comment:** 5-25-04

**Summary:** Update the Formulary compendium for physicians and pharmacists.

**Rules Coordinator:** Anne Walsh

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

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

\*\*\*\*\*  
**Stat. Auth.:** ORS 685.125

**Stats. Implemented:** ORS 685.145

**Proposed Adoptions:** 850-010-0212

**Last Date for Comment:** 5-25-04

**Summary:** This amendment clarifies education needed to administer injections.

**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:**  
6-17-04

**Time:**  
9 a.m.

**Location:**  
Rogue Valley Manor  
1200 Mira Mar  
Medford, OR 97504

**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:** 6-11-04, 5 p.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 April, May and June 2004 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.

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

**Rules Coordinator:** KC Cotton

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

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

\*\*\*\*\*  
**Date:**  
6-17-04

**Time:**  
9 a.m.

**Location:**  
Rogue Valley Manor  
1200 Mira Mar  
Medford, OR 97504

**Hearing Officer:** Marguerite Gutierrez, Board President

**Stat. Auth.:** ORS 678.440 & 678.444

**Stats. Implemented:** ORS 678.440 & 678.444

**Proposed Amendments:** 851-061-0080, 851-061-0090, 851-061-0110

**Last Date for Comment:** 6-11-04, 5 p.m.

**Summary:** These rules cover the standards for training programs for Nursing Assistants and Medication Aides. These amendments clarify the Program Director's responsibility in reference to criminal history checks for their training programs, reflect new rule references for the Oregon Department of Human Services, and deletes language that is no longer applicable to the criminal records process under the Department of Human Services' new rules.

*\*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

\*\*\*\*\*  
**Board of Parole and Post-Prison Supervision**  
**Chapter 255**

**Stat. Auth.:** ORS 163.105

**Stats. Implemented:**

**Proposed Amendments:** 255-032-0015

**Last Date for Comment:** 6-03-04

**Summary:** The amendment of this rule is necessary to bring the dates within the rule into conformity with the effective date of ORS 163.105 as amended and passed into law by the Oregon Legislature (1999).

**Rules Coordinator:** Michael R. Washington

**Address:** Board of Parole & Post-Prison Supervision, 2575 Center St. NE - Suite 100, Salem, OR 97301

**Telephone:** (503) 945-8978

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

**Stat. Auth.:** ORS 87.093, 183.310 - 183.500, 670.310, 701.055, 701.235, 701.280 & 701.992

**Stats. Implemented:** ORS 25.785, 25.990, 36.600 - 36.740, 36.705, 87, 87.093, 179.331, 701, 701.055, 701.143, 701.145, 701.146, 701.147, 701.148, 701.150 & 701.235

**Proposed Amendments:** 812-001-0020, 812-001-0022, 812-002-0530, 812-003-0015, 812-004-0110, 812-010-0020, 812-010-0050, 812-010-0060, 812-010-0140, 812-010-0440, 812-010-0460, 812-010-0500, 812-010-0510, 812-010-0520

**Last Date for Comment:** 5-25-04

# NOTICES OF PROPOSED RULEMAKING

**Summary:** 812-001-0020, 812-001-0022, 812-002-0530, 812-003-0015, 812-004-0110, 812-010-0020, 812-010-0050, 812-010-0060, 812-010-0140, 812-010-0440, 812-010-0460, 812-010-0500, 812-010-0510, 812-010-0520 are amended to correct statutory cite references.

**Rules Coordinator:** Cathy Heine

**Address:** Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310

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

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

Date:	Time:	Location:
6-10-04	2:30 p.m.	Dept. of Agriculture 635 Capitol St. NE Salem, OR

**Hearing Officer:** Brent Searle

**Stat. Auth.:** ORS 561.190

**Stats. Implemented:** ORS 561, 576.320(3), 577.345(3) & 578.135(3)

**Proposed Amendments:** 603-042-0020

**Last Date for Comment:** 6-10-04, 5 p.m.

**Summary:** This amendment proposes revising the manner of allocating the fees for the user-based Commodity Commission Oversight Program to create greater parity in the percentage of the fee charged each commission. The amendment reduces the minimum payment and increases the maximum payment. The fee remains based upon the assessments collected by each commission. The sum total of the fee remains unchanged.

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

**Rules Coordinator:** Sue Gooch

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

**Telephone:** (503) 986-4583

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

Date:	Time:	Location:
5-18-04	9:30 a.m.	1535 NW Edgewater Salem, OR 97310

**Hearing Officer:** Richard J. Baumann

**Stat. Auth.:** ORS 446.210, 446.400, 455.457, 460.085, 479.630, 479.910, 480.630, 693.050, 183.415 & 25.785; Other Auth.: Social Security Act, Sec. 466(a)(13)

**Stats. Implemented:** ORS 25.785 & 183.415

**Proposed Adoptions:** 918-001-0031, 918-030-0320, 918-030-0325

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

**Summary:** ORS 25.785 requires the Building Codes Division to record an applicant's social security number in order to issue or renew a license, permit or registration. These rules establish requirements and procedures for requiring an applicant to provide a social security number as well as establishing requirements for applicants who have not been issued a social security number by the United States Social Security Administration.

ORS 183.415 requires the Department of Consumer & Business Services to establish a reasonable time for notifying individuals of their right of a contested case hearing, and to provide definitions of "good cause" and "reasonable time."

*\*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 97310

**Telephone:** (503) 373-7559

Date:	Time:	Location:
5-18-04	10 a.m.	1535 NW Edgewater St. Salem, OR 97309

**Hearing Officer:** Richard J. Baumann

**Stat. Auth.:** ORS 480.545 & 480.630; Other Auth.: ORS 183.025 - 183.410 & OAR 918-001-0010

**Stats. Implemented:** ORS 480.630

**Proposed Amendments:** 918-225-0691, 918-225-0920

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

**Summary:** Clarifies boiler and pressure vessel certification and continuing education requirements, to provide greater clarity and flexibility for applicants obtaining and renewing certifications, and for providers of continuing education classes.

*\*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 97310

**Telephone:** (503) 373-7559

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

Date:	Time:	Location:
6-3-04	1:30 p.m.	Conf. Rm. B (basement) 350 Winter St. NE Salem, OR

**Hearing Officer:** Lewis Littlehales

**Stat. Auth.:** ORS 731.244

**Stats. Implemented:** ORS 746.015, 746.240, 746.600 & 746.650

**Proposed Adoptions:** 836-080-0436, 836-080-0437, 836-080-0438

**Proposed Amendments:** 836-080-0425, 836-080-0430, 836-080-0435

**Proposed Repeals:** 836-080-0432

**Last Date for Comment:** 6-11-04

**Summary:** This rulemaking is proposed to conform rules relating to credit scoring (OAR 836-080-0425 to 836-080-0450) to legislation enacted in 2003 (chapter 788, Oregon Laws 2003). That legislation incorporated some of the provisions of the rules and also extended the scope of statutory regulation of credit scoring and its use in connection with insurance. Rule provisions that are now in statute are proposed to be deleted, as are rule provisions that the legislation supersedes. Proposed new rules relate to disclosure of adverse underwriting decision, annual notice of right to seek rating and definition of adverse underwriting decision.

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

**Rules Coordinator:** Sue Munson

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

**Telephone:** (503) 947-7272

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

Date:	Time:	Location:
5-26-04	10 a.m.	Rm. B (basement) Labor & Industries Bldg. 350 Winter St. NE PO Box 14480 Salem, OR 97309-0405

**Hearing Officer:** Fred Bruyns

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

**Stats. Implemented:** ORS 656.245, 656.260, sec. 9 ch. 170 OL 2003 (SB 233), sec. 3 ch. 811 OL 2003 (HB 3669)

**Proposed Amendments:** Rules in 436-015

**Proposed Repeals:** 436-015-0130

# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 6-1-04, 5 p.m.

**Summary:** The agency proposes to amend these rules and replace temporary rules issued to implement changes in the law due to legislation passed by the 2003 Oregon Legislature:

- Senate Bill 233 changed the time frame for appeal of a proposed order or proposed assessment of civil penalty from 60 days following the party's receipt of notice to 60 days from the date the order is mailed by the department. Amendments are proposed to OAR 436-015 to reflect this change.

- House Bill 3669 gives additional authority to nurse practitioners to treat injured workers and authorize temporary disability payments. HB 3669 also authorizes a nurse practitioner to provide the same level of services as a primary care physician, if at the time the worker is enrolled in the managed care organization (MCO), the nurse practitioner maintains the worker's medical records and has a documented history of treatment, provided the nurse practitioner agrees to refer the worker to the MCO for specialized treatment and agrees to comply with all of the MCO's rules, terms, and conditions regarding services performed. Amendments are proposed to OAR 436-015 to reflect these changes. House Bill 3669 was a result of legislative action after development of the legislative concepts by nurse practitioners and the Management Labor Advisory Committee.

**In addition, these proposed rules:**

- State the time frame and method to appeal a decision of a managed care organization (MCO) (currently stated only in required text for the MCO to use in its notices);

- Require that an MCO allow a worker to select a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010. If the MCO has fewer than three authorized nurse practitioners from which a worker can choose within a geographical service area, the MCO must allow the worker to seek treatment outside the MCO from authorized nurse practitioners, consistent with the MCO's treatment and utilization standards and ORS 656.245(2)(b)(C), which limits the treatment of the worker by a nurse practitioner to 90 days and authorization of payment of temporary disability benefits to 60 days from the date of the first visit on the initial claim;

- Require that the MCO provide the director a copy of an MCO/insurer contract extension, signed by the insurer and MCO, no later than a contract's date of expiration or termination, or workers will no longer be subject to the contract after it expires or terminates without renewal;

- Require an MCO to report any board member or shareholder changes to the director within 14 days of such changes, and that these parties submit affidavits certifying they have no interest in an insurer or other non-qualifying employer;

- Require that fees paid for medical services provided by authorized nurse practitioners who are not MCO members, but authorized to provide medical services under OAR 436-015-0070(2), shall not be less than fees paid to nurse practitioners who are MCO members for similar medical services; and

- Repeal the rule prescribing how the director serves orders of sanctions, civil penalties, and orders suspending or revoking the certification of a managed care organization.

Address questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail [fred.h.bruyns@state.or.us](mailto:fred.h.bruyns@state.or.us) Proposed rules are available on the Workers' Compensation Division's Web site: <http://www.cbs.state.or.us/external/wcd/policy/rules/rules.html#proprules> or from WCD Publications at 503-947-7627 or fax 503-947-7630.

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

**Rules Coordinator:** Fred Bruyns

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

**Telephone:** (503) 947-7717

## Department of Corrections Chapter 291

<b>Date:</b> 5-21-04	<b>Time:</b> 8 a.m.	<b>Location:</b> Dept. of Corrections Brentwood Bldg. Birch Conference Rm. 1793 13th St. SE Salem, OR 97302
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**Hearing Officer:** Birdie Worley

**Stat. Auth.:** ORS 179.040, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 179.040, 423.020, 423.030 & 423.075

**Proposed Adoptions:** 291-117-0070 - 291-117-0140

**Proposed Amendments:** 291-117-0005, 291-117-0008

**Proposed Repeals:** 291-117-0010 - 291-117-0060

**Last Date for Comment:** 5-28-04

**Summary:** These rule amendments are necessary to update and clarify the policies and procedures governing the handling, control, storage and disposition of inmate personal property within Department of Corrections facilities, taking into consideration the safety concerns identified by the State Fire Marshal's Office, and security concerns of the department.

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

**Rules Coordinator:** Carolyn Schnoor

**Address:** Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667

**Telephone:** (503) 945-0933

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<b>Date:</b> 5-26-04	<b>Time:</b> 8 a.m.	<b>Location:</b> Dept. of Corrections Brentwood Bldg. Birch Conference Rm. 1793 13th St. SE Salem, OR 97302
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**Hearing Officer:** Birdie Worley

**Stat. Auth.:** ORS 179.040, 423.020, 423.030 & 423.075

**Stats. Implemented:** ORS 179.040, 423.020, 423.030 & 423.075

**Proposed Amendments:** 291-013-0005 - 291-013-0225

**Proposed Ren. & Amends:** 291-013-0090 to 291-013-0105

**Last Date for Comment:** 5-28-04

**Summary:** These rule amendments are necessary to clarify and update policy and procedures governing the use of force and security equipment by Department of Corrections employees in the performance of their duties.

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

**Rules Coordinator:** Carolyn Schnoor

**Address:** Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667

**Telephone:** (503) 945-0933

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## Department of Environmental Quality Chapter 340

<b>Date:</b> 6-3-04	<b>Time:</b> 2 p.m.	<b>Location:</b> DEQ, Rm. 3A 811 SWE 6th Ave. Portland, OR
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**Hearing Officer:** Maggie Vandehey

**Stat. Auth.:** OL 2003, ch. 618, sec. 28 - 32, as reprinted in a note following ORS 315.356

**Stats. Implemented:** OL 2003, Ch. 618

**Proposed Adoptions:** 340-016-0210, 340-016-0220, 340-016-0230, 340-016-0240, 340-016-0250, 340-016-0260

**Last Date for Comment:** 6-8-04

**Summary:** The proposed rules outline administrative procedures for review and approval of the truck engine tax credit authorized by the 2003 Legislature. The truck engine tax credit is available for Oregon taxpayers purchasing heavy duty diesel engines emitting nitrogen

# NOTICES OF PROPOSED RULEMAKING

oxides at the rate of 2.5 grams per brakehorsepower hour or less, when bought between January 1, 2004 through December 31 2007.

To submit comments or request additional information, please contact Kevin Downing at the Department of Environmental Quality (DEQ), 811 SW 6th Avenue, Portland Oregon 97204, toll free in Oregon at 800-452-4011 or 503-229-6549, downing.kevin@deq.state.or.us, 503-229-5675 fax, or visit DEQ's website <http://www.deq.state.or.us/news/index.asp>

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

**Rules Coordinator:** Rachel Sakata

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

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

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## Department of Fish and Wildlife Chapter 635

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-11-04	8 a.m.	Best Western-Sunridge Inn One Sunridge Ln. Baker City, OR 97814

**Hearing Officer:** Oregon Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146 & 496.162

**Stats. Implemented:** ORS 496.012, 496.138, 496.146 & 496.162

**Proposed Amendments:** Rules in 635-045, 060, 065, 066, 067, 068, 069, 070, 071, 072, 073, 075, 078, 080

**Last Date for Comment:** 6-11-04

**Summary:** Establish 2004 controlled hunt tag numbers for the hunting of pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer, and elk. Change bag limits from one buck to one deer in certain units in the general archery season.

Propose 2005 hunting regulations for game mammals, including season dates, open area, location of cooperative travel management areas, and other rules including general hunting, landowner preference, emergency hunt, and controlled hunting regulations. Propose quotas for 2005 cougar seasons. Propose spring bear seasons and tag numbers for 2005. These proposals will be presented in principle to the Oregon Fish and Wildlife Commission in June 2004 and again for adoption in October 2004.

Lastly, 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:** Katie Thiel

**Address:** Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303

**Telephone:** (503) 947-6033

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## Department of Forestry Chapter 629

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-20-04	9 a.m.	Oregon Dept. of Forestry 611 20th St. LaGrande, OR 97850

**Hearing Officer:** Richard Gibson

**Stat. Auth.:** ORS 477.225; Other Auth.: ORS 526.016(4)

**Stats. Implemented:** ORS 477.225

**Proposed Amendments:** 629-041-0550

**Last Date for Comment:** 5-20-04

**Summary:** OAR 629-041-0550 describes the boundary of the Northeast Oregon Forest Protection District. The current boundary is described by lines drawn on maps. This proposed rule amendment will replace the lines on maps description with a written description. The amendment will result in changes to the existing boundary. Some lands will be added to the forest protection district and some lands will be withdrawn from the district, as a result of this action. Questions specific to the proposed rule amendment process

may be directed to Richard Gibson, 503-945-7440. Questions specific to the location of the boundary may be directed to Tim Keith, 541-963-3168.

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

**Rules Coordinator:** Gayle Birch

**Address:** Department of Forestry, 2600 State St., Salem, OR 97310

**Telephone:** (503) 945-7210

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
6-24-04	1:30 p.m.	Rm. 252 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005; Other Auth.: Public Law 105-89, Adoption and Safe Families Act

**Stats. Implemented:** ORS 418.005

**Proposed Adoptions:** 413-080-0040, 413-080-0045, 413-080-0050, 413-080-0055, 413-080-0060

**Last Date for Comment:** 6-24-04

**Summary:** Department of Human Services is issuing permanent rules regarding the type and frequency of caseworker contact with children, parents and caregivers (foster parents, relative care givers, and residential treatment providers) while caseworkers perform child welfare services. Previously, child welfare policy identified the type and frequency of contact for workers only with children placed in substitute care. These new rules incorporate standards of contact for children who are being served by the department and who are not in a substitute care setting, and standards for caseworker contact with parents or caregivers. During the federal Child and Family Service Review (CFSR) in Oregon during 2001, the department was found not to be in compliance with the federal requirements for the type and frequency of caseworker contact. A Program Improvement Plan (PIP) was developed which included the state's agreement to adopt these rules regarding caseworker contact with children, parents and caregivers. These rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Child Welfare Programs, 550 Summer St. NE, E48, Salem, OR 97301-1066

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

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-17-04	10:30 a.m.-12 p.m.	Rm. 137A 500 Summer St. NE Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010

**Stats. Implemented:** ORS 414.743

**Proposed Amendments:** 410-120-1295, 410-141-0420

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

**Summary:** The General Rules and OHP administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. Effective March 23, 2004, OMAP temporarily amended OAR 410-120-1295 and OAR 410-141-0420. OAR 410-120-1295 was amended to add Table 120-1295, to give an immediate clarification for hospitals and managed care organizations about how to apply the formula established under the new reimbursement methodology to claims for reimbursement for services to

# NOTICES OF PROPOSED RULEMAKING

medical assistance clients. OAR 410-141-0420 was amended to reference OAR 410-120-1295. This is the Notice to permanently amend OAR 410-120-1295 and OAR 410-141-0420.

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

**Rules Coordinator:** Darlene Nelson

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

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

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-17-04	10:30 a.m.-12 p.m.	Rm. 137 A 500 Summer St. NE Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-121-0030  
**Last Date for Comment:** 5-17-04, 5 p.m.

**Summary:** The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for pharmaceutical products and services provided to clients. Rule 410-121-0030 will be amended, effective June 1, 2004 to update Table 121-0030-1 to modify for Estrogens and Hypoglycemics drug classes to add and delete drugs based on drug class reviews.

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

**Rules Coordinator:** Darlene Nelson

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

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-17-04	10:30 a.m.-12 p.m.	Rm. 137A 500 Summer St. NE Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-141-0260, 410-141-0261, 410-141-0262, 410-141-0263, 410-141-0264, 410-141-0265, 410-141-0266, 410-141-0480

**Last Date for Comment:** 5-17-04, 5 p.m.  
**Summary:** The Oregon Health Plan (OHP) Services program rules govern Office of Medical Assistance Programs' payment for services provided to clients. Rules 410-141-0260, 410-141-0261, 410-141-0262, 410-141-0263, 410-141-0264, 410-141-0265, 410-141-0266 and 410-141-0480 will be revised to change the complaint and grievance rules to parallel Code of Federal Regulations (CFR). For clarification purposes, OMAP included a definition section, changed the heading of the rules and separated the complaint (grievance) process from the appeals and hearings processes.

*\*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

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## Department of Human Services, Public Health Chapter 333

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-24-04	1 p.m.	Lane Co. Public Service Bldg. Harris Hall 125 East 8th Ave. Eugene, OR
5-28-04	1 p.m.	Portland State Office Bldg. Rm. 120C 800 NE Oregon St. Portland, OR

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 431.120(6) & 442.315  
**Stats. Implemented:** ORS 431.120(6) & 442.315  
**Proposed Adoptions:** 333-560-0140, 333-560-0150  
**Proposed Amendments:** 333-550-0010, 333-590-0040  
**Last Date for Comment:** 6-1-04, 5 p.m.

**Summary:** Amends OAR 333-590-0040 to change how service areas for existing general hospitals are determined. Also amends OAR 333-590-0040 to delete an outdated reference to projects which involve a specific service or services. Amends OAR 333-550-0010 to change how hospital service areas are determined for the purpose of determining what is a new hospital. Adopts 333-560-0140 and 333-560-0150 to create an accelerated certificate of need review process for new hospitals under specific conditions.

*\*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., Suite 930, Portland, OR 97232

**Telephone:** (503) 731-4405

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**Stat. Auth.:** ORS 443.340  
**Stats. Implemented:** ORS 443.305 - 443.350  
**Proposed Adoptions:** 333-536-0000, 333-536-0005, 333-536-0015, 333-536-0020, 333-536-0025, 333-536-0030, 333-536-0035, 333-536-0040, 333-536-0045, 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  
**Proposed Amendments:** 333-536-0010, 333-536-0050

**Last Date for Comment:** 5-22-04  
**Summary:** As required by statute, the Department of Human Services (DHS) adopted permanent rules that established standards for licensure of In-Home Care Agencies that became effective February 1, 2003. Retroactively adopt 333-536-0000, 333-536-0005, 333-536-0015, 333-536-0020, 333-536-0025, 333-536-0030, 333-536-0035, 333-536-0040, 333-536-0045, 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 to correct an untimely filing error for which temporary rules were filed. This action will adopt temporary rules as permanent rules.

Amend 333-536-0010 and 333-536-0050 to remove the requirement for a second license for a home health agency, which also operates as an In-Home Care Agency; removes the requirement that In-Home Care Agencies need to comply with Department administrative rules governing criminal background checks; and removes the requirement for tuberculosis testing of personnel.

**Rules Coordinator:** Christina Hartman

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**Telephone:** (503) 731-4405

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**Stat. Auth.:** ORS 431 & 448  
**Stats. Implemented:** ORS 431.110, 431.150, 448.115, 448.123, 448.131, 448.150, 448.268, 448.273, 448.279, 448.280, 448.405, 448.407, 448.450, 448.455, 448.460, 448.465 & 448.994.

# NOTICES OF PROPOSED RULEMAKING

**Proposed Adoptions:** 333-061-0058, 333-061-0064, 333-061-0228, 333-061-0272

**Proposed Amendments:** 333-061-0020, 333-061-0025, 333-061-0034, 333-061-0057, 333-061-0060, 333-061-0061, 333-061-0065, 333-061-0085, 333-061-0087, 333-061-0090, 333-061-0205, 333-061-0210, 333-061-0215, 333-061-0220, 333-061-0225, 333-061-0230, 333-061-0235, 333-061-0245, 333-061-0250, 333-061-0260, 333-061-0265, 333-061-0270, 333-061-0290

**Proposed Repeals:** 333-061-0240, 333-061-0255, 333-061-0020(T), 333-061-0025(T), 333-061-0034(T), 333-061-0057(T), 333-061-0058(T), 333-061-0060(T), 333-061-0061(T), 333-061-0065(T), 333-061-0085(T), 333-061-0087(T), 333-061-0090(T), 333-061-0205(T), 333-061-0210(T), 333-061-0215(T), 333-061-0220(T), 333-061-0225(T), 333-061-0228(T), 333-061-0230(T), 333-061-0235(T), 333-061-0245(T), 333-061-0250(T), 333-061-0260(T), 333-061-0265(T), 333-061-0270(T), 333-061-0272(T), 333-061-0290(T)

**Last Date for Comment:** 5-22-04

**Summary:** Retroactively amends 333-061-0020, 0025, 0034, 0057, 0060, 0061, 0065, 0085, 0087, 0090, 0245, 0290 with minor housekeeping changes and clarifications. These rules are identical to the rules previously filed with the Secretary of State's office on October 25, 2002.

Retroactively adopts 333-061-0058 to include wellfield determination. This rule is identical to the rule previously filed with the Secretary of State's office on October 25, 2002.

Retroactively adopts 333-061-0064, requirements for the development of written emergency response and water system operations plans, filed with the Secretary of State's office on October 25, 2002 and include the housekeeping changes and clarifications filed with the Secretary of State's office on August 15, 2003. This rule is identical to the rule previously filed with the Secretary of State's office on August 15, 2003.

Retroactively amends 333-061-0205, 0210, 0215, 0220, 0230, 0235, 0265, 0270, and adopts 333-061-0272 applying to community and non-transient non-community public water systems and their operators with minor housekeeping changes. These rules are identical to the rules previously filed with the Secretary of State's office on May 2, 2002.

Retroactively amend 333-061-0225 and adopt 333-061-0228 to comply with statutory changes which eliminated the exemption for operators of drinking water systems with less than 150 service connections, using groundwater sources, and for systems directly supervised by registered professional engineers. These rules are identical to the rules previously filed with the Secretary of State's office on May 2, 2002.

Retroactively suspends 333-061-0240 and 333-061-0255. This rule action is identical to the action filed with the Secretary of State's office on May 2, 2002.

Retroactively amend 333-061-0250 to provide further clarification to treatment definitions to concur with terminology that is commonly used in the industry. These rules are identical to the rules previously filed with the Secretary of State's office on March 28, 2003.

Retroactively amend 333-061-0260 to allow water distribution operators applying for level 3 and level 4 certification to substitute required post high school education with additional years of experience. Minor housekeeping changes for consistency are included. These rules are identical to the rules previously filed with the Secretary of State's office on March 28, 2003.

**Rules Coordinator:** Christina Hartman

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**Telephone:** (503) 731-4405

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

**Date:**  
5-25-04

**Time:**  
10 a.m.

**Location:**  
Rm. 254  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 181.537, 409.050, 410.070, 411.060, 411.070, 411.710, 411.816, 414.042, 414.342, 418.040 & 418.100; Other Auth: PRWORA Section 820 and 829; USDA Food and Nutrition Services Administrative Notices 98-93, 04-04, and 04-09; 7 CFR 273.1(b)(4), 273.9(b)(2), (b)(5)(i), and (c)(15); 7 CFR 273.10(c)(3); 7 CFR 273.11(j); 7 CFR 273.16(b)(5); 42 USC 1396p(b)(4)(B); FS Act, Section 6(j); House Bill 2696 (2003 Oregon Legislative Session)

**Stats. Implemented:** ORS 181.537, 411.060, 411.070, 411.111, 411.117, 411.122, 411.700, 411.710, 411.816, 411.825, 414.025, 414.042, 414.105, 414.342, 418.040, 418.100 & 418.134

**Proposed Adoptions:** 461-145-0105

**Proposed Amendments:** 461-101-0010, 461-110-0210, 461-110-0330, 461-110-0630, 461-115-0430, 461-115-0530, 461-115-0651, 461-120-0125, 461-120-0210, 461-120-0330, 461-120-0340, 461-120-0345, 461-120-0510, 461-120-0630, 461-130-0327, 461-130-0328, 461-130-0330, 461-135-0085, 461-135-0170, 461-135-0200, 461-135-0300, 461-135-0310, 461-135-0320, 461-135-0340, 461-135-0350, 461-135-0700, 461-135-0730, 461-135-0750, 461-135-0780, 461-135-0845, 461-135-1120, 461-135-1130, 461-140-0040, 461-140-0110, 461-140-0120, 461-140-0242, 461-145-0120, 461-145-0200, 461-145-0230, 461-145-0240, 461-145-0250, 461-145-0280, 461-145-0360, 461-145-0410, 461-145-0420, 461-145-0600, 461-145-0860, 461-145-0910, 461-150-0010, 461-150-0020, 461-150-0042, 461-155-0010, 461-155-0035, 461-155-0070, 461-155-0500, 461-155-0670, 461-160-0010, 461-160-0015, 461-160-0140, 461-160-0160, 461-160-0430, 461-160-0620, 461-165-0030, 461-165-0120, 461-165-0180, 461-175-0050, 461-175-0200, 461-175-0300, 461-180-0010, 461-180-0050, 461-180-0070, 461-180-0090, 461-180-0120, 461-180-0140, 461-190-0211, 461-195-0621

**Proposed Repeals:** 461-135-0760, 461-190-0221

**Last Date for Comment:** 5-25-04

**Summary:** Rules 461-101-0010, 461-110-0210, 461-110-0330, 461-110-0630, 461-115-0430, 461-120-0210, 461-120-0330, 461-120-0510, 461-120-0630, 461-130-0328, 461-135-0170, 461-135-0300, 461-135-0310, 461-135-0320, 461-135-0340, 461-135-0350, 461-140-0120, 461-145-0230, 461-145-0240, 461-145-0250, 461-145-0280, 461-145-0360, 461-145-0410, 461-145-0420, 461-145-0600, 461-145-0860, 461-150-0010, 461-150-0042, 461-155-0070, 461-155-0670, 461-160-0010, 461-160-0015, 461-160-0140, 461-165-0120, 461-175-0200, 461-175-0300, 461-180-0010, 461-180-0090, and 461-180-0140 are being amended to remove references to the ADCM-EA program. The Department no longer administers benefits under this program because the federal-funding authority no longer exists under Title IV-A or Title XIX of the Social Security Act.

Rule 461-110-0630 is being amended to eliminate the policy stating that the unborn child of a pregnant female is in the need group for OSIPM. The OSIPM program does not have a standard for unborn and coverage for the pregnant female would not be any different than other individuals. Additionally, the reference to the OSIPM-MN program has been deleted, as that program no longer exists.

Rule 461-115-0530 is being amended to clarify that a client's OHP benefits will end before the end of the six-month certification period if the program ends.

Rules 461-115-0651 and 461-160-0430 are being amended to update the rule and remove outdated information.

Rule 461-120-0125 is being amended to comply with federal regulations. For the OSIP, GA, and GAM programs, individuals that are qualified noncitizens that have resided in the United States since August 22, 1996 are not eligible for SSI and therefore not eligible

## NOTICES OF PROPOSED RULEMAKING

for OSIP, GA or GAM. Victims of trafficking are only eligible for OSIP, OSIPM. GA and GAM for seven years from the date their status was granted. Additionally for OSIP, a qualified noncitizen who entered the United States on or after August 22, 1996 and has been in the qualified noncitizen status for at least five years must have forty qualifying quarters of coverage. For OSIPM, language was added to state that a qualified noncitizen who entered the United States on or after August 22, 1996 must have been in the qualified noncitizen status for at least five years. This rule was filed as a temporary rule effective April 9, 2004 to incorporate this change.

Rules 461-120-0330, 461-120-0340, 461-120-0345, 461-130-0330, 461-135-0085, 461-140-0040 and 461-195-0621 are being amended and rule 461-145-0105 is being adopted to merge all information about disqualifying income into one rule. In addition, there is a need to begin to count the recovery of a client-caused TANF overpayment from a TANF grant as available income to comply with federal regulations. The amendment will bring treatment of income into compliance with food stamp program federal regulations.

Rule 461-130-0327 is being amended to update good cause criteria.

Rule 461-130-0330 is being amended to correct the wording of section (1)(d). For several years, it has been the policy of the TANF program that when a client fails to cooperate for five or more months with JOBS program requirements, the penalty for non-cooperation is that all cash payments from TANF are stopped. However, the language of this rule suggests that the penalty for failure to cooperate for five and all subsequent months is TANF ineligibility. We are changing the rule in order to make the current wording consistent with the actual policy and also with other material in the Family Services Manual (which does accurately describe the policy) and with our forms and notices.

Rule 461-135-0200 is being amended to remove reference to Pay-after-Performance (PAP). When the Department eliminated the PAP policy and updated affected the rules in 2003, this rule was inadvertently missed.

Rule 461-135-0700 is being amended to clarify what constitutes an acceptable form of prima facie evidence regarding Title II verification. Specifically, the "VERSA" screen maintained by the Department, or a printed copy of the screen, is prima facie evidence that the information on the screen reflects the client's non-disability determination of Title II eligibility by the Social Security Administration. This rule was filed as a temporary rule effective April 15, 2004 to incorporate this change.

Rule 461-135-0730 is being amended to add an enrollment cap for those QMB-SMB clients at the 121-135% FPL income level. We refer to these clients as SMF clients. The Federal term for them is QI-1s. This rule was filed as a temporary rule effective April 1, 2004 to incorporate this change.

Rule 461-135-0750 is being amended to simplify the policy that is contained in the current rule and in rule 461-155-0760. This amendment also adds more specific information regarding the populations that are eligible for OSIPM.

Rule 461-135-0760 is being repealed to combine specific eligibility information regarding the OSIPM program into one OAR.

Rule 461-135-0780 is being amended to comply with the provisions of 42 USC 1396(a) which requires Medicaid coverage of those who became ineligible for SSI due to a cost of living adjustment in their Social Security benefit. The rule filing effective January 1, 2004 did not include the factors from previous cost of living adjustments that are needed to correctly determine eligibility.

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 by replacing "shall be" with "is." This rule was filed as a temporary rule effective February 5, 2004 to incorporate these changes. This rule is also being amended to clarify, and expand upon, the definition of fair market value of real property that may be subject to a claim by the Department for recov-

ery of reimbursable public assistance benefits and imposes upon the person the burden of establishing the subject real property's fair market value.

Rule 461-135-1120 is being amended to state that an Oregon Health Plan (OHP) premium payment is required to be received on or before the 20th of the month for which the premium was billed to be considered on time. This change also clarifies the consequences for clients who do not pay premiums on time. Clients are informed through the billing process that OHP premium payments are due on the 20th of the month for which the premium was billed. Clients who fail to make a premium payment on time may be disqualified under rule 461-135-1130. This rule was filed as a temporary rule effective February 19, 2004 to incorporate this change.

Rule 461-135-1130 is being amended to clarify that an Oregon Health Plan (OHP) disqualification is rescinded if the past due premium payment is received by the 20th of the month following the month for which the premium was billed. This rule was filed as a temporary rule effective February 19, 2004 to incorporate this change.

Rules 461-140-0040, 461-145-0120 and 461-145-0910 are being amended to clarify the definition and treatment of self-employment for all programs. Rule 461-140-0040 is being amended to state that, for clients who are not self-employed, the amount they must expend on a regular monthly basis to produce their earned income is considered unavailable. Rule 461-145-0120 is being amended to clarify that self-employment earnings include the gross sales or receipts before costs. Rule 461-145-0910 is being amended to clarify the definition of self-employment for all programs.

Rule 461-140-0110 is being amended to change the treatment of periodic income for the Food Stamp program. The intent is to give the household a choice on when the income will be counted.

Rule 461-140-0242 is being amended to clarify when transfers of assets are disqualifying.

Rule 461-145-0200 is being amended to bring treatment of foster care payments received for a person who is not a member of the household group in compliance with federal food stamp regulations.

Rule 461-145-0280 is being amended to clarify current policy that, for the MAA, MAF and SAC medical programs, third-party payments not legally obligated to be paid directly to a member of the financial group and the group does not have the option of taking cash are excluded. These excluded payments also include those made by the non-custodial parent to a third party that are court-ordered but not designated as child support.

Rule 461-150-0020 is being amended to clarify that there is an agency caused overpayment when the agency does not follow agency policy or use all information available to process the income and calculate the benefits. This rule was filed as a temporary rule effective April 1, 2004 to incorporate this change.

Rule 461-155-0010 is being amended to clarify that ongoing special needs are used to determine benefit amount for General Assistance.

Rule 461-155-0035 is being amended to correct the amount of the Cooperation Incentive Payment (COI) in section (3)(a) of the rule from \$37 to \$43. This is not a change to Department policy in the TANF program because it is merely an alteration to an example that has no bearing on how the COI is calculated.

Rule 461-155-0500 is being amended to remove language that was unclear. Reference is now made to OAR 461-155-0010 to clarify policy application.

Rule 461-160-0160 is being amended to remove the reference to the SAC medical program because rule 461-160-0190 correctly provides the earned income deductions for the SAC program.

Rule 461-160-0620 is being amended to conform with the requirements of Section 1924 of the Social Security Act and the statutory authority in 42 USC 1396 r-5, which requires an annual increase in the amount of income a community spouse can protect while their spouse is institutionalized. The amount which is indexed by the federal poverty level is equal to 150% of the federal poverty level for

# NOTICES OF PROPOSED RULEMAKING

a two person household. This rule is also being amended to clarify that under calculation method one, the allowance is the amount that benefits the couple most and may not necessarily be the greatest.

Rule 461-165-0030 is being amended to clarify that a client cannot receive benefits from the EXT, MAA, MAF, OHP, OSIPM or SAC medical assistance program and from the Family Health Insurance Assistance Program (FHIAP). Before the amendment, the rule only referenced "OHP benefits" when the EXT, MAA, MAF, OSIPM and SAC programs provide recipients with the OHP Plus benefit package. To be clear, the program acronyms are now listed.

Rule 461-165-0180 is being amended to clarify the Department may deny eligibility of child care providers when information received indicates a substantial risk to the health or safety of children not only when the provider is licensed with Child Care Division but also when the provider is exempt from licensing.

Rule 461-175-0050 is being amended to include a correct effective date of an overpayment when a household fails to report a required change timely and this inaction results in an overpayment of benefits.

Rule 461-180-0050 is being amended to clarify that if an OHP program ends, the effective date for closing benefits will be the day on which the program ends regardless of when the certification period ends.

Rule 461-180-0070 is being amended to clarify that a person must meet the General Assistance eligibility requirements before a cash payment is made. This rule is also being amended to ensure that a service client's OSIP cash payment begin the date the client requests benefits if all eligibility requirements are met.

Rule 461-180-0120 is being amended to clarify that if an OHP program ends, the effective date for removing a client from a benefit group will be the end of the month in which the program ends.

Rule 461-190-0211 is being amended as a result of HB 2696. The Department has developed standards for making payments and providing support services for the employment and self-sufficiency skills programs (JOBS). These standards describe the circumstances under which JOBS Program participants and other clients may and may not receive JOBS support service payments.

Rule 461-190-0221 is being repealed as a result of the implementation of HB 2696, 2003 Oregon Legislative Session.

Rule 461-195-0621 is being amended to bring the rule into compliance with FS law and regulations.

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

**Rules Coordinator:** Annette Tesch

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

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-21-04	11 a.m.	HRB, Rm. 137D 500 Summer St. Salem, OR

**Hearing Officer:** Lynda Dyer

**Stat. Auth.:** ORS 410 & 411

**Stats. Implemented:** ORS 410.070

**Proposed Amendments:** 411-040-0000

**Last Date for Comment:** 5-24-04

**Summary:** The amendment to the Home Delivered Meals rule provides for the following: a) strengthens the language that Medicaid Home Delivered meals must be a part of a waived service plan and that the cost of those meals must be calculated into the total cost of the service plan. b) specifies that clients who receive these meal services are under no obligation to make "suggested" donations and should be informed of this right. c) Provides clear direction to the field on treatment of clients who are liable for a monthly pay-in

amount, (per OAR 461-185-0050), in order to remain eligible for services and receive home delivered meals.

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

**Rules Coordinator:** Lynda Dyer

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**Telephone:** (503) 945-6398

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-21-04	9 a.m.	Rm. 137D 500 Summer St. Salem, OR

**Hearing Officer:** Lynda Dyer

**Stat. Auth.:** ORS 410.410; Other Auth.: OAR 411-032-0000

**Stats. Implemented:** ORS 410.020, 410.030, 410.050, 410.060, 410.070 & 410.080

**Proposed Amendments:** Rules in 411-032

**Last Date for Comment:** 5-24-04

**Summary:** The Oregon Project Independence rules are being amended due to the implementation of the collective bargaining agreement between DHS and the Service Employees International Union which represents homecare workers. OPI rules must be revised to include definitions related to the collective bargaining agreement and to bring procedures related to the employment of homecare workers into technical compliance under this agreement.

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

**Rules Coordinator:** Lynda Dyer

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076

**Telephone:** (503) 945-6398

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-27-04	9 a.m.	500 Summer St. Rm. 137D Salem, OR

**Hearing Officer:** Lynda Dyer

**Stat. Auth.:** ORS 409.050, 417.340 - 417.355 & 430.041

**Stats. Implemented:** ORS 430.215, 427.005 - 427.007 & 417.340 - 417.355

**Proposed Ren. & Amends:** 309-044-0100 to 411-350-0010, 309-044-0110 to 411-350-0020, 309-044-0120 to 411-350-0030, 309-044-0130 to 411-350-0040, 309-044-0140 to 411-350-0050, 309-044-0150 to 411-350-0060, 309-044-0160 to 411-350-0070, 309-044-0170 to 411-350-0080, 309-044-0180 to 411-350-0090, 309-044-0190 to 411-350-0100, 309-044-0200 to 411-350-0110, 309-044-0210 to 411-350-0120

**Last Date for Comment:** 5-27-04

**Summary:** The rules in Chapter 309, Division 044, Medically Fragile Children Services, are proposed for permanent amendment effective 06/01/2004. These rules will be renumbered to reflect the current organizational structure of DHS and will repeal the temporary rule due to expire on June 7, 2004. The following changes are included in this proposal:

- 1) Removes the Department's Mission Statement and Statutory Authority verbiage from 309-044-0100.
- 2) Permanently changes Form MHDDSD-DD-0519 in rule 309-044-0110 (3) to DHS 0519.
- 3) Removes from 309-044-0140 12 (i), caregiver training and education, from the list of 'goods, services and supplies' MFC services can provide;
- 4) 309-044-0170 (2) replaces OAR 411-009-0000, the Criminal History reference that was repealed on March 1, 2004 and changes it to the new Criminal records rule OAR 410-007-0200 thru 0380;
- 5) 309-044-0150 (4)(6) increases the time to request a hearing from 30 days to 45 days; and



## NOTICES OF PROPOSED RULEMAKING

6) 309-044-0210 (4) increases the time a provider may appeal the Department's decision to sanction from 30 days to 45 days.

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

**Rules Coordinator:** Lynda Dyer

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076

**Telephone:** (503) 945-6398

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<b>Date:</b> 5-21-04	<b>Time:</b> 9 a.m.	<b>Location:</b> 500 Summer St. Rm. 137D Salem, OR
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**Hearing Officer:** Lynda Dyer

**Stat. Auth.:** ORS 410.410; Other Auth.: OAR 411-032-0000

**Stats. Implemented:** ORS 410.020, 410.030, 410.050, 410.060, 410.070 & 410.080

**Proposed Amendments:** Rules in 411-032

**Last Date for Comment:** 5-24-04

**Summary:** The Oregon Project Independence rules are being amended due to the implementation of the collective bargaining agreement between DHS and the Service Employees International Union which represents homecare workers. OPI rules must be revised to include definitions related to the collective bargaining agreement and to bring procedures related to the employment of homecare workers into technical compliance under this agreement.

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

**Rules Coordinator:** Lynda Dyer

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076

**Telephone:** (503) 945-6398

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<b>Date:</b> 5-21-04	<b>Time:</b> 11 a.m.	<b>Location:</b> 500 Summer St. Rm. 137D Salem, OR
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**Hearing Officer:** Lynda Dyer

**Stat. Auth.:** ORS 410 & 411

**Stats. Implemented:** ORS 410.070

**Proposed Amendments:** 411-040-0000

**Last Date for Comment:** 5-24-04

**Summary:** The amendment to the Home Delivered Meals rule provides for the following: a) strengthens the language that Medicaid Home Delivered meals must be a part of a waived service plan and that the cost of those meals must be calculated into the total cost of the service plan. b) specifies that clients who receive these meal services are under no obligation to make "suggested" donations and should be informed of this right. c) Provides clear direction to the field on treatment of clients who are liable for a monthly pay-in amount, (per OAR 461-185-0050), in order to remain eligible for services and receive home delivered meals.

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

**Rules Coordinator:** Lynda Dyer

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076

**Telephone:** (503) 945-6398

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<b>Date:</b> 5-21-04	<b>Time:</b> 1 p.m.	<b>Location:</b> 500 Summer St. Rm. 137D Salem, OR
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**Hearing Officer:** Lynda Dyer

**Stat. Auth.:** ORS 409.050, 410.070 & 410.090

**Stats. Implemented:** ORS 409.050, 410.070 & 410.090

**Proposed Repeals:** 411-030-0060, 411-030-0065

**Last Date for Comment:** 5-24-04

**Summary:** OAR 411-060-0060 and OAR 411-030-0065 are proposed for repeal and will be placed in Division 031, a division for Client Employed Provider Program.

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

**Rules Coordinator:** Lynda Dyer

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076

**Telephone:** (503) 945-6398

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<b>Date:</b> 5-21-04	<b>Time:</b> 3 p.m.	<b>Location:</b> 500 Summer St. Rm. 137D Salem, OR
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**Hearing Officer:** Lynda Dyer

**Stat. Auth.:** ORS 409.050, 410.070, 410.090 & 411.590

**Stats. Implemented:** ORS 409.50, 410.070, 410.090, 411.590, 410.604, 410.608 & 410.612

**Proposed Adoptions:** Rules in 411-031

**Last Date for Comment:** 5-21-04

**Summary:** The rules in Chapter 411, Division 030 that pertain to homecare workers enrolled in the Client Employed Provider Program are proposed for repeal June 7, 2004 for placement in the new Division 31 effective June 7, 2004. Additional language was added to this new set of rules pertaining to providers of in-home care services. Rules in Division 031 incorporate the following: a) It provides definitions of the terminology used in the administrative rules for Homecare Workers Enrolled in the Client Employed Provider program; b) it contains systems and payment structures to employ both hourly and live in providers; and c) it establishes the appeal and hearing rights for Homecare Workers when the Department suspends or terminates the HCW's provider enrollment.

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

**Rules Coordinator:** Lynda Dyer

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076

**Telephone:** (503) 945-6398

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<b>Date:</b> 5-27-04	<b>Time:</b> 11 a.m.	<b>Location:</b> 500 Summer St. Rm. 137D Salem, OR
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**Hearing Officer:** Lynda Dyer

**Stat. Auth.:** ORS 409.050 & 417.340 - 417.350

**Stats. Implemented:** ORS 430.215, 427.007 & 417.340 - 417.350

**Proposed Amendments:** 411-300-0100, 411-300-0110, 411-300-0170, 411-300-0210, 411-300-0220

**Last Date for Comment:** 5-27-04

**Summary:** The rules in Chapter 411, Division 300, Children's Intensive In Home Services, are proposed for permanent amendment effective 06/01/2004. Rule 411-300-0110 will repeal the temporary rule due to expire on June 7, 2004. The following changes are included in this proposal:

1) Amends rule 411-300-0100 to remove the Department's mission statement and statutory authority citation.

2) Amends 411-300-0110 for clarification purposes and includes the scoring directions for the assessment tool allowing for consistent application of the program.

3) Changes reference in 411-300-0170 from an expired criminal history rule to the current DHS criminal records rule.

4) Amends 411-300-0210 and 411-300-0220 to comply with DHS standards, increasing the number of days to request a hearing or appeal a denial from 30 to 45 days.

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

**Rules Coordinator:** Lynda Dyer

# NOTICES OF PROPOSED RULEMAKING

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076  
**Telephone:** (503) 945-6398

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Date:	Time:	Location:
5-21-04	1 p.m.	500 Summer St. Rm. 137D Salem, OR

**Hearing Officer:** Lynda Dyer

**Stat. Auth.:** ORS 409.050, 410.070 & 410.090

**Stats. Implemented:** ORS 409.050, 410.070 & 410.090

**Proposed Amendments:** Rules in 411-030

**Last Date for Comment:** 5-24-04

**Summary:** OAR Chapter 411, Division 030, In Home Support Services is proposed for permanent adoption on June 7, 2004 to incorporate the following changes:

In OAR 411-030-0002, 411-030-0020, 411-030-0033 the phrase "in-home services" was changed to "in-home support services". Many definitions in 411-030-0020 were deleted and placed into a new division (411, Division 031). The definitions for "cost-effective", "exception", "Independent", "Minimal Assistance", "Substantial Assistance", "Full assistance", "Business Days", and "contracted in-home care" were updated. Language referencing overtime laws were stricken from definitions 12, 25 and 30.

OAR 411-030-0033 and OAR 411-030-0040 were amended to describe the different programs available under the 'umbrella' category of "in-home support services". In OAR 411-030-0033, section (3) (b), the words "relative care" were removed. Language was added in OAR 411-030-0040 to explain that in order to remain eligible for the waived In-Home Services Program, a client must employ a homecare worker and must not go without a homecare worker for more than thirty days. OAR 411-030-0040 (2) (a) the General Assistance program (GA) was added back to the eligibility criteria. Section 3 was revised to clarify residents of all long-term care facilities are ineligible for in-home support services.

OAR 411-030-0050, a paragraph regarding service payment being considered payment in full was added. OAR 411-030-0060 and 411-030-0065 were repealed and placed in another Division. In OAR 411-030-0070 the word "live-in" was added to a section about 24-hour availability. In OAR 411-030-0070 the word "In-Home Service Authorization" was changed.

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

**Rules Coordinator:** Lynda Dyer

**Address:** Department of Human Services, Seniors and People with Disabilities, 500 Summer St. NE, E10, Salem, OR 97301-1076

**Telephone:** (503) 945-6398

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## Department of Justice Chapter 137

**Stat. Auth.:** ORS 25.020, 25.125, 25.396, 25.427, 25.610, 25.729, 180.345, 416.430, 416.455 & 293

**Stats. Implemented:** ORS 18.645, 25.010, 25.011, 25.020, 25.080, 25.085, 25.125, 25.140, 25.150, 25.164, 25.287, 25.396, 25.414, 25.610, 107.105, 107.108, 107.135, 109.100, 109.510, 109.704, 110.303, 110.327, 110.333, 416.425, 416.427, 416.455, 418.001, 418.035, 419B.400 & 419C.590

**Proposed Adoptions:** 137-055-3430, 137-055-3485, 137-055-5030, 137-055-5045, 137-055-6210, 137-055-7190

**Proposed Amendments:** 137-055-1070, 137-055-1180, 137-055-2040, 137-055-3420, 137-055-4120, 137-055-5040, 137-055-5110, 137-055-5510, 137-055-6020, 137-055-6220, 137-055-7180

**Last Date for Comment:** 5-28-04

**Summary:** The amendments to OAR 137-055-1070 are to clarify whether an applicant for services can select certain services and if has discretion to pursue only one parent. The amendments to OAR 137-055-1180 are to clarify when a party's address of record may be released. The amendments to OAR 137-055-2040 are to clarify

which office has responsibility for providing services when parties reside out of state. The amendment to OAR 137-055-3420 takes the Change of Circumstance modification out of the Periodic Review rule and into a new rule OAR 137-055-3430 and the interstate provisions into a new rule OAR 137-055-7190. The amendment to 137-055-3420 also allows the Administrator discretion to not proceed with the review if necessary information is not received. The adoption of OAR 137-055-3485 provides guidance to the Program for establishment of support, paternity and modification when a child is approaching or past the age of 18 years. The amendments to OAR 137-055-4120 correct cites and update language. The adoption of OAR 137-055-5030 clarifies how the Program receipts support payments. The amendments to OAR 137-055-5040 clarify how the Program will handle accounting on cases where there is no beginning due date or effective date in an order, and when amounts for a month will be adjusted. The adoption of OAR 137-055-5045 is to move language pertaining to how accounting will occur when amounts listed in the body of an order does not match the support or money award from OAR 137-055-5040. The change to 137-055-5110 reflects 2003 legislative changes in the requirements for home schooling. The amendment to 137-055-5510 clarifies the time period for when an obligor may be allowed a credit for physical custody of the child. The adoption of OAR 137-055-6210 and amendments to OAR 137-055-6020 and 137-055-6220 are to clarify how the Oregon Child Support Program will handle overpayments. OAR 137-055-7180 clarifies how we are determining controlling orders.

Copies of the proposed rules can be found on our web page at <http://www.dcs.state.or.us/policy/>

**Rules Coordinator:** Shawn Irish

**Address:** Department of Justice, 494 State St. SE, Suite 300, Salem, OR 97301

**Telephone:** (503) 986-6240

\*\*\*\*\*

## Department of Revenue Chapter 150

Date:	Time:	Location:
5-24-04	9:45 a.m.	955 Center St. NE Fishbowl Conference Rm. Salem, OR

**Hearing Officer:** Cecily Martin

**Stat. Auth.:** ORS 305.100 & 320.315

**Stats. Implemented:** ORS 320.305

**Proposed Adoptions:** 150-320.305

**Last Date for Comment:** 5-24-04

**Summary:** The purpose of this rule is to provide definitions and clarification for purposes of the state transient lodging tax enacted by HB 2267 (Oregon Laws, 2003, Chapter 818), to describe types of lodging subject to the tax, and to explain requirements for registration and penalties imposed.

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

**Rules Coordinator:** Xann Culver

**Address:** Department of Revenue, 955 Center St. NE, Room 457, Salem, OR 97301-2555

**Telephone:** (503) 947-2099

\*\*\*\*\*

## Division of State Lands Chapter 141

Date:	Time:	Location:
5-24-04	2-4 p.m.	Museum Clubroom Harney Co. Hist. Society & Museum 18 West D St. Burns, OR
5-24-04	7-9 p.m.	Harbor Sanitary District Conference Rm. 16408 Lower Harbor Rd. Brookings, OR

# NOTICES OF PROPOSED RULEMAKING

5-24-04 1-3 p.m. Portland State Office Bldg.  
Rm. 120C  
800 NE Oregon St.  
Portland, OR

**Hearing Officer:** Nancy Pustis; John Lilly or designee  
**Stat. Auth.:** ORS 183, 273 & 274; Other Auth.: Article VIII, Sec. 5, OR Constitution

**Stats. Implemented:** ORS 273 & 274

**Proposed Adoptions:** 141-088-0035, 141-088-0040, 141-088-0050, 141-088-0060, 141-088-0070, 141-088-0080, 141-088-0090, 141-088-0100, 141-088-0110, 141-088-0120, 141-088-0130, 141-088-0140, 141-088-0150, 141-088-0160, 141-088-0170, 141-088-0180

**Proposed Amendments:** 141-088-0000 - 141-088-0020

**Proposed Repeals:** 141-084-0010 - 141-084-0100

**Last Date for Comment:** 5-31-04

**Summary:** Certain types of activities such as overnight camping, open fires during periods of wildfire danger, and the use of motor vehicles have been determined by the State Land Board (Board) and the Department of State Lands (Department) to have caused, or have the potential of causing damage to state-owned land and related natural and cultural resources under the jurisdiction of the Board. Additionally, such activities may also jeopardize public health and/or safety.

The Board has previously restricted the public use of a number of limited areas of state-owned lands that are under the Board's jurisdiction in order to protect the land and related natural and cultural resources or to protect public health and/or safety. OAR chapter 141, Division 84, currently restricts public use of ten state-owned estuaries. OAR chapter 141, division 88, currently provides a general provision governing the public use of state owned lands and specifically restricts the public use of three limited areas of land.

The proposed amendments, repeals, and adoptions would merge division 84 into division 88 so that the public could more easily locate a list of the restrictions that apply to public use of state-owned lands that are under the jurisdiction of the Board. The restrictions that are currently provided in division 84 would be relocated to division 88, but not substantively changed. In addition, they would clarify the general provision governing public use.

The proposed amendments, repeals, and adoptions would also specifically restrict the use of six additional areas of land: portions of the Sandy River, Columbia River, Chetco River, and Willamette River, and a parcel near Riley. The restrictions are being proposed to either address specific problems reported by users of, or persons living adjacent to the subject state-owned parcels, by Department staff or staff of other government agencies, or by law enforcement officials.

## PROPOSED PUBLIC USE RESTRICTIONS OF STATE-OWNED LAND TO SPECIFIC USES

**Sandy River** - The bed and banks of the Sandy River from River Mile 0.0 to 37.5 to: • Overnight camping and other uses between 10 P.M. and 5 A.M. throughout the year, and • Open fires at any time beginning July 1 and ending November 1 of every year. Reason for restriction: To reduce the risk of fire danger and public disturbances.

**Columbia River** - The bed and banks of the Columbia River in the vicinity of Dodson to Warrendale from River Mile 139.5 to 142.5 to: • Overnight camping and other uses between 10 P.M. and 5 A.M. throughout the year, and • Open fires at any time beginning July 1 through October 31 of every year. Reason for restriction: To reduce public disturbances and the risk of fire danger.

**Chetco River** - The bed and banks of the Chetco River from the Highway 101 Bridge to an area about one mile upstream from the mouth of Elk Creek (River Mile 11) to: • Overnight camping and other uses between 10 P.M. and 5 A.M. throughout the year, and • Open fires at any time beginning July 1 and ending November 1 of every year. Reason for restriction: To end long-term public occupancy of, and the dumping of trash and other debris and human waste on the bed and banks of the waterway.

**Willamette River** - The bed and banks of the Willamette River in the vicinity of Wheatland Ferry (River Mile 71-72) and adjacent DSL-managed upland in the vicinity of, and including Wheatland Island and Willamette Mission State Park to: • Overnight camping and other uses between 10 P.M. and 5 A.M. throughout the year, • Open fires at any time beginning July 1 and ending November 1 of every year, and • ATV or other motorized vehicle use at all times. Reason for restriction: To reduce the destruction/public abuse of the resources and trails in the area, littering, and public disturbances.

**Willamette River (Portland Harbor)** - An area of submerged and submersible land fronting and abutting the old McCormick-Baxter Plant site at River Mile 7 to: • All public use during the construction period while a sand cap is placed over contaminated sediments. Following the installation of the cap: • All anchoring, • All uses by vessels equipped with propeller or motors. Reason for restriction: To reduce the potential that the sand cap covering the contaminated sediments will be breached.

**Parcel Near Riley** - An approximately 15-acre area near Riley and north of Glass Butte known as Swamp Creek to: • Overnight camping from October through December every year. Reason for restriction: To reduce resource damage from camping in the area.

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

**Rules Coordinator:** Nicole Kielsmeier

**Address:** Division of State Lands, 775 Summer St. NE, Salem, OR 97301-1279

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

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**Health Licensing Office**  
**Chapter 331**

Date:	Time:	Location:
5-20-04	9 a.m.	Rhoades Conference Rm. 700 Summer St. NE Suite 320 Salem, OR 97301-1287

**Hearing Officer:** Bert Krages

**Stat. Auth.:** ORS 676.605, 676.615 & 690.405; Other Auth.: ORS 183

**Stats. Implemented:** ORS 676.605, 676.615 & 690.405

**Proposed Adoptions:** 331-525-0035, 331-525-0038, 331-525-0055, 331-525-0060, 331-525-0065, 331-530-0020, 331-565-0025, 331-565-0075, 331-565-0080, 331-570-0020

**Proposed Amendments:** 331-505-0000, 331-505-0010, 331-510-0000, 331-515-0000, 331-515-0010, 331-515-0020, 331-515-0030, 331-520-0000, 331-520-0010, 331-520-0030, 331-520-0040, 331-520-0060, 331-520-0070, 331-525-0000, 331-525-0020, 331-525-0040, 331-535-0000, 331-535-0010, 331-535-0020, 331-535-0030, 331-535-0050, 331-535-0060, 331-535-0070, 331-535-0080, 331-540-0000, 331-540-0010, 331-540-0020, 331-545-0000, 331-545-0020, 331-550-0000, 331-555-0030, 331-555-0040, 331-560-0000, 331-560-0010, 331-560-0020, 331-560-0030, 331-560-0040, 331-560-0050, 331-560-0060, 331-565-0000, 331-565-0020, 331-565-0030, 331-565-0040, 331-565-0060, 331-575-0010, 331-575-0020, 331-575-0030, 331-575-0040, 331-580-0000, 331-580-0010, 331-580-0020, 331-580-0030, 331-585-0000, 331-585-0010, 331-585-0020, 331-590-0000, 331-590-0020

**Proposed Repeals:** 331-500-0000, 331-500-0010, 331-500-0020, 331-500-0030, 331-500-0040, 331-500-0050, 331-505-0020, 331-505-0030, 331-505-0040, 331-515-0040, 331-515-0050, 331-520-0020, 331-520-0050, 331-525-0010, 331-525-0030, 331-525-0050, 331-545-0010, 331-555-0000, 331-555-0050, 331-565-0010, 331-565-0050, 331-565-0070, 331-590-0010

**Proposed Ren. & Amends:** 331-530-0010 to 331-530-0000, 331-555-0020 to 331-555-0010, 331-570-0010 to 331-570-0000

**Last Date for Comment:** 5-20-04

**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 practices of Elec-

# NOTICES OF PROPOSED RULEMAKING

tology, Permanent Coloring and Tattooing. 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, clarify provisions for demonstration permits, establish requirements and criteria for temporary facility permits, and establish licensure for electrology business licensure, and clarify safety and infection control and sterilization standards.

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

**Rules Coordinator:** Patricia C. Allbritton

**Address:** Health Licensing Office, 700 Summer St. NE, Ste. 320, Salem, OR 97301-1287

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

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**Stat. Auth.:** ORS 676.612 & OL 1999, Ch. 736, Sec. 10; Other Auth.: ORS 183

**Stats. Implemented:** ORS 676.612 & OL 1999, Ch. 736, Sec. 10

**Proposed Amendments:** 331-105-0030

**Last Date for Comment:** 5-20-04

**Summary: Fee Reduction:** The athletic training program has attained a sufficient/stable revenue balance and number of licensees to sustain program operations since regulation was established by the 1999 Legislature. The initial registration fee and annual renewal fee is being reduced by 15% -- \$325 to \$275.

**Rules Coordinator:** Patricia C. Allbritton

**Address:** Health Licensing Office, 700 Summer St. NE, Ste. 320, Salem, OR 97301-1287

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

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## Health Licensing Office, Sanitarians Registration Board Chapter 338

**Date:**  
5-20-04

**Time:**  
9 a.m.

**Location:**  
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:** 5-20-04

**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 *Registra-*

*tion Requirements* (application requirements, procedures for issuing and renewing registrations, duplicate registrations and sanctions).

The proposed rules reflect the statutory name change for 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 97310

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

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## Land Conservation and Development Department Chapter 660

**Date:**  
6-10-04

**Time:**  
9 a.m.

**Location:**  
Government Center  
305 Main St., Rm. 219  
Klamath Falls, OR

**Hearing Officer:** LCDC

**Stat. Auth.:** ORS 197.040(1) & 197.175(1); Other Auth.: ORS 215.213(2), 215.283(2), 215.296 - .298, 517.750, 183.335(7) & OAR 137-001-0080

**Stats. Implemented:** ORS 197, 215.213, 215.283, 215.296 & 215.298

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

**Last Date for Comment:** 6-10-04

**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 proposed significant aggregate sites, the proposed rule amendments will provide a new, more streamlined conditional use permit (CUP) process for local consideration of mining proposals. The amendments may also "grandfather" certain CUP sites previously approved, and make other technical changes to this rule. The amended rule will include provisions to protect certain types of higher quality agricultural land that may be affected by sites approved under the new CUP process. LCDC will have a work session to discuss these rules during its April 22-23, 2004 meeting in Salem, but no public testimony is scheduled for that meeting.

*\*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

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## Occupational Therapy Licensing Board Chapter 339

**Stat. Auth.:** OAR 339-005-0000

**Stats. Implemented:**

**Proposed Amendments:** 339-005-0000

**Last Date for Comment:** 5-21-04

**Summary:** Increase the license fees for Occupational Therapy and Occupational Therapy Assistant Licensees.

**Rules Coordinator:** Felicia Holgate

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

**Telephone:** (503) 731-4048

\*\*\*\*\*

**Stat. Auth.:** OAR 339-010-0023 & 339-020-0050

**Stats. Implemented:**

# NOTICES OF PROPOSED RULEMAKING

**Proposed Amendments:** 339-010-0023, 339-020-0030, 339-020-0050

**Last Date for Comment:** 5-21-04

**Summary:** Change rules to reflect Statutory change needed for issuing two-year license renewals and for required continuing education requirements within the two-year renewal time.

**Rules Coordinator:** Felicia Holgate

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

**Telephone:** (503) 731-4048

.....  
**Office of Energy  
Chapter 330**

Date:	Time:	Location:
5-19-04	10 a.m.	625 Marion St. NE Rm. C/D Salem, OR 97301

**Hearing Officer:** Suzanne Dillard

**Stat. Auth.:**

**Stats. Implemented:**

**Proposed Amendments:** 330-090-0105 - 330-090-0150

**Last Date for Comment:** 5-28-04

**Summary:** Extend requirements of State Energy Efficiency Design (SEED) program to buildings owned, leased, or otherwise operated and maintained by the state.

Other housekeeping changes will be considered. Those may include reformatting definitions for clarification, changing language to improve the application review process or other changes required to better meet the objectives of Oregon Revised Statute 469.185.

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

**Rules Coordinator:** Kathy Stuttaford

**Address:** Office of Energy, 625 Marion St. NE, Salem, OR 97301

**Telephone:** (503) 378-5489

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Date:	Time:	Location:
5-19-04	1:30 p.m.	Oregon Dept. of Energy Salem, OR

**Hearing Officer:** Suzanne Dillard

**Stat. Auth.:** ORS 469.160 - 469.180

**Stats. Implemented:**

**Proposed Amendments:** 330-070-0010 - 330-070-0097

**Last Date for Comment:** 5-28-04

**Summary:** The purpose of the proposed rule changes are to: Modify appliance eligibility rules to reflect changes in new federal standard testing procedures or test results. Proposed changes are: a) Refrigerators-freezers shall have at least 20 percent lower energy consumption than allowed by the July 1, 2001 USDOE standards for refrigerators; b) Dishwashers shall have an energy factor of .62 cycles/kWh or higher; c) Dishwashers shall have tax credit eligibility based on energy and water use derived from the DOE Dishwasher Test Procedure effective September 28, 2003.

Other housekeeping changes will be considered. Those may include reformatting definitions for clarification, change language to improve the application review process or other changes required to better meet the objective of the Oregon Revised Statute 469.160 through 180.

Interested persons may attend an advisory committee meeting to review and comment on the proposed changes on May 19, 2004 at 1:30 p.m. at the Oregon Department of Energy, 625 Marion St. NE, Salem, Oregon.

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

**Rules Coordinator:** Kathy Stuttaford

**Address:** Office of Energy, 625 Marion St. NE, Salem, OR 97301

**Telephone:** (503) 378-5489

## Oregon Board of Dentistry Chapter 818

**Stat. Auth.:** ORS 679 & 680

**Stats. Implemented:** ORS 679.250(9), 679.090, 679.120, 680.072 & 680.075

**Proposed Amendments:** 818-021-0070

**Proposed Repeals:** 818-021-0086

**Last Date for Comment:** 6-1-04

**Summary:** 818-021-0086, regarding the reinstatement of licenses revoked for non-payment of renewal fees, is being repealed. The rule is obsolete as the statutes (ORS 679.130 and ORS 680.080) regarding the revocation of licenses for non-payment of renewal fees were repealed in 1999.

818-021-0070 is amended to clarify language, to define the time period that continuing education records must be retained, to modify continuing education requirements for dental hygienists, to specify that continuing education must be related to clinical patient care and to eliminate the list of approved subject areas.

A Certificate and Order for Filing Permanent Administrative Rules to amend 818-021-0070 was filed with the Secretary of State on July 31, 2002, with an effective date of October 1, 2002. It is necessary to again provide Notice of Proposed Rulemaking because the amended rule was not filed with the Legislative Counsel Committee within the ten-day period required by ORS 183.715.

**Rules Coordinator:** Sharon Ingram

**Address:** Oregon Board of Dentistry, 1515 SW 5th Ave., Ste. 602, Portland, OR 97201

**Telephone:** (503) 229-5520

.....  
**Oregon Department of Education  
Chapter 581**

Date:	Time:	Location:
5-18-04	3 p.m.	Public Service Bldg. Rm. 251-A 255 Capitol St. NE Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 343.041, 343.045 & 343.055; Other Auth.: 34 CFR 300.306 & 300.553

**Stats. Implemented:** ORS 343.045 & 343.155

**Proposed Amendments:** 581-015-0062

**Last Date for Comment:** 5-18-04

**Summary:** The Department of Education needs to correct an unintended consequence of a rule amendment in March 2003. At that time, ODE amended OAR 581-015-0062 to comply with CFR 300.306, and mistakenly deleted language required by 34 CFR 300.553. The United States Department of Education's Office of Special Education Programs (OSEP) requires this rule change to approve Oregon's State Application for receiving funding under the Individuals with Disabilities Education Act.

If you have questions regarding this rule please contact Suzy Harris at (503) 378-3600, ext 2333 or e-mail suzy.harris@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail debby.ryan@state.or.us

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

**Rules Coordinator:** Debby Ryan

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

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

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Date:	Time:	Location:
5-18-04	3 p.m.	Public Service Bldg. Rm. 251-A 255 Capitol St. NE Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 326; Other Auth.: HB 2822

# NOTICES OF PROPOSED RULEMAKING

**Stats. Implemented:** ORS 326.051

**Proposed Amendments:** 581-022-0610

**Last Date for Comment:** 5-18-04

**Summary:** The revision of this OAR gives districts the ability to make a decision about which window to test students in grades 5 & 8 in the area of Math Problem Solving and/or Writing. This waiver process will allow districts to choose to test students in the January or March testing window. This rule was filed as a permanent rule with the office of the Secretary of State on June 10, 2002. This additional notice of hearing is to comply with ORS 183.715, which requires a newly filed permanent rule with the office of Secretary of State to also be filed within a 10 day period of time with Legislative Counsel.

If you have questions regarding this rule please contact Randy Harnisch at (503) 378-3600, ext 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail debby.ryan@state.or.us

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

**Rules Coordinator:** Debby Ryan

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

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

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-18-04	3 p.m.	Public Service Bldg. Rm. 251-A 255 Capitol St. NE Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 326.051

**Stats. Implemented:** ORS 329.075, 329.465 & 329.485

**Proposed Amendments:** 581-022-1111

**Last Date for Comment:** 5-18-04

**Summary:** The Department is proposing an amendment to the existing rule, 581-022-1111, which permits "juried assessments." Currently the rule allows "juried assessments" for only CIM level students. The federal No Child Left Behind Act requires changes to Oregon Statewide Assessment to include grades 4, 6 and 7 in addition to grades 3, 5, 8 and 10, which are already assessed. The proposed amendment would permit "juried assessment" as an accommodation to the Oregon State Assessment procedures for all appropriate students in grades 3 - 12.

If you have questions regarding this rule please contact Randy Harnisch at (503) 378-3600, ext 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail debby.ryan@state.or.us

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

**Rules Coordinator:** Debby Ryan

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

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

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-18-04	3 p.m.	Public Service Bldg. Rm. 251-A 255 Capitol St. NE Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 326.051

**Stats. Implemented:** ORS 326.051

**Proposed Adoptions:** 581-022-1131

**Proposed Amendments:** 581-022-0102, 581-022-1350

**Last Date for Comment:** 5-18-04

**Summary:** The proposed amendments to OAR 581-022-0102 will assure that definitions are consistent with the development of a proficiency based educational system; the amendments to OAR 581-022-1350 will incorporate requirements of SB 258 into the rule as

well as clarify methods for awarding students credit towards meeting diploma requirements; the proposed rule OAR 581-022-1131 will establish methods for awarding students credit. These rules were filed as permanent rules, effective March 14, 2003. They are being resubmitted in order to meet the requirement of ORS 183.715 to provide copies of the rules and filings to Legislative Counsel within a 10-day period after being filed with the office of the Secretary of State.

If you have questions regarding this rule please contact Randy Harnisch at (503) 378-3600, ext 2350 or e-mail randy.harnisch@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail debby.ryan@state.or.us

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

**Rules Coordinator:** Debby Ryan

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

**Telephone:** (503)

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-18-04	3 p.m.	Public Service Bldg. Rm. 251-A 255 Capitol St. NE Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 326.051

**Stats. Implemented:** ORS 326.051

**Proposed Amendments:** 581-051-0100, 581-051-0400, 581-051-0500, 581-051-0510, 581-051-0520, 581-051-0530, 581-051-0550, 581-051-0555, 581-051-0560, 581-051-0565, 581-051-0570, 581-051-0580, 581-051-0590

**Last Date for Comment:** 5-18-04

**Summary:** The proposed amendments will implement recent changes in federal regulation and will clarify current rule language.

If you have questions regarding this rule, please contact Joyce Dougherty at (503) 378-3600, ext 2607 or e-mail joyce.dougherty@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail debby.ryan@state.or.us

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

**Rules Coordinator:** Debby Ryan

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

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

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-18-04	3 p.m.	Public Service Bldg. Rm. 251-A 255 Capitol St. NE Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 820.110

**Stats. Implemented:** ORS 820.110

**Proposed Amendments:** 581-053-0002

**Last Date for Comment:** 5-18-04

**Summary:** This amendment updates the year, which allows vehicles to move from one location to another.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, ext 2664 or e-mail deborah.lincoln@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail debby.ryan@state.or.us

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

**Rules Coordinator:** Debby Ryan

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

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

# NOTICES OF PROPOSED RULEMAKING

**Date:** 5-18-04  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 820.110  
**Stats. Implemented:** ORS 820.110  
**Proposed Amendments:** 581-053-0006  
**Last Date for Comment:** 5-18-04

**Summary:** A new Behind-the-Wheel manual changes the training hour requirements from 10 to 15 hours and a new Core Manual drops classroom hours from 10 to 8 hours. It also includes other minor changes.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, ext 2664 or e-mail [deborah.lincoln@state.or.us](mailto:deborah.lincoln@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan  
**Address:** Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203  
**Telephone:** (503) 378-3600, ext. 2348

\*\*\*\*\*

**Date:** 5-18-04  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 820.110  
**Stats. Implemented:** ORS 820.110  
**Proposed Amendments:** 581-053-0015  
**Last Date for Comment:** 5-18-04

**Summary:** Rules pertaining to school bus drivers — correct a numbering problem and change the accident dollar amount.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, ext 2664 or e-mail [deborah.lincoln@state.or.us](mailto:deborah.lincoln@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan  
**Address:** Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203  
**Telephone:** (503) 378-3600, ext. 2348

\*\*\*\*\*

**Date:** 5-18-04  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 820.110  
**Stats. Implemented:** ORS 820.110  
**Proposed Amendments:** 581-053-0507  
**Last Date for Comment:** 5-18-04

**Summary:** Industry changes have changed the weights and classifications on vehicles.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, ext 2664 or e-mail [deborah.lincoln@state.or.us](mailto:deborah.lincoln@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan

**Address:** Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203  
**Telephone:** (503) 378-3600, ext. 2348

\*\*\*\*\*

**Date:** 5-18-04  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 820.110  
**Stats. Implemented:** ORS 820.110  
**Proposed Amendments:** 581-053-0512  
**Last Date for Comment:** 5-18-04

**Summary:** Industry changes have changed the weights and classifications on vehicles.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, ext 2664 or e-mail [deborah.lincoln@state.or.us](mailto:deborah.lincoln@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan  
**Address:** Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203  
**Telephone:** (503) 378-3600, ext. 2348

\*\*\*\*\*

**Date:** 5-18-04  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 820.110  
**Stats. Implemented:** ORS 820.110  
**Proposed Amendments:** 581-053-0517  
**Last Date for Comment:** 5-18-04

**Summary:** Industry changes have changed the weights and classifications on vehicles.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, ext 2664 or e-mail [deborah.lincoln@state.or.us](mailto:deborah.lincoln@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan  
**Address:** Oregon Department of Education, Public Service Bldg., 255 Capitol St. NE, Salem, OR 97310-0203  
**Telephone:** (503) 378-3600, ext. 2348

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**Date:** 5-18-04  
**Time:** 3 p.m.  
**Location:** Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 820.110  
**Stats. Implemented:** ORS 820.110  
**Proposed Amendments:** 581-053-0545  
**Last Date for Comment:** 5-18-04

**Summary:** First aid course.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, ext 2664 or e-mail [deborah.lincoln@state.or.us](mailto:deborah.lincoln@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan

# NOTICES OF PROPOSED RULEMAKING

**Address:** Oregon Department of Education, Public Service Bldg.,  
255 Capitol St. NE, Salem, OR 97310-0203  
**Telephone:** (503) 378-3600, ext. 2348

.....  
**Date:** 5-18-04      **Time:** 3 p.m.      **Location:**  
Public Service Bldg.  
Rm. 251-A  
255 Capitol St. NE  
Salem, OR

**Hearing Officer:** Mike Reed  
**Stat. Auth.:** ORS 820.100, 820.110  
**Stats. Implemented:** ORS 820.100, 820.110  
**Proposed Amendments:** 581-053-0550  
**Last Date for Comment:** 5-18-04

**Summary:** Type 20 Pupil Transportation Vehicle Standards -- Industry changes have changed the weights and classifications on vehicles. First Aid course is nonexistent.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600, ext 2664 or e-mail [deborah.lincoln@state.or.us](mailto:deborah.lincoln@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 348-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan  
**Address:** Oregon Department of Education, Public Service Bldg.,  
255 Capitol St. NE, Salem, OR 97310-0203  
**Telephone:** (503) 378-3600, ext. 2348

.....  
**Oregon Economic and Community Development Department  
Chapter 123**

**Stat. Auth.:** ORS 285A.075(5) & 285A.110(1)  
**Stats. Implemented:** ORS 285C.600 - 285C.620  
**Proposed Adoptions:** Rules in 123-023  
**Proposed Amendments:** Rules in 123-023  
**Proposed Repeals:** Rules in 123-023  
**Last Date for Comment:** 5-17-04

**Summary:** Generally amends and enhances the administrative rules governing the Department's processes, modalities for the Strategic Investment Program (SIP), so that the rules are up-to-date and conform to the current statutes, as revised by the 2003 Legislature.

A copy of the proposed revisions is available on request.

**Rules Coordinator:** Philip A. Johnson, II  
**Address:** Oregon Economic and Community Development Department, State Lands Bldg., Suite 200, 775 Summer St. NE, Salem, OR 97301-1280  
**Telephone:** (503) 986-0159

.....  
**Oregon Film and Video Office  
Chapter 951**

**Stat. Auth.:** ORS 284.300 - 284.315  
**Stats. Implemented:** ORS 736.75 - 736.82  
**Proposed Adoptions:** 951-001-0000  
**Last Date for Comment:** 5-22-04  
**Summary:** Procedure for notice of intended rulemaking.  
**Rules Coordinator:** Susan Tong  
**Address:** Oregon Film and Video Office, 121 SW Salmon St., Ste. 1205, Portland, OR 97204  
**Telephone:** (503) 229-5832

.....  
**Oregon Government Standards and Practices Commission  
Chapter 199**

**Date:** 6-4-04      **Time:** 10:30 a.m.      **Location:**  
Conference Rm. A  
Executive Bldg.  
155 Cottage St. SE  
Salem, OR

**Hearing Officer:** John Kopetski, Chair, GSPC

**Stat. Auth.:** ORS 244.290  
**Stats. Implemented:** ORS 171.725 - 171.785 & 244.040(1)(a)  
**Proposed Adoptions:** 199-001-0040  
**Proposed Amendments:** 199-010-0025, 199-010-0035, 199-010-0060, 199-010-0075, 199-010-0080, 199-010-0085, 199-010-0095, 199-010-0100  
**Last Date for Comment:** 6-4-04

**Summary:** All Division 10 lobbying rule amendments are technical or housekeeping changes to clarify the rules or correct minor errors. A new rule is added to Division 1 that describes criteria for the exercise of prosecutorial discretion in enforcement of ORS 244.040(1)(a) when the receipt of financial benefit or avoidance of financial detriment is minimal and does not substantially conflict with the purposes of ORS Chapter 244.

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

**Rules Coordinator:** Virginia Lutz  
**Address:** Government Standards and Practices Commission, 100 High St. SE, Suite 220, Salem, OR 97301  
**Telephone:** (503) 378-5105

.....  
**Oregon Public Employees Retirement System  
Chapter 459**

**Date:** 5-19-04      **Time:** 10:30 a.m.      **Location:**  
Boardroom  
PERS Headquarters  
11410 SW 68th Parkway  
Tigard, OR

**Hearing Officer:** Holly Hayes  
**Stat. Auth.:** ORS 238.650  
**Stats. Implemented:** ORS 238.650  
**Proposed Amendments:** 459-001-0000  
**Last Date for Comment:** 5-28-04  
**Summary:** OAR 459-001-0000 sets forth the rules of procedure for noticing the adoption, amendment, and repeal of administrative rules. The current rule, however, does not allow for the adoption of temporary rules in accordance with the Attorney General's Model Rules of Procedure (Model Rules). Amending the current rule to clarify that its provisions apply only to permanent rulemaking would allow PERS to adopt temporary rules in accordance with the Model Rules.

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 [holly.v.hayes@state.or.us](mailto:holly.v.hayes@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

.....  
**Date:** 5-18-04      **Time:** 1 p.m.      **Location:**  
Boardroom  
PERS Headquarters  
11410 SW 68th Parkway  
Tigard, OR

**Hearing Officer:** Holly Hayes  
**Stat. Auth.:** ORS 238.650  
**Stats. Implemented:** ORS 238  
**Proposed Amendments:** 459-010-0055, 459-045-0030  
**Last Date for Comment:** 5-28-04

**Summary:** These proposed rule modifications implement chapter 276, Oregon Laws 2003 and section 23 of chapter 625, Oregon Laws 2003. The former provides a bonus amount of 50 percent of the account balance to certain inactive members who withdraw their accounts from PERS between July 1, 2004, and June 30, 2006. The latter extends this provision to alternate payees of certain inactive members.



## NOTICES OF PROPOSED RULEMAKING

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 [holly.v.hayes@state.or.us](mailto:holly.v.hayes@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

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Date:	Time:	Location:
5-24-04	2 p.m.	Conference Rm. Archives Bldg. 800 Summer St. NE Salem, OR

**Hearing Officer:** Holly Hayes

**Stat. Auth.:** ORS 238.650

**Stats. Implemented:** ORS 238

**Proposed Amendments:** 459-005-0001

**Last Date for Comment:** 5-28-04

**Summary:** This proposed rule modification clarifies that a casual, emergency, or seasonal worker is not an eligible employee. To be considered an eligible employee, a person must be performing service in a position other than as a casual, emergency, or seasonal worker, as defined in OAR 459-005-0001, and be employed for more than 599 hours in a calendar year. This rule modification is necessary to clarify current statute and will resolve the issue facing those retirees who selected the total lump sum retirement option, which first became available for retirements on January 1, 2003, and who returned to PERS-covered employment. This amendment clarifies who is a "non-eligible employee" and would allow more retirees to qualify to return to work on a limited basis.

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 [holly.v.hayes@state.or.us](mailto:holly.v.hayes@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

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Date:	Time:	Location:
5-18-04	9 a.m.	Boardroom PERS Headquarters 11410 SW 68th Parkway Tigard, OR

**Hearing Officer:** Holly Hayes

**Stat. Auth.:** ORS 238.650

**Stats. Implemented:** ORS 238

**Proposed Amendments:** 459-007-0050

**Last Date for Comment:** 5-28-04

**Summary:** This proposed rule modification clarifies the method for crediting earnings to the accounts of members who died prior to the implementation of Tier Two in 1996 and expands the "window of opportunity" for beneficiaries to receive crediting under the old rules from those of members who died before January 1, 2000, to those of members who died before July 1, 2003. The deadline for this opportunity is also extended to December 31, 2004. These proposed modifications would be effective July 1, 2003, to override the version of this rule in effect since that time.

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 [holly.v.hayes@state.or.us](mailto:holly.v.hayes@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

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Date:	Time:	Location:
5-19-04	1 p.m.	Boardroom PERS Headquarters 11410 SW 68th Parkway Tigard, OR

**Hearing Officer:** Holly Hayes

**Stat. Auth.:** ORS 238.650

**Stats. Implemented:** ORS 238

**Proposed Amendments:** 459-017-0060

**Last Date for Comment:** 5-28-04

**Summary:** This rule is being amended because chapter 625, Oregon Laws 2003 §34 and chapter 311, Oregon Laws 2003 expand the list of retired members that can exceed 1,039 hours without jeopardizing their retirement benefits. The rule is also being amended to list the Social Security earnings limits for 2003 and to clarify the rule's applicability to total lump sum retirees and those who choose early retirement.

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 [holly.v.hayes@state.or.us](mailto:holly.v.hayes@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

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Date:	Time:	Location:
5-24-04	1 p.m.	Conference Rm. Archives Bldg. 800 Summer St. NE Salem, OR

**Hearing Officer:** Holly Hayes

**Stat. Auth.:** ORS 238.650

**Stats. Implemented:** ORS 238

**Proposed Adoptions:** 459-013-0280

**Last Date for Comment:** 5-28-04

**Summary:** The PERS Board approved the settlement agreement in the City of Eugene v. PERS case. One of the provisions of that agreement requires the Board to adopt a rule governing the calculation of money match retirement benefits for members with accounts in the variable account program (paragraph 1.1 of the settlement agreement). The rule provides that the member's annuity and pension will be calculated first as if the member's variable contributions had been invested in the regular account. Then, that allowance (pension and annuity) will be adjusted up or down depending on whether the member's variable account out- or under-performed the regular. The terms of the settlement agreement require the agency to adopt this new methodology to be effective no later than July 1, 2004.

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 [holly.v.hayes@state.or.us](mailto:holly.v.hayes@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

# NOTICES OF PROPOSED RULEMAKING

## Oregon State Lottery Chapter 177

**Date:** 5-24-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** 500 Airport Rd. SE Salem, OR 97301

**Hearing Officer:** Larry Trott  
**Stat. Auth.:** OR Const., Article XV, §4(4) & ORS 461  
**Stats. Implemented:** ORS 461.310 & 461.445  
**Proposed Adoptions:** 177-040-0026  
**Last Date for Comment:** 5-24-04, 12 p.m.

**Summary:** The proposed new rule sets forth a new compensation system and new compensation rates for video lottery retailers effective June 27, 2004. The new system and new rates were approved for rulemaking by the Lottery Commission at the March 31, 2004 Commission meeting.

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

**Rules Coordinator:** Mark W. Hohlt  
**Address:** Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301  
**Telephone:** (503) 540-1417

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**Date:** 5-24-04      **Time:** 9:30-10 a.m.      **Location:** 500 Airport Rd. SE Salem, OR 97301

**Hearing Officer:** Larry Trott  
**Stat. Auth.:** OR Const., Article XV, §4(4) & ORS 461  
**Stats. Implemented:** ORS 461.200, 461.217, 461.300 & 461.310  
**Proposed Adoptions:** 177-045-0060, 177-045-0080  
**Last Date for Comment:** 5-24-04, 10 a.m.

**Summary:** The proposed rules define a Lottery retailer's responsibilities for loss of or damage to Lottery equipment and distinguish the liability between losses \$2,500 and over, and under \$2,500. Claims for loss or damages under \$2,500 will be processed by the Oregon Lottery. Claims for losses of \$2,500 or more will be reported to the Department of Administrative Services Risk Management Division in accordance with Oregon Revised Statutes Chapter 278.

The four temporary rules noted above, which were adopted January 5, 2004, are being suspended. The two new rules, OAR 177-045-0060 and OAR 177-045-0080, replace the two previous temporary rules numbered the same.

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

**Rules Coordinator:** Mark W. Hohlt  
**Address:** Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301  
**Telephone:** (503) 540-1417

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**Date:** 5-24-04      **Time:** 9-9:30 a.m.      **Location:** 500 Airport Rd. SE Salem, OR 97301

**Hearing Officer:** Larry Trott  
**Stat. Auth.:** OR Const., Article XV, §4(4) & ORS 461  
**Stats. Implemented:** ORS 461.200, 461.217, 461.300, 461.310 & 461.445

**Proposed Amendments:** 177-010-0003, 177-040-0000, 177-040-0003, 177-040-0025, 177-040-0050, 177-040-0052  
**Proposed Repeals:** 177-040-0190  
**Last Date for Comment:** 5-24-04, 9:30 a.m.

**Summary:** 1. **OAR 177-010-0003 Definitions** - The proposed amendments define the terms "Business Day," "Business Week," "Business Year," and "Traditional Lottery Games."

2. **OAR 177-040-0000 Definitions** - The proposed amendment revises the definition for "Premises."

3. **OAR 177-040-0003 Application for Temporary Lottery Retailer Contract** - The proposed amendment deletes a specific reference to the time that the Lottery Business Week ends.

4. **OAR 177-040-0025 Retailer Compensation - Traditional Lottery Games** - The proposed amendments will: • Revise the title. • Revise section (1)(b) to clarify when tickets and shares are sold for purposes of calculating weekly sales. • Revise section (2) on compensation for Breakopen shares. • Add section (4) which provides for a one percent bonus paid to retailers for validating and paying a prize of \$600 or less for a winning Scratch-it or On-Line ticket.

5. **OAR 177-040-0050 Retailer Duties** - The proposed amendment deletes the specific reference to the time that the Lottery Business Week ends.

6. **OAR 177-040-0052 - Non-Sufficient Funds** - The proposed amendments will: • Reduce the number of non-sufficient funds transactions from four to three per year per retailer. • Relieve the retailer from responsibility for bank errors that cause an NSF so long as the bank verifies and corrects the error, and the funds were otherwise available. • Address temporary bank closures and allow a grace period for funds to be deposited. This results from experience during the recent inclement weather which resulted in unexpected bank closures.

7. **OAR 177-040-0190 100% Interest Transfer** - This rule is being repealed.

The remaining amendments are grammatical and for housekeeping.

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

**Rules Coordinator:** Mark W. Hohlt  
**Address:** Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301  
**Telephone:** (503) 540-1417

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## Oregon University System Chapter 580

**Date:** 5-14-04      **Time:** 1-3 p.m.      **Location:** 1431 Johnson Ln. 3rd Floor Conference Rm.

**Hearing Officer:** Chris Mahoney  
**Stat. Auth.:** ORS 351.210  
**Stats. Implemented:** ORS 351.210  
**Proposed Adoptions:** 580-040-0300 - 580-040-0311  
**Last Date for Comment:** 5-20-04

**Summary:** This rule establishes procedures for disposition of property surplus to the needs of the Chancellor's Office and the Oregon University System institutions. In the 2003 Legislative session, Legislation (Senate Bill 437) was passed and signed into law by the Governor granting authority to the State Board of Higher Education to dispose of surplus property.

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

**Rules Coordinator:** Marcia M. Stuart  
**Address:** Oregon University System, PO Box 3175, Eugene, OR 97403-0175  
**Telephone:** (541) 346-5795

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## Oregon University System, Oregon Institute of Technology Chapter 578

**Date:** 5-26-04      **Time:** 11 a.m.      **Location:** Sunset Lounge College Union Bldg. Klamath Falls, OR

**Hearing Officer:** Staff  
**Stat. Auth.:** ORS 351  
**Stats. Implemented:** ORS 351.070  
**Proposed Amendments:** 578-041-0030  
**Last Date for Comment:** 5-29-04

**Summary:** 578-041-0030 - Amends the Schedule of Special Institution Fees and Charges. Amendments allow for increases, revisions, additions or deletions of special course fees and general service fees

# NOTICES OF PROPOSED RULEMAKING

for fiscal year 2004-05. The schedule of subject fees may be obtained from the Oregon Institute of Technology Office.

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

**Rules Coordinator:** Ceilia Foster

**Address:** Oregon State System of Higher Education, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603

**Telephone:** (541) 885-1105

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**Oregon University System,  
Oregon State University  
Chapter 576**

Date:	Time:	Location:
5-26-04	12 p.m.	206 Memorial Union Oregon State University Corvallis, OR

**Hearing Officer:** Bonnie Dasenko

**Stat. Auth.:** ORS 351.070, 352.360 & OAR 580-040-0010

**Stats. Implemented:** ORS 351.070 & 352.360

**Proposed Amendments:** 576-010-0000

**Last Date for Comment:** 5-27-04

**Summary:** The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2004-2005. The rule states: "The University hereby adopts by reference a list of fees and charges for fiscal year 2004-2005. The list of fees and charges is available at the Oregon State University Office of Budget and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule."

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

**Rules Coordinator:** Bonnie Dasenko

**Address:** Oregon State System of Higher Education, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331-2128

**Telephone:** (541) 737-2474

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Date:	Time:	Location:
5-26-04	12:15 p.m.	206 Memorial Union Oregon State University Corvallis, OR

**Hearing Officer:** Bonnie Dasenko

**Stat. Auth.:** ORS 351.070 & 352.360

**Stats. Implemented:** ORS 351.070 & 352.360

**Proposed Amendments:** 576-030-0020, 576-030-0030, 576-030-0035, 576-030-0040, 576-030-0050

**Last Date for Comment:** 5-27-04

**Summary:** Parking permits will be in the form of a hangtag from the interior rearview mirror instead of affixed to the vehicle. Faculty/Staff parking permits may be purchased through payroll deduction over a 6-month period or less (instead of 9 months) and the \$5 handling fee is deleted. Persons are prohibited from living in vehicles of any kind on University property. Violators may be cited for improper parking and/or the vehicle may be immobilized (booted) or towed.

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

**Rules Coordinator:** Bonnie Dasenko

**Address:** Oregon State System of Higher Education, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331-2128

**Telephone:** (541) 737-2474

**Oregon University System,  
University of Oregon  
Chapter 571**

Date:	Time:	Location:
5-20-04	10 a.m.	Alsea/Coquille Rms. EMU, UO Eugene, OR

**Hearing Officer:** Deb Eldredge

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

**Stats. Implemented:** ORS 351.070

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

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

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

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

**Rules Coordinator:** Deb Eldredge

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

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

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**Oregon Youth Authority  
Chapter 416**

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

**Stats. Implemented:** ORS 183.335(7)

**Proposed Adoptions:** 416-001-0015, 416-001-0020

**Proposed Amendments:** 416-001-0000, 416-001-0005

**Last Date for Comment:** 6-1-04

**Summary:** These rules are being adopted and amended to: (1) Update the current list of organizations receiving notice to reflect current agency and organizational changes; (2) Amend the agency's use of the Attorney General's Model Rules of Procedure to the most current rules, dated October 3, 2001, and (3) Adopt rules requiring a fee to be charged for subscription to the agency's mailing list for individuals, organizations, and agencies, not including any federal, state, county or local governmental unit.

Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

**Rules Coordinator:** Kimberly Walker

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

**Telephone:** (503) 378-3864

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**Racing Commission  
Chapter 462**

Date:	Time:	Location:
5-20-04	1:30 p.m.	Rm. 140 800 NE Oregon St. Portland, OR

**Hearing Officer:** Stephen S. Walters, Commissioners

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

**Stats. Implemented:** ORS 462.270(3)

**Proposed Amendments:** 462-220-0040

**Last Date for Comment:** 5-20-04

**Summary:** Amends the sunset provision in Subsection 2 of the rule.  
*\*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

# NOTICES OF PROPOSED RULEMAKING

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

**Date:** 5-28-04      **Time:** 9-9:30 a.m.      **Location:** 900 Court St. NE  
Rm. 257  
Salem, OR 97301

**Hearing Officer:** Fred Neal  
**Stat. Auth.:** ORS 246.150 & 249.205  
**Stats. Implemented:** ORS 249.205  
**Proposed Adoptions:** 165-010-0110  
**Last Date for Comment:** 5-28-04, 5 p.m.

**Summary:** This proposed rule adopts a standard deadline for candidates to file to fill a vacancy in nonpartisan office that occurs between the 70th day before the nominating election and on or before the 80th day before the general election.

*\*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

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**Date:** 5-28-04      **Time:** 9-9:30 a.m.      **Location:** 900 Court St. NE  
Rm. 257  
Salem, OR 97301

**Hearing Officer:** Fred Neal  
**Stat. Auth.:** ORS 246.150, 260.156, 260.159 & 260.200  
**Stats. Implemented:** ORS 246.021, 246.159, 260.200  
**Proposed Amendments:** 165-012-0230  
**Last Date for Comment:** 5-28-04, 5 p.m.

**Summary:** This rule amendment conforms the electronic filing rule to OAR 165-012-0005, the 2004 *Campaign Finance Manual*, to address the fact that beginning January 1, 2004, the Secretary of State can no longer grant waivers for committees required under ORS 260.159 to file electronically. ORS 246.021(4) states that reports required to be filed electronically cannot be accepted in any other format. This rule amendment implements this change by noting that reports required to be filed electronically are not filed until successfully filed electronically. 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*.

*\*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

# ADMINISTRATIVE RULES

## Board of Geologist Examiners Chapter 809

**Adm. Order No.:** BGE 1-2004(Temp)

**Filed with Sec. of State:** 4-6-2004

**Certified to be Effective:** 4-6-04 thru 10-3-04

**Notice Publication Date:**

**Rules Adopted:** 809-001-0035

**Subject:** This rule is identical to the rule on confidentiality of mediation communications, developed by the Attorney General pursuant to ORS 36.224(2). The rule covers all mediations involving the Oregon Board of Geologist Examiners, except those express exclusions. The rule limits information that the mediator may disclose and allows the parties to agree in writing to limit what may be disclosed or used in a subsequent administrative proceeding.

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

### 809-001-0035

#### Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the “mediator” in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency’s employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless

(a) all the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) the mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the

employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties’ agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an “agreement to mediate.” [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party’s communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

# ADMINISTRATIVE RULES

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Oregon State Board of Geologist Examiners determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 36.224, 670.310  
Stats. Implemented: ORS 36.220 - 36.238  
Hist.: BGE 1-2004(Temp), f. & cert. ef. 4-6-04 thru 10-3-04

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**Adm. Order No.:** BGE 2-2004

**Filed with Sec. of State:** 4-6-2004

**Certified to be Effective:** 4-6-04

**Notice Publication Date:**

**Rules Amended:** 809-001-0005

**Subject:** This rule revision allows the Board to use the newest edition of the Model Rules.

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

**809-001-0005**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, in effect on January 15, 2004, are hereby adopted as the rules of procedure by reference for the State Board of Geologist Examiners.

Stat. Auth.: ORS 183.341 & 670.310  
Stats. Implemented: ORS 183.341 & 183.355  
Hist: GE 1(Temp), f. & ef. 11-3-77; GE 2, f. & ef. 12-13-77; GE 1-1982, f. & ef. 5-14-82; GE 1-1984, f. & ef. 2-1-84; GE 3-1986, f. & ef. 7-15-86; EE 1-1996, f. & cert. ef. 8-30-96; GE 1-1996, f. & cert. ef. 8-30-96; BGE 2-1999, f. & cert. ef. 11-8-99; BGE 1-2000, f. & cert. ef. 8-3-00; BGE 2-2004, f. & cert. ef. 4-6-04

## Board of Massage Therapists Chapter 334

**Adm. Order No.:** BMT 2-2004(Temp)

**Filed with Sec. of State:** 3-16-2004

**Certified to be Effective:** 3-16-04 thru 9-7-04

**Notice Publication Date:**

**Rules Amended:** 334-010-0050

**Subject:** To amend the effective date which mandates continuing education providers/classes be approved by an outside professional accrediting agency, Oregon Department of Education, or the Oregon Board of Massage Therapists to January 1, 2005.

**Rules Coordinator:** Michelle Sherman—(503) 365-8657

**334-010-0050**

**Continuing Education**

(1) At the biennial renewal time, each licensee shall sign a statement and provide proof that they have completed 25 hours of continuing education.

(2) All continuing education must be completed within the 24 months preceding the date renewal is due. Hours in excess of the total number required may not be carried over for credit toward future renewals.

(3) The continuing education requirement shall not apply to a massage therapist's first license renewal, but will apply every biennium thereafter.

(4) Each licensee must provide records of all continuing education hours at the time of renewal in the manner prescribed below:

(a) Official abstract of research conducted;

(b) Copy of official certificate or letter of attendance at seminars, workshops, institutes, classes;

(c) Official transcripts from a university, college, or technical school demonstrating successful completion of a course;

(d) Official letter from a designated agent of a Board or national or state agency or organization verifying participation as a Board member, test item writer, or examiner;

(e) Official letter from designated agent of agency for whom students are precepted or supervised with information stating number of students and dates of supervision or precepting;

(f) Type, name and dates of production of media materials;

(g) Dates and hours of mentoring contact;

(h) Names, author(s), and date of publication of reading material used for self study;

(i) Name, producer, date of telecommunication conferences or video-taped presentations;

(j) Certificate of completion from agency or program providing self-study credits;

(k) Name, topic, date and hours of presentation for classes, workshops, seminars, institutes taught by licensee.

(5) Continuing education records shall be maintained by each licensee for no less than three years.

(6) Falsification of continuing education records will result in disciplinary action.

(7) Failure to complete continuing education hours by the time of renewal will result in non-issuance of a license.

(8) If the Board determines that the licensee does not meet continuing education requirements, licensee has thirty days from date of notification of non-compliance to come into compliance. Failure to be in compliance within thirty days shall result in suspension of license to practice massage.

(9) If the Board finds indications of fraud, investigative action shall be instituted. Findings of fraud may result in loss of license.

(10) Topic Areas: Continuing education must be in areas related to the practice of massage or bodywork including theory, research, technique or practice. Topic areas may include, but are not limited to:

(a) Sciences related to massage or bodywork;

(b) Movement modalities related to massage or bodywork;

(c) Psychosocial sciences;

(d) Somatics;

(e) Medicinal substances (allopathic, herbal, homeopathic, naturopathic);

(f) Devices related to massage or bodywork practice;

(g) Communication principles & techniques including group, interpersonal, and documentary;

(h) Ethics;

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(i) Health care contexts related to massage or bodywork such as business practices, insurance, standards, politics;

(j) Specialized forms or modalities of massage and bodywork;

(k) Communicable disease principles and prevention;

(l) Sanitation practices related to massage or bodywork practice;

(m) Regulatory and legal requirements related to massage or bodywork;

(n) Theories of massage & bodywork paradigms, principles & practice; and

(o) Interventions and techniques;

(11) Categories. The required 25 hours of continuing education per biennium shall be selected from one of the following categories however, 12 of the continuing education hours must be in activities that involve attendance at organized events involving other massage and bodywork practitioners unless otherwise specified in the rules. The Board accepts any CE class that is approved by a national credentialing program and any class presented by a school that has Oregon Department of Education approval.

(a) Attendance at an accredited university, college or technical course — may claim 3 hours per credit hour earned;

(b) Attendance at Board approved seminars, workshops, or institutes — may claim 1 hour per direct hour of contact up to a total of 25 hours for the biennium;

(c) Attendance at Board approved telecommunication presentations of educational courses, seminars, workshops — may claim 1 hour per direct hour up to a total of 12 hours for the biennium;

(d) Completion of a Board approved self-study course—may claim one hour of credit per unit.

(e) Attendance at educational sessions at state and national conferences related to massage or bodywork — may claim 1 hour per hour of attendance (up to 25 hours);

(f) Professional presentation (as presenter) for a class, seminar, or workshop — may claim two hours of credit for every hour of actual presentation up to 25 hours of credit. No additional hours may be claimed for subsequent presentation.

(g) Author or co-author of a publication related to massage or bodywork may claim 25 hours of credit one time only per publication.

(h) Research related to massage or bodywork as a principal investigator or co-investigator or as an associate investigator in an established research project - may claim:

(A) 25 hours of credit if principal or co-investigator;

(B) 12 hours of credit if associate investigator;

(i) Participation as an item writer for a state or national licensing or certifying examination — may claim up to 12 hours of credit;

(j) Supervision of massage or mentoring of massage or bodywork students in a formal program of study—may claim 2 hours of credit for each student supervised during the course up to a total of 12 hours of credit

(k) Participation as an examiner for a state or national practical examination for licensure or certification — may claim 6 hours of credit for every year up to 12 hours of credit for the biennium;

(l) Serving as a Board member on a state licensing board for massage or bodywork or on a state or national professional organization for massage or bodywork — may claim 6 hours of credit for every year served up to a total of 12 hours of credit for the biennium.

(m) Serving as a Committee member for the Oregon Board — may claim 6 hours of credit for every year served up to a total of 12 hours of credit for the biennium;

(n) Volunteer work at an organized event — may claim 2 hours of credit for every year up to a total of 4 hours of credit for the biennium; and,

(o) Attendance at a Board approved CPR class — may claim 4 hours of CE per biennium.

(12) Effective January 1, 2005, a continuing education class, seminar, workshop or institute that is not approved by an outside professional accrediting agency or the Oregon Department of Education, must meet the following. Providers must submit the documents listed below and receive written verification of approval from the Board:

(a) Resume and qualifications or licenses in subject area;

(b) Course applicability to massage and bodywork;

(c) Course syllabus and content outline;

(d) Course objectives;

(e) Methods of evaluation; and,

(f) Sample of certificate or proof of credit.

Stat Auth: ORS 687.081, 687.121 & 687.122

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04

## Board of Naturopathic Examiners Chapter 850

**Adm. Order No.:** BNE 2-2004

**Filed with Sec. of State:** 4-14-2004

**Certified to be Effective:** 4-14-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 850-010-0215

**Subject:** This amendment will clarify who is eligible to apply for a Drug Enforcement Administration Registration, and what schedules can be prescribed.

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

### 850-010-0215

#### Drug Enforcement Administration Registration

(1) Licensees may register with the United States Department of Justice for the issuance of a Drug Enforcement Administration (DEA) Number.

(2) Licensees with DEA registration have authority to prescribe from Schedules II, III, IIIN, IV and V, only those drugs as listed on the Formulary compendium, OAR 850-010-0225.

(3) Licensees shall not prescribe from Schedules II, III, IIIN, IV and V without a current DEA registration.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: NE 6-1980, f. & ef. 9-11-80; NE 2-1984, f. & ef. 2-28-84; BNE 2-2004, f. & cert. ef. 4-14-04

## Board of Parole and Post-Prison Supervision Chapter 255

**Adm. Order No.:** PAR 3-2004(Temp)

**Filed with Sec. of State:** 4-15-2004

**Certified to be Effective:** 4-15-04 thru 10-11-04

**Notice Publication Date:**

**Rules Amended:** 255-032-0015

**Subject:** The amendment of this rule is necessary to bring the dates within the rule into conformity with the effective date of ORS 163.105 as amended and passed into law by the Oregon Legislature (1999).

**Rules Coordinator:** Michael R. Washington—(503) 945-8978

### 255-032-0015

#### Petition/Purpose for Review Hearing

An inmate not described in OAR 255-032-0005(4) may petition and the Board shall hold a hearing to determine whether the inmate is likely to be rehabilitated within a reasonable period of time:

(1) Any time after thirty (30) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or after October 23, 1999; or

(2) Any time after twenty-five (25) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed on or between June 30, 1995 through October 22, 1999; or

(3) Any time after twenty (20) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(1) for an offense committed before June 30, 1995; or

(4) Any time after fifteen (15) years from the date of imposition of a minimum period of confinement pursuant to OAR 255-032-0010(2); or

(5) Anytime after twenty-five (25) years from the date of imposition of confinement pursuant to OAR 255-032-0010(3).

Stat. Auth.: ORS 163.115

Stats. Implemented:

Hist.: 2PB 8-1985, f. & ef. 5-31-85; PAR 6-1988, f. & ef. 5-19-88; PAR 1-1991, f. & cert. ef. 1-16-91; PAR 4-1993, f. & cert. ef. 10-29-93; PAR 4-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 4-1999, f. & cert. ef. 5-18-99; PAR 2-2000, f. 1-3-00, cert. ef. 1-4-00; PAR 1-2003, f. & cert. ef. 5-13-03; PAR 3-2004(Temp), f. & cert. ef. 4-15-04 thru 10-11-04

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## Board of Radiologic Technology Chapter 337

**Adm. Order No.:** BRT 1-2004  
**Filed with Sec. of State:** 4-15-2004  
**Certified to be Effective:** 4-15-04  
**Notice Publication Date:** 11-1-03  
**Rules Adopted:** 337-020-0010  
**Rules Repealed:** 337-021-0050

**Subject:** In order to assist its licensees, the board has proposed specific language clarify timelines for license renewal. The language is contained in OAR 337-020-0010. At the direction of the Legislature, the board no longer either charges a special fee for or provides expedited service to approve, renew, or reinstate a license or limited permit. This requires repeal of OAR 337-021-0050.

**Rules Coordinator:** Linda Russell—(503) 731-4088, ext. 22

### 337-020-0010

#### Timely Renewal

An OBRT license renewal application must be received by OBRT 30 days before a license expires. A license expires biennially on the first day of the birth month of the licensee. No person is allowed to practice after a license expires.

Stat. Auth.: ORS 688.555  
Stats. Implemented: ORS 685.445  
Hist.: BRT 1-2004, f. & cert. ef. 4-15-04

## Bureau of Labor and Industries Chapter 839

**Adm. Order No.:** BLI 1-2004  
**Filed with Sec. of State:** 4-9-2004  
**Certified to be Effective:** 4-15-04  
**Notice Publication Date:**  
**Rules Amended:** 839-016-0700

**Subject:** The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 5, 2004 to include amendments effective April 15, 2004.

**Rules Coordinator:** Marcia Ohlemiller—(503) 731-4212

### 839-016-0700

#### Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279.359, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in a publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 5, 2004 are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 5, 2004, and the effective date of the applicable special wage determination:

(a) Marine Rates for Public Works Contracts in Oregon (effective January 18, 2002).

(b) Amendments to the Prevailing Wage Rate for Public Works in Oregon dated January 5, 2004 (effective April 15, 2004)

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 5, 2004, and special wage determinations are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.boli.state.or.us](http://www.boli.state.or.us) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #32, Portland, Oregon 97232; (503) 731-4723

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

Stat. Auth.: ORS 279.359  
Stats. Implemented: ORS.279.359

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-

14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04

## Department of Administrative Services Chapter 125

**Adm. Order No.:** DAS 2-2004  
**Filed with Sec. of State:** 3-24-2004  
**Certified to be Effective:** 3-26-04  
**Notice Publication Date:** 3-1-04  
**Rules Amended:** 125-020-0610

**Subject:** Under ORS 180.235, the Oregon Attorney General may authorize a public officer or agency to retain in 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 125-020-0230, 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.

**Rules Coordinator:** Kristin Keith—(503) 378-2349, ext. 325

### 125-020-0610

#### Exemptions

(1) This rule exempts Contracting Agencies, for certain classes of contracts, from the screening and selection rules only as described in OAR 125-020-0300 through 125-020-0335. The Contracting Agency shall competitively solicit to the extent practicable or justify entering into the contracts by direct negotiation. When the contract requires payments of more than \$75,000, this rule does not exempt the Contracting Agency from obtaining the approval of the Attorney General for legal sufficiency pursuant to ORS 291.045-047. This exemption applies to the following classes of contracts:

(a) Client services, as defined in OAR 125-020-0140(3);

(b) Expert witness services, as defined in OAR 125-020-0140(14);

(c) Year 2000 services, as defined in OAR 125-020-0140(26);

(d) Business assistance services, defined as services delivered directly to small or troubled businesses in Oregon, that are intended to assist business start-up or growth or to revitalize or stabilize a business. Such services include, but are not limited to, technical assistance services, feasibility evaluations, management consulting, basic business training (including elements of accounting, personnel management, marketing and tax compliance), counseling on business needs and problems, assistance in securing state or federal procurement contracts and assistance in securing Oregon suppliers for goods and services.

(2) The Division totally exempts the following types of Personal Services agreements: Federal Government, Interagency, Intergovernmental, Interstate and International. This exemption exempts the Contracting Agency from all requirements of ORS 279.712(3) and these division 020 rules and allows the Contracting Agency to enter into such agreements by direct negotiation without Division approval.

(3) Upon an Agency's written request, the Division may exempt a contract for Personal Services or class of contracts for Personal Services from any requirements of ORS 279.712(3) upon the following findings:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of Personal Services Contracts or substantially diminish competition for these contracts; and

(b) The awarding of Personal Services Contracts pursuant to the exemption will result in substantial cost savings to the Agency. In making such findings, the Division may consider the type, cost, amount of the contract, number of persons available and any other factors the Division deems appropriate.

(4) The Division may revoke the Contracting Agency's exempted authority by written letter to the Agency.

(5) The Agency shall maintain copies of letters granting exempted authority.

(6) The Contracting Agency is required to:

(a) Follow all applicable rules except to the extent exempted by this rule;

(b) Prepare the contract;

(c) Assign an Agency number to the contract;

(d) Obtain all required approvals; and



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(e) Maintain records as required by state laws and OAR 125-020-0510.

(7) Copies of these contracts are not filed with the Division; however, exempted contract data must be reported to the Division each fiscal year for inclusion in the Division's report to the Legislature.

(8) Screening and Selection Procedures for General or Special Counsel Authorized by the Attorney General.

(a) 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 rule governs the process for obtaining such counsel, together with the division 20 rules with the exceptions of: OAR 125-020-0210, 125-020-0220, 125-020-0300, 125-020-0310, 125-020-0320, 125-020-0330, 125-020-0335, 125-020-0340, 125-020-0520(3), (6) and (7), and 125-020-0530.

(b) Definitions For purposes of this sub-section (8), these terms have the following meanings:

(A) "Attorney General" means the Attorney General of the State of Oregon.

(B) "Authorized Agency" means the public officer or agency that the Attorney General authorized to retain its own general or special counsel other than the Department of Justice under ORS 180.235.

(C) "Authorized Legal Services" means the legal services as authorized by the Attorney General for the particular matter or class of matters and as required by the Authorized Agency.

(D) "Outside Counsel" means general or special counsel selected by the Authorized Agency under this rule.

(E) "Firm" means the proprietorship, partnership or professional legal corporation engaged in the practice of law of which Outside Counsel is a partner, a shareholder, an associate, a member, or a lawyer serving as "of counsel."

(F) "Solicitation" means a written or oral request for offers, proposals, statements of qualifications, or other information from individuals or entities.

(c) Delegation of Approval and Contract Authority

(A) The Division delegates approval and contract authority to the Authorized Agency to the extent authorized by the Oregon Attorney General.

(d) Selection Criteria:

(A) The Authorized Agency shall select the Firm it considers most advantageous based on the following factors:

(i) The knowledge, skills and ability of the Firm that will provide Authorized Legal Services. The Firm's ability to provide Authorized Legal Services includes the training and expertise of the Firm attorneys, including Outside Counsel. Outside Counsel must be a member of the Oregon State Bar pursuant to ORS 180.235(2);

(ii) The Firm's experience, level of expertise and suitability to perform the Authorized Legal Services;

(iii) Whether the Firm's available personnel possess any required licenses or certifications required to perform the legal services for the Authorized Legal Services, such as licenses to practice law in the appropriate jurisdiction, or to appear in a certain forum;

(iv) The Outside Counsel's availability and capability to perform the Authorized Legal Services and meet the Agency's needs;

(v) The commitment the Outside Counsel and Counsel's Firm can make to the Authorized Agency to meet the Agency's needs;

(vi) The value of the Firm's legal services, taking into account the cost of the Firm's legal services; and

(vii) Other factors the Authorized Agency considers relevant to accomplish an optimal, timely outcome.

(B) In weighing the evaluation factors, no single factor is determinative.

(e) Scope of Firms Considered:

(A) The Solicitation process may range from direct negotiation and contracting with a single firm to publication of a request for proposals. The Authorized Agency shall extend Solicitations to those firms that it considers reasonable and practical to solicit under the circumstances, and shall take into consideration the following factors:

(i) When the subject matter of the Authorized Legal Services requires specialized knowledge in a particular field of law, the Authorized Agency may limit the Solicitation to prospective Firms that have a reputation of subject matter expertise in that field of law;

(ii) The Authorized Agency shall limit the number of Firms considered under the Solicitation as appropriate if the interests of the Authorized Agency would likely be adversely affected by delay in obtaining a Firm or through broad distribution of the Solicitation; and

(iii) Other factors the Authorized Agency considers relevant to accomplish an optimal, timely outcome.

(f) Documentation of Selection:

(A) The Authorized Agency shall prepare a record of selection signed by an officer or an employee of the Authorized Agency designated to be responsible for the selection process. The record of selection shall include the officer's or employee's summary of:

(i) The Solicitation process used and the Firms considered in the Solicitation process;

(ii) Why the selected firm is considered most advantageous to the Authorized Agency; and

(iii) Why the scope of the Solicitation was reasonable and practical under the circumstances.

(B) As used in (f)(A) above, an officer includes a member of the Authorized Agency's board or commission.

(C) The record of solicitation shall be retained by the Authorized Agency with the contract file for the Firm.

Stat. Auth.: ORS 184.305, 184.340 & 279.712

Stats. Implemented: ORS 180.235, 279.712

Hist.: BMD 1-1992, f. & cert. ef. 1-6-92; TPPSD 3-1994, f. 12-30-94, cert. ef. 2-1-95; Renumbered from 122-020-0018 and 122-020-0028; DASII 1-1997, f. & cert. ef. 1-6-97; Suspended by DASII 7-1997(Temp), f. 10-3-97, cert. ef. 10-4-97; DAS 3-1998, f. & cert. ef. 4-1-98; DAS 3-1999(Temp), f. 7-23-99, cert. ef. 7-26-99 thru 1-21-00; DAS 5-2002(Temp), f. 8-22-02, cert. ef. 8-23-02 thru 2-19-03; DAS 1-2003, f. & cert. ef. 2-24-03, DAS 5-2003(Temp), f. & cert. ef. 10-1-03 thru 3-28-04; DAS 2-2004, f. 3-24-04, cert. ef. 3-26-04

## Department of Agriculture Chapter 603

**Adm. Order No.:** DOA 10-2004

**Filed with Sec. of State:** 3-22-2004

**Certified to be Effective:** 3-22-04

**Notice Publication Date:** 12-1-03

**Rules Adopted:** 603-095-3800, 603-095-3820, 603-095-3840, 603-095-3860

**Subject:** The rules effectuate the implementation of the Klamath Headwaters Agricultural Water Quality Management Area Plan developed pursuant to ORS 568.900 et seq.

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

### 603-095-3800

#### Purpose

(1) These rules have been developed to implement a water quality management area plan for the Klamath Headwaters Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900 - 568.933 and 561.190 - 561.191. The area plan is known as the Klamath Headwaters Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Klamath Headwaters Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules (OARs 603-095-3800 through 603-095-3860) is expected to aid in the achievement of applicable water quality standards in the Klamath Headwaters Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 10-2004, f. & cert. ef. 3-22-04

### 603-095-3820

#### Geographic and Programmatic Scope

(1) The Klamath Headwaters Agricultural Water Quality Management Area is comprised of the Upper Klamath Lake drainages, the west Klamath River drainages including the headwaters of Spencer Creek in Klamath County and Jenny, Cottonwood and Colstein Creeks in Jackson County, and excludes the entire Lost River Drainage and the Klamath Project lands on the west side of the Klamath River down to the Keno dam. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Klamath Headwaters Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forested lands with agricultural activities, with the exception of public lands managed by federal agencies. These rules (OAR 603-095-3800 through 603-095-3860) will affect any lands in agricultural use on all non-

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Federal and non-Tribal lands in the Klamath Headwaters Agricultural Water Quality Management Area.

(a) Agricultural use does not include the use of land for garden plots used for the cultivation of vegetables, flowers, herbs, or fruits for non-commercial, personal use.

(b) The provisions of the Klamath Headwaters Agricultural Water Quality Management Area Plan and OARs 603-095-3800 through 603-095-3860 shall not apply to any forest activity subject to the Oregon Forest Practices Act, ORS 527.610.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, highly erodible lands with no present active use are within the purview of these rules.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will work with these Designated Management Agencies to assure that provisions of these rules apply, and to assure that duplication of any services provided or fees assessed does not occur.

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

Stat. Auth: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 10-2004, f. & cert. ef. 3-22-04

## 603-095-3840

### Unacceptable Conditions

(1) All landowners or operators conducting activities on lands in agricultural use will comply with the following criteria. A landowner is responsible for only those conditions resulting from activities caused by the landowner. A landowner is not responsible for conditions resulting from actions by another landowner on other lands. A landowner is not responsible for conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated. A landowner is not responsible for natural increases in nutrient or temperature loading.

(2) Excessive Sheet and Rill Erosion: Effective January 1, 2007. Combined sheet, rill and wind erosion of soil averaged through a crop rotation period shall not be greater than the soil-loss tolerance value (T).

(3) Nonfunctional Riparian Conditions: Effective January 1, 2007.

(a) Agricultural activities must not create riparian conditions that are downward-trending according to Technical Reference 1737-15, 1998, United States Department of Interior, Bureau of Land Management (Proper Functioning Condition) guidelines or that degrade stream shading consistent with site capability.

(b) Agricultural activities must not prevent riparian areas rated as non-functional by Proper Functioning Condition Guidelines from improving consistent with site capability.

(c) Exemptions from OAR 603-095-3840(3)(a) and (b).

(A) Limited duration agricultural activities such as pump installation or livestock crossings provided they do not compromise achieving the conditions described in 603-095-3840(3)(a) and (b).

(B) Constructed irrigation delivery systems, dikes, borrow pits, drainage ditches, and ponds not hydraulically connected to waters of the State.

(d) This rule is not intended to prohibit riparian grazing where it can be managed to meet water quality standards.

(4) Effective upon adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 10-2004, f. & cert. ef. 3-22-04

## 603-095-3860

### Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, or through notification by another agency, the department may conduct an investigation. The department may, at its discretion, coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-3860(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.

(c) As used in section OAR 603-95-3860(4), "person" does not include any local, state, or federal agency.

(5) Notwithstanding OAR 603-095-3860(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.

(6) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 10-2004, f. & cert. ef. 3-22-04

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**Adm. Order No.:** DOA 11-2004

**Filed with Sec. of State:** 3-26-2004

**Certified to be Effective:** 3-26-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 603-027-0395, 603-027-0640

**Rules Repealed:** 603-027-0405

**Subject:** Amendments and changes to the rules outline general housekeeping to OAR 603-027-0395 and 603-027-0640, and repeal OAR 603-027-0405. The amended sections pertain to protecting scales that are used to sell LPG from wind and weather effects, motor fuel dispensers with modified quantity and price indicators, and gasoline blended with alcohol definitions and labeling requirements. These particular sections are either no longer applicable to the agency's weights and measures program or are covered by other regulations.

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

## 603-027-0395

### Liquefied Petroleum Gas (LPG)

(1) As used in this rule, "Liquefied Petroleum Gas," "LP Gas," or "LPG" means a petroleum product composed predominantly of any of the hydrocarbons propane, propylene, butane (normal or iso), butylene, or mixtures thereof, maintained in the liquid state.

(2) Method of Sale. Liquefied petroleum gas shall be sold by weight or liquid measure determined from legal devices as provided in ORS 618.121 and 618.141. Customer charges for LP gas purchased at retail shall be computed only on the basis of the net weight or liquid measure received by the purchaser but may, for deliveries of two gallons or eight pounds or less, include an additional "bottle filling service charge" if the retailer so chooses and has clearly disclosed the use of the additional service charge. "Clearly disclosed" for bottle filling service charge means that both:

(a) The additional dollar amount for the filling charge; and

(b) The conditions under which the additional bottle filling service charge applies, are displayed by the retailer in a clear and conspicuous manner on both the dispensing device and on all signs advertising the price of LP-gas at that site. Minimum transaction charges based solely on the size of the customer's LP-gas container or set at flat or fixed dollar amounts without regard to the actual quantity of LP-gas remaining in or delivered by the retailer into the customer's container(s) are prohibited.

(3) Pressure Differential System. In the process of measuring liquefied petroleum gas for the purpose of sale whenever a meter is used for the purpose of determining the quantity, a pressure differential between vessels shall not be obtained by use of a vapor pump or compressor, unless the vapor being transferred to the dispensing vessel is accurately measured by means of an accepted and approved vapor meter and the quantity of such vapor is deducted from the LPG delivered.

(4) Use of External Heat Source. The use of an external source of heat or energy which contributes to the thermal expansion of the liquefied petroleum gas immediately before or during the process of delivery, when the basis of settlement for such sale is liquid volume, is prohibited.

(5) Marking of Cylinders and Bottles. When liquefied petroleum gas is sold by weight and delivered in a cylinder or bottle, such cylinder or bottle must be legibly and conspicuously marked with, in addition to any other marking or labeling required by state or federal law, the following:

# ADMINISTRATIVE RULES

(a) The tare weight expressed in pounds or other identified unit of weight including all permanently attached fittings but not the cap;

(b) The water capacity expressed in pounds or other identified unit of weight if a refillable container;

(c) The name or identity symbol of the manufacturer or dealer.

(6) Vapor-Return Lines. Vapor return lines are only permitted for metered delivery of liquefied petroleum gas from a supplier's tank to a receiving container under special circumstances, as provided for in section U.R.2.3. VAPOR-RETURN LINE (of NIST Handbook 44). When use is permitted, these vapor return lines must be of the portable type and must be physically disconnected from both the supplier's tank and the receiving container after each delivery.

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

Stat. Auth.: ORS 618

Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.096, 618.206, 618.236 & 618.241

Hist.: AD 1012(2-74), f. 1-10-74, ef. 2-11-74; AD 8-1990, f. & cert. ef. 4-5-90; AD 20-1990, f. & cert. ef. 10-25-90; AD 12-1996, f. & cert. ef. 12-10-96; DOA 8-2000, f. & cert. ef. 3-29-00; DOA 11-2004, f. & cert. ef. 3-26-04

## 603-027-0640

### Exceptions to the National Institute of Standards and Technology Handbook 44

The following exceptions and amendments are made to said handbook identified in OAR 603-027-0635:

(1) General Code: Section G-UR. User Requirements. In the last sentence of subsection G-UR.4.1 "Maintenance of Equipment", change "device user" to "device owner or operator".

(2) Scale Code:

(a) Section T. Tolerances. After Table 5 in subsection T.1. "Tolerance Values", of the Scale Code in said handbook, add a new **H-44 Table 5b**. (see **Table 4**).

(b) Section UR.3. User Requirements. Add a new subsection UR.3.11. "For Spring Scales Only" to the Scale Code in said handbook: "UR.3.11. for Spring Scales Only. Uncompensated (for temperature) spring scales with nominal capacities of 200 pounds or less meeting **Table T.1.1** tolerances shall not be used in applications where the unit value of the commodity sold or services performed exceeds 15 cents per pound for straight-face spring scales or 60 cents per pound for all other spring scales provided this limitation does not apply to any spring scale meeting NIST/H-44 Scale Code **Table 5** or **Table 6** tolerance."

(c) Section UR.3. User Requirements. At the end of subsection UR.3.3 "Single-Draft Vehicle Weighing", of the Scale Code in said handbook, add a new paragraph (c): "(c) The requirements of this rule apply only to new or used vehicle scales installed after August 13, 1975."

(d). Section UR.3. User Requirements. At the end of subsection UR.3.7.(a) add "and domestic solid waste".

(e) Add a new subsection UR.3.3.1. "Multiple-Draft Vehicle Weighing", to the Scale Code in said handbook: "UR.3.3.1. Multiple Draft Vehicle Weighing. A vehicle scale installed and in use for weighing highway vehicles prior to August 13, 1975, may, at its thenexisting location, continue to be used for commercially weighing a highway vehicle or a coupled highway vehicle in multiple-draft rather than a single draft if:

(A) The vendor and vendee to the weighing transaction or an agent of either with written authority to consent to the transaction, agree in writing to a multiple-draft weight determination and provide written disclosure of the multiple-draft weight determination for the information of third parties to the weighing transaction, in a manner prescribed by the Department;

(B) At least one of the approaches to such a scale is straight, level and in the same plane as the scale platform and the weight determination is made using that approach; and

(C) The vehicle weight is limited or distributed on the scale platform so as not to exceed the manufacturer's rated sectional capacity for such a scale."

(f) Non-price-computing scales of 50 kilograms (110 pounds) capacity or less that meet other Scale Code design, performance, marking and user requirements are exempt from ACCURACY CLASS MARKING under Section S.5. provided that devices intended for Class III applications excluding retail precious metals and semi-precious gem weighing under **Table 7a**. of Scale Code Section UR.1.1(a) shall have a minimum of 250 scale divisions.

(3) Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Measuring Devices Code.

(a) Section S Specifications. Section S.1.1.4. Advancement of Indicating and Recording Elements. LP Gas measuring devices with non-computing indicating registers that do not fully comply with this requirement, but were manufactured prior to July 1, 1979, and licensed for com-

mercial use in Oregon as of July 1, 1989, are hereby granted an exemption from compliance but only until such time as either the dispensing device or its register head is taken out of service or the date of June 30, 1999 has arrived, whichever first occurs and provided further that the register head meets all other applicable provisions of NIST Handbook 44, including, but not limited to General Code Section G-S.5. Indicating and Recording Elements.

(b) UR.2.6. Ticket Printer; Customer Ticket. At the end of this section, add the following: (Non retroactive; To become retroactive as of January 1, 1999.)

(4) Vehicle-Tank Meters Code: Section UR.2.2 Ticket Printer; Customer Ticket. Change the effective dates in brackets at the end of this section to read as follows: (Non retroactive as of January 1, 1998. To become retroactive as of January 1, 2003.)

(5) Appendix D Definitions.

(a) Direct Sale. Replace with the following: "A sale in which both parties in the transaction are present when the quantity is being determined."

(b) Remanufactured device. At the end of the Remanufactured device definition add "by a remanufacturer".

(c) Remanufacturer. Add the following definition: "Remanufacturer. A company or individual who produces remanufactured devices or remanufactured main elements for resale."

(6) Hydrocarbon Gas Vapor-Measuring Devices Code. Section 3.33. Add a new subsection "N.7. Leak Test" to the Hydrocarbon Gas Vapor-Measuring Devices Code in said handbook: "N.7. Leak Test. Each hydrocarbon gas vapor-measuring device shall be submitted to a pressure leak test not to exceed the manufacturer's maximum rated pressure."

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

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

Stat. Auth.: ORS 561 & ORS 618

Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.076, 618.081, 618.086, 618.096, 618.115, 618.151 & 618.275

Hist.: AD 1010(23-73), f. 12-20-73, ef. 1-11-74; AD 1050(40-74), f. 11-20-74, ef. 12-11-74; AD 1056(2-75), f. 4-16-75, ef. 12-11-74; AD 6-1977, f. & ef. 3-21-77; AD 9-1979, f. & ef. 8-16-79; AD 12-1981, f. & ef. 7-6-81; AD 2-1986, f. & ef. 1-21-86; AD 9-1988, f. & cert. ef. 12-15-88; AD 8-1990, f. & cert. ef. 4-5-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 8-2000, f. & cert. ef. 3-29-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 10-2002, f. & cert. ef. 3-7-02; DOA 11-2004, f. & cert. ef. 3-26-04

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**Adm. Order No.:** DOA 12-2004

**Filed with Sec. of State:** 4-15-2004

**Certified to be Effective:** 7-1-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 603-059-0020

**Subject:** Amend inspection fee for fertilizer, agricultural amendment and agricultural mineral products.

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

## 603-059-0020

### Inspection Fees

(1) The inspection fees authorized to be established by ORS 633 and payable under ORS 633 are as follows:

(a) Thirty five cents (\$0.35) for each ton of fertilizer;

(b) Thirty five cents (\$0.35) for each ton of agricultural mineral;

(c) Thirty five cents (\$0.35) for each ton of agricultural amendment;

(d) Five cents (\$0.05) for each ton of fertilizer, agricultural mineral, or agricultural amendment containing 100% "compost" as defined in ORS 633.310.

(e) Three cents (\$0.03) for each ton of gypsum.

(2) A portion of the inspection fees paid to the department for fertilizers, agricultural minerals and agricultural amendments shall be continuously appropriated for the purpose of funding grants for research and development related to the interaction of fertilizer, agricultural mineral or agricultural amendment products and ground water or surface water as described in ORS 633. The portion of fees so appropriated shall be determined by the Department based on the recommendation of the Fertilizer Research Committee (ORS 633.479).

(3) The inspection fees specified in section (1) of this rule shall be in effect commencing July 1, 2004.

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

Stats. Implemented: ORS 561.190 & ORS 633

Hist.: AD 1071(17-75), f. & ef. 11-20-75; AD 10-1978, f. & ef. 7-10-78; AD 15-1983, f. 11-23-83, ef. 12-31-83; AD 14-1989, f. 10-12-89, cert. ef. 10-9-89; AD 1-1996, f. & cert. ef. 2-12-96; DOA 24-2001, f. & cert. ef. 10-15-01; DOA 12-2004, f. 4-15-04 cert. ef. 7-1-04

# ADMINISTRATIVE RULES

## Department of Agriculture, Oregon Salmon Commission Chapter 646

**Adm. Order No.:** OSC 2-2004  
**Filed with Sec. of State:** 4-8-2004  
**Certified to be Effective:** 4-8-04  
**Notice Publication Date:** 11-1-03  
**Rules Amended:** 646-030-0020  
**Subject:** This amendment clarifies the geographic qualification of commissioner.  
**Rules Coordinator:** Nancy Fitzpatrick—(541) 994-2647

### 646-030-0020

#### 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 Salmon 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 salmon;
      - (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.
    - (3) In addition to the qualifications set forth in subsection (2) of this rule, at least one member(s) shall be from each of the following regions:
      - (a) Northern Oregon border to North of Cascade Head;
      - (b) Cascade Head to south of Florence;
      - (c) South of Florence to southern Oregon border.
- Stat. Auth.: 2003 OL Ch. 604, ORS 576  
Stats. Implemented: 2003 OL Ch. 604, ORS 576  
Hist.: OSC 1-2004, f. 1-15-04 cert. ef. 1-16-04; OSC 2-2004, f. & cert. ef. 4-8-04

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

**Adm. Order No.:** BCD 4-2004  
**Filed with Sec. of State:** 3-31-2004  
**Certified to be Effective:** 4-1-04  
**Notice Publication Date:** 3-1-04  
**Rules Adopted:** 918-261-0036, 918-261-0037, 918-261-0038, 918-261-0039  
**Rules Amended:** 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  
**Rules Repealed:** 918-306-0370  
**Subject:** 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 3163 that allows telecommunications service providers the ability to purchase elec-

trical 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.

**Rules Coordinator:** Richard J. Baumann—(503) 373-7559

### 918-251-0090

#### Definitions

For purposes of OAR chapter 918, divisions 251 through 311, unless otherwise specified, the following shall apply:

- (1) “Appliance” as applied to the limited maintenance specialty contractor license established by ORS 479.630, means any built-in or permanently-connected electrical utilization equipment, not including lighting fixtures, other than industrial, that is installed or connected as a unit to perform one or more functions such as clothes washing, air conditioning, food mixing, deep frying, etc.
- (2) “Approved” when referring to electrical product certification means approved in Oregon or for Oregon by the Electrical and Elevator Board.
- (3) “Balance of system” as it relates to renewable electrical energy systems are those products, equipment and systems for the conversion, control and storage of electrical energy.
- (4) “Board” means Electrical and Elevator Board.
- (5) “Building” means a structure that stands alone or that is isolated from adjoining structures by area separation walls as identified in **Section 504.6 of the Oregon Structural Specialty Code** adopted in OAR chapter 918, division 460, with all openings therein protected by approved fire doors as required.
- (6) “Certification Mark” is identification on an electrical product indicating that the product has been certified under ORS 479.760.
- (7) “Certified Electrical Product” is an electrical product certified under ORS 479.760 to which a label or other identifying mark.
- (8) “Continuously Employ” means a person, including a person leased from a worker leasing company licensed under ORS 656.850, during time periods when electrical work for which they are responsible is performed, devotes their entire time of employment to tasks of supervising, designing, laying out, planning, controlling and making electrical installations for the electrical contractor for which the supervisor is registered as signing supervisor.
- (9) “Custom Made” means electrical products that are designed for a specific purpose and location.
- (10) “Document” means prepare records itemizing what was checked, why it was checked, when it was done, how it was checked, what was determined and who did the work.
- (11) “**Electrical Specialty Code**” means the National Electrical Code with Oregon amendments.
- (12) “Electrical Specialty Code Inspector,” formerly referred to as “A-Level Electrical Inspector,” is a person certified to inspect under the **Electrical Specialty Code**.
- (13) “Energy generation,” as it relates to renewable electrical energy generation equipment, are those products, equipment and systems in renewable electrical energy systems that produce or convert electrical energy.
- (14) “Engineer” is an individual who has completed a minimum four-year degree program in electrical engineering or electrical technology with power specialty, from an accredited college or university and has received a Bachelor of Science degree.
- (15) “Field Evaluation” means the evaluation of electrical products by an approved field evaluation firm .
- (16) “Immediate Family” of an owner is the owner’s father, mother, brother, sister, son, daughter, son-in-law, daughter-in-law, grandson, granddaughter, grandfather, grandmother, step-mother, step-father, step-son, step-daughter, brother-in-law or sister-in-law.
- (17) “Indorsement” is a designation within the restricted energy electrical area showing qualifications and training regarding a product area. It determines the scope of restricted energy electrical activity authorized under a restricted energy electrical license.
- (18) “Industrial Electronic Equipment” means a device, appliance, motor, or machine regulated, operated, or controlled through fiber optics or by a combination of electron tubes, capacitors, resistors, impedance transformer, and relays; the control circuit, and/or the power circuits having electrons flowing through a vacuum, metallic vapor, gas tubes, or transistors as used in an industrial plant.
- (19) “Industrial Plant”, for purposes of licensing and electrical master permit inspection program means an establishment engaged in industrial production, or service, or a school, hospital, sewer plant, water plant, com-

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mercial office building, building occupied by the state or a local government entity, or an institution. For purposes of the elevator program, "industrial plant" does not include a school, hospital, commercial office building, building occupied by the state or a local government entity, or an institution where the elevators are accessible to and used by persons other than the employees of that building.

(20) "Installation" includes external and field wiring, service contracts or warranties by the seller or manufacturer concerning the longevity of the equipment or parts after the original installation. It does not include "start-up" activities where new equipment is placed in service, and that type of work related to delivering and setting in place a piece of machinery.

(21) "Inverter", as it relates to renewable electrical energy generation equipment, is a product, equipment or system that converts direct current into alternating current.

(22) "Jurisdictional Inspector" is a state or municipal inspector having inspection responsibility within their jurisdiction over electrical products or their installation, or both.

(23) "Labeled" means a label, symbol or other identifying mark of a Nationally Recognized Testing Laboratory (NRTL), field evaluation firm or the division that is attached to an electrical product indicating the product is manufactured according to approved standards and tested or evaluated for specific end uses or both.

(24) "Lighting Fixture" is a complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamp to the power supply.

(25) "Limited Energy System" means those systems that include Class 1, Class 2 or Class 3 systems as defined by **Section 725.2 of NFPA 70 (National Electrical Code)** and audio systems, communication systems and power-limited fire alarm systems, covered in the **Oregon Electrical Specialty Code**.

(26) "Listed Product" means a product was examined and accepted by a Nationally Recognized Testing Laboratory (NRTL) to meet a particular product standard and is maintained on a list of the listing laboratory.

(27) "Maintain" means to preserve electrical equipment in a good sound condition.

(28) "Maintenance" Compare with repair, replacement, and maintain for definition.

(29) "Minimum Electrical Installation Safety Code" means the adopted **Oregon Electrical Specialty Code**.

(30) "Nationally Recognized Testing Laboratory (NRTL)" means a laboratory recognized by the Federal Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.7.

(31) "NEMA" means the National Electrical Manufacturers Association.

(32) "Off grid system" is a stand-alone system, connected to a structure, whose electrical systems are not connected to a utility-supplied electrical production and distribution network.

(33) "On grid system" is an electrical power system connected to a structure whose electrical systems are also connected to a utility-supplied electrical production and distribution network.

(34) "Plug-in Replacement" is a part, component or assembly designed to be inserted directly into a mating receptacle or socket such as printed circuit boards, control relays, control harnesses or other equipment connected by a cord or cable and plug assembly. A plug-in replacement does not have any field wiring that is connected to the plug-in part or assembly.

(35) "Power Circuitry" means that portion of the system, other than control, that provides electrical power to utilization equipment.

(36) "Registered Professional Electrical Engineer" is an individual licensed by the State of Oregon Board of Engineering Examiners as a professional electrical engineer under OAR chapter 820, division 10.

(37) "Renewable Electrical Energy System" as it relates to electrical energy generation, is the total components and subsystems that, in combination, convert wind energy, solar energy, micro-hydroelectricity, photovoltaic energy or fuel cell energy into electrical energy suitable for connection to a utilization load.

(38) "Repair" means to restore worn or damaged parts to a good, sound condition by means other than replacement.

(39) "Replacement" means substitution of complete units of damaged or worn equipment with similar new or used equipment of a size and rating that does not exceed the design capacity of the existing product.

(40) "Signing Supervising Electrician" or "Signing Supervisor" is a licensed supervising electrician who has been authorized by the electrical contractor to sign permits.

(41) "Similar Equipment," as applied to the limited maintenance specialty contractor license established by ORS 479.630(12), means components of light fixtures other than ballasts.

(42) "Special Deputy" means a person certified by the board or Chief Electrical Inspector to perform special deputy inspections allowed under ORS 479.760.

(43) "Stand-alone system" is a renewable electrical energy system that supplies power independently of an electrical production and distribution network.

(44) "Up to the load side of the inverter", as it relates to electrical energy generation equipment, is the renewable electrical energy system equipment up to the alternating current connection terminals of the inverter.

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

Stat. Auth.: ORS 479.630

Stats. Implemented: ORS 479.730

Hist.: DC 10, f. 4-13-72, ef. 5-1-72; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; Renumbered from 814-022-0105; BCA 44-1991, f. & cert. ef. 12-26-91; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0005; BCD 4-1999, f. & cert. ef. 4-1-99; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-2000; BCD 5-2001, f. 6-7-01, cert. ef. 7-1-01; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03; BCD 15-2003, f. & cert. ef. 10-1-03; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-261-0036

### Exemption for Transformers

An exemption from certification is created under ORS 479.540 for transformers over 600 volts that are built to or conform with:

(1) IEEE C57.12.00 standards; or

(2) Standards used by a public utility as defined in ORS 757.005.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-261-0037

### Exemption for Traffic Management Systems

An exemption from certification is created under ORS 479.540 for traffic management systems approved by Oregon Department of Transportation (ODOT) and maintained on their qualified products list. This exemption does not apply to message boards nor does it remove the requirements of licensing, permitting and inspection for the installation of these products.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-261-0038

### Exemption for Manufactured Construction Services

An exemption from licensing is created under ORS 479.540 for the placement of manufactured construction services of 100 amperes, 240 volts single-phase or less. This exemption applies only to manufactured services used during construction. Repairs or alterations to the manufactured construction service require permit, inspection and appropriately licensed person(s). The word "manufactured" as used in this rule applies to a construction service built by and supplied from an electrical contractor or manufacturer.

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-261-0039

### Exemption for Products Located on the Load Side of a Listed Class 2 Transformer

(1) An exemption from product certification is granted under ORS 479.540 for installation of Class 2 products, other than wiring, located on the load side of a listed Class 2 transformer. The exemption applies only to products that are not:

(a) In a damp or wet location;

(b) Located in a plenum, duct or other air-handling space;

(c) Located in any area from chapter 5 of the adopted **Oregon**

**Electrical Specialty Code**; or

(d) Part of a protective signaling system.

(2) An exemption from permitting is created for installation of Class 2 wiring located on the load side of a listed garage door controller. The exemption applies only to one- and two-family dwellings when the wiring is not part of the original wiring of the dwelling.

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

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

# ADMINISTRATIVE RULES

## 918-306-0010

### Overview

(1) ORS 479.610 establishes certification requirements for electrical products.

(2) The certification process generally involves inspection, testing and evaluation of the product. This is done through:

(a) Listing and application of listing label by a Nationally Recognized Testing Laboratory (NRTL);

(b) Special Deputy Evaluation and Certification. A product can be submitted to the division for certification under ORS 479.760. The special deputy procedures, rules and limitations are located in OAR 918-306-0510 to 918-306-0530; or

(c) Field Evaluation of Products. Field evaluation involves inspection, testing, evaluation and application of an evaluation label utilizing Recommended Practice and Procedures for Unlabeled Electrical Equipment Evaluation dated June 2003 and published by the American Council of Independent Laboratories (ACIL).

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; Suspended by BCD 12-2003(Temp), f. & cert. ef. 6-24-03 thru 10-31-03; BCD 15-2003, f. & cert. ef. 10-1-03; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-306-0340

### General Requirement for Approval of Field Evaluation Firms

Approval of a field evaluation firm requires:

(1) The firm to meet Oregon approval standards in these rules for each type of product for which it seeks approval and be approved according to OAR 918-306-0350;

(2) Examination and continued approval under OAR 918-306-0360;

(3) Payment of actual expenses of examination and evaluation; and

(4) The address and contact person representing the field evaluation firm be provided.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-306-0350

### Checklist for Applicants

The application for approval as a field evaluation firm shall require proof that the firm:

(1) Is an independent, third-party inspection company with no direct or indirect affiliation with manufacturers, suppliers or vendors of the products it evaluates;

(2) Is primarily engaged in the business of testing electrical products, equipment and systems;

(3) Does not engage in the promotion or design of the product being evaluated;

(4) Has sufficient diversity of clients or activity and financial net worth, so loss or award of an evaluation contract would not be a material factor in the financial well-being of the firm;

(5) Operates in accordance with generally accepted professional and ethical business practices; and

(a) Performs inspections, tests and evaluations required under the field evaluation programs in accordance with the referenced recommended practice in OAR 918-306-0010;

(b) Assures that reported values accurately reflect the inspection measurement data and final evaluation assessment; and

(c) Limits its work to that for which it has the competence and capacity to fulfill;

(6) Provides in its client agreement that it may report to appropriate jurisdictions information concerning safety hazards and failures to meet applicable product safety standards and to provide any information requested by regulatory agencies;

(7) Maintains a consumer complaint file dealing with written complaints and resolve complaints contesting test results and evaluations fairly and promptly;

(8) Is able to do all examinations, tests, evaluations and inspections for field evaluating and labeling of products for which it is approved;

(9) Maintains an independent relationship between its clients, client affiliates or other organizations so the firm's ability to issue reports and certifications objectively and without bias is not adversely affected;

(10) Has a quality control manual as provided in OAR 918-306-0380;

(11) Has personnel meeting the requirements of OAR 918-306-0390;

(12) Has test and measurement equipment meeting the requirements of OAR 918-306-0400;

(13) Maintains records according to OAR 918-306-0410; and

(14) Maintains an up-to-date library of all product safety standards as defined in OAR 918-306-0005 relating to each product being evaluated.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-306-0360

### Examination Schedule for Field Evaluation Firms

(1) Approved field evaluation firms shall be examined under the following schedule:

(a) Firms initially approved shall be examined at the end of two years; and

(b) Firms in good standing shall be examined every three years.

(2) Firms examined shall make all arrangements and pay all fees in advance of the re-examination.

(3) Field evaluation firms shall provide submittals to the division for the initial examination and re-examinations according to the schedule in Section (1) for review of the company's field evaluation program including procedures, processes, equipment calibration program, personnel qualifications and training, controls and record keeping as specified in OAR 918-306-0340 to 918-306-0410. Approval of field evaluation firms shall be for all company locations.

(4) On re-examination, field evaluation firms shall be specifically examined for corrections in prior examinations and to determine whether the firm continues to meet Oregon requirements.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-306-0380

### Quality Control Manual

The firm shall:

(1) Maintain a quality control system to assure accuracy and technical integrity;

(2) Have a quality control manual or a firm operations control manual with written procedures, references and information covering evaluation of each product for which approval is sought. The contents must be adequate to guide a testing technician or inspector through the required tests and inspection; and

(3) Keep an updated copy of all applicable manuals and standards at the work site for use by firm personnel and make manuals available to the division for review and audit.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-306-0390

### Field Evaluation Firm Personnel

(1) Firm personnel shall be competent to perform the tests, examinations, reevaluations and inspections for field evaluation of each product for which approval is sought.

(2) Staff competency shall be verified at least annually by observations and/or examinations by qualified persons selected by the manager having technical responsibility for the firm's field evaluation operations.

(3) A training program to assure new or untrained staff will be able to perform tests and inspections properly and uniformly to the requisite degree of precision and accuracy shall be maintained.

(4) The firm shall maintain records, including dates of training, observation or examination of personnel performance.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-306-0400

### Electrical Evaluation Equipment

The firm shall calibrate, verify and maintain its test and measurement equipment used to conduct any field evaluation. It shall maintain:

(1) A description of the procedures used in calibrating, verifying and maintaining the test equipment, including as applicable:

(a) Calibration and verification equipment or services used;

(b) Reference standards and materials used;

(c) Measurement assurance, corroborative references, or other programs in which the laboratory participates;

(d) Specified maintenance practices.

(2) Calibration and verification records, including as applicable:

(a) Equipment description or name;

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- (b) Name of manufacturer;
  - (c) Model, style and serial number, or other identification;
  - (d) Equipment variables subject to calibration and verification;
  - (e) Statement of the instrument's allowable error and tolerances of readings;
  - (f) Calibration and verification schedules (intervals);
  - (g) Dates and results of last calibrations including "as received" results or verifications and schedule of future calibrations or verifications;
  - (h) Name of laboratory person or outside contractor providing the calibration or verification service;
  - (i) Traceability to National Institute of Standards and Technology or other standard reference authority as required.
- Stat. Auth.: ORS 479.730  
Stats. Implemented: ORS 479.730  
Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-306-0410

### Records

- (1) The firm shall maintain reports and supporting data as records of evaluation activities associated with each product inspected and tested for which approval is sought. The firm shall make available to the division, upon request, a typical completed test or inspection report deleting the name of the client and installation location.
  - (2) Test and inspection reports shall be retained for at least three years and contain as applicable:
    - (a) Name and address of the evaluation firm;
    - (b) Pertinent dates and identification of tests or inspections;
    - (c) Name of client;
    - (d) An appropriate title;
    - (e) Identification of the test, inspection or procedure as specified for the field evaluation program;
    - (f) Known deviations, additions to or exclusions from testing, inspection and evaluation activities to be appropriate to new or innovative products not contemplated by the standard;
    - (g) Measurements, examinations, derived results and identification of test anomalies;
    - (h) A statement whether or not the results comply with the requirements of the standard;
    - (i) Name of the person completing the inspections, testing and evaluation and the signature of the person having responsibility for the report;
    - (j) Data generated during testing if not included in the test report, such as raw data, calculations, table, graphs, sketches and photographs;
    - (k) Records of its quality control checks and audits for monitoring its test work associated with its evaluation programs.
- Stat. Auth.: ORS 479.730  
Stats. Implemented: ORS 479.730  
Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-309-0000

### Electrical Permits

- (1) Except as provided by OAR chapter 918, division 282, dealing with restricted energy transactions, limited maintenance specialty contractor-HVAC/R, and registered telecommunications service provider, the signature of a signing supervising electrician or limited supervising electrician shall be required on each permit to aid inspections by the division and indicate responsibility under ORS 479.710. Any person providing false or incorrect information or false or an incorrect signature to obtain a permit may be subject to compliance action by the board.
- (2) The following may purchase electrical permits:
  - (a) Electrical contractors; and
  - (b) Registered telecommunications service provider (TSP) as defined in ORS 759.005, including competitive carriers, competitive local exchange carriers (CLEC) and telecommunications utilities. These telecommunications service providers are listed as such by the Public Utilities Commission (PUC).
- (3) A permit is required prior to start of electrical work. See OAR 918-309-0080 for temporary permit criteria. Expansion of work under a permit may be added to an existing permit prior to final inspection.
- (4) A permit shall be posted in a conspicuous place near the main electrical panel location. If there is no main panel installed, the permit shall be posted in a conspicuous place on the job site.
- (5) An electrical permit, other than a restricted energy electrical permit as provided in OAR 918-309-0400, issued to one person or firm is not transferable and shall not permit any other person or firm to perform any electrical work thereunder.
- (6) Any permittee holding an unexpired permit may apply for an extension of the time within which work may be completed.

- (7) Permits issued by an inspection jurisdiction under the provisions of the Electrical Specialty Code and these rules shall expire and become null and void if the work authorized by the permit is:
  - (a) Not started within 180 days from the date of permit issuance; or
  - (b) Suspended or abandoned for a period of 180 days after the work is started.
- (8) Corrections to electrical installations must be completed regardless of 180-day suspension or abandonment of work. All corrections to electrical installations must be completed within 20 calendar days of notice of deficiency. See OAR 918-271-0030 for requirements
- (9) In addition to other signing supervising electricians, the following are authorized to sign permits:

- (a) A person whose qualifications are relied upon for licensing under OAR 918-282-0140 is a "supervisor" under ORS 479.560 and can sign for electrical permits or labels for work under a limited maintenance specialty contractor-HVAC/R license;
- (b) A Class "A" or Class "B" limited energy technician can sign permits or labels for 100 volt-ampere or less electrical installations performed by those licensees;
- (c) A "supervisor" as used in ORS 479.630 who can sign restricted energy permits includes:
  - (A) A Class "A" or "B" limited energy technician when the electrical installation is within the scope of the person's license;
  - (B) Persons whose qualifications are relied upon for the issuance of a restricted energy electrical contractor license under OAR 918-282-0060; and
  - (C) Any other electrical licensee authorized to sign a permit provided the work is within the scope of the person's license.
- (10) No electrical permit is required:
  - (a) To replace light bulbs, fluorescent tubes, or approved fuses, or to connect approved portable electrical equipment to permanently installed and properly wired receptacles;
  - (b) For experimental electrical work or testing of electrical products in testing laboratories of electric shops, educational institutions, industrial plants, or recognized testing laboratories;
  - (c) For those minor electrical installations for which the board has authorized an installation label;
  - (d) To install components exempted by OAR chapter 918, division 261;
  - (e) To replace an existing garbage disposal, dish washer, electric water heater or similar appliance of 30 amps or less, single phase; or
  - (f) To install cord and plug connected Class 2 irrigation control systems.

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

Stat. Auth.: ORS 479.560

Stats. Implemented: ORS 479.560 & 479.870

Hist.: DC 10, f. 4-13-72, ef. 5-1-72; DC 41, f. 1-20-75, ef. 2-11-75; DC 49(Temp), f. 6-30-75, ef. 7-1-75; DC 54, f. 9-5-75, ef. 10-1-75; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; DC 20-1982, f. & ef. 9-21-82; DC 12-1983(Temp), f. 6-10-83, ef. 7-1-83; DC 17-1983, f. & ef. 7-21-83; DC 5-1984, f. & ef. 2-24-84; Renumbered from 814-022-0125; BCA 16-1988, f. & cert. ef. 7-20-88; BCA 2-1992(Temp), f. 2-28-92, cert. ef. 3-18-92; BCA 11-1992, f. & cert. ef. 6-26-92; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0190; BCD 7-1997, f. & cert. ef. 4-1-97; BCD 16-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 5-2003, f. 3-14-03, cert. ef. 4-1-03; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-309-0040

### Permit for the Installation, Alteration, or Relocation of an Electrical Service or Feeder

Permanent service or feeder.

- (1) Each service or feeder of 200 amps or less, \$79.
- (2) Each service or feeder in excess of 200 amps but not more than 400 amps, \$94.
- (3) Each service or feeder in excess of 400 amps but not more than 600 amps, \$156.
- (4) Each service or feeder in excess of 600 amps but not more than 1,000 amps, \$204.
- (5) Each service or feeder over 1,000 amps or volts, \$469.
- (6) General Procedure for a Separate Service. If a structure has a separate service, the fee is based on the service size (amps), plus feeders, if any, plus the number of branch circuits.
- (7) Fees in this rule are:
  - (a) In addition to any other fees required under ORS 479.510 to 479.855; and
  - (b) For up to two inspections per unit except for section (6) of this rule that covers one inspection only.

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(8) Where the service constitutes a load center, the permit fee shall be calculated the same as any service panel. The charges shall be for the size of the service and the branch circuits or feeders to the load center.

(9) Reconnect Only. This rule applies to reconnection where the service was disconnected for repair or by the serving utility company and no change in service capacity or location is made. This allows the replacement of a meter base, a service mast, a service panel, a sub-panel, the feeder to one of the items listed or the repair or replacement of damaged service mast and meter on the exterior of a building. The \$63 fee covers one inspection for this item.

(a) If a major violation of the service exists, a new service and new permit fee shall be required;

(b) It may also be used for house moves. If a major violation of the code or a dangerous condition exists in a house move, repair or replacement and a permit are required.

(10) Fees charged under this rule may not be charged both for amps and volts.

(11) In commercial and industrial buildings, separately metered premises that are divided from each other by walls are classified as a separate building for the purpose of computing permit fees. A different permit is required for each separate building:

(a) Master Service. For buildings with a master service, such as an office building, compute fees by the service (amps), the feeders (amps) and branch circuits. If there is more than one service, each service is charged separately along with its related feeders and branch circuits;

(b) Single Occupant. In single occupant buildings, the fee is based on the service (amps), the number of feeders (by amps) and branch circuits;

(c) Tenants. Where tenants are involved, the shell receives a permit for any service, feeders and branch circuits that involve only the shell. Each tenant space requires a separate permit. Each tenant space is charged for service (amps), the number of feeders by amps and branch circuits.

Stat. Auth.: ORS 455.020 & 479.870

Stats. Implemented: ORS 455.020 & 479.870

Hist.: DC 74, f. 5-21-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 10-1979, f. & ef. 6-8-79; DC 12-1981, f. 9-29-81, ef. 10-1-81; DC 10-1982, f. & ef. 3-1-82; DC 7-1983, f. & ef. 3-11-83; Renumbered from 814-022-0108; BCA 10-1991, f. 4-26-91, cert. ef. 7-1-91; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-260-0230; BCD 9-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 18-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 9-2001(Temp), f. 8-15-01, cert. ef. 9-4-01 thru 3-3-02; BCD 10-2001, f. 9-28-01, cert. ef. 10-1-01; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-309-0210

### Use of Minor Installation Labels

(1) Persons who may be issued and use minor labels. Minor installation labels may only be issued to and used for installations under the minor label programs permitted by OAR 918-050-0500 through 918-050-0520 and 918-100-0000 through 918-100-0060 by:

(a) An electrical contractor employing a properly licensed general supervising electrician only as authorized by OAR 918-309-0220;

(b) A limited maintenance specialty contractor or a limited maintenance specialty contractor-HVAC/R only as authorized by OAR 918-309-0220

(c) A restricted energy contractor only as authorized by OAR 918-309-0220;

(d) A limited renewable energy contractor only as authorized by OAR 918-309-0220;

(e) A limited pump installation specialty contractor only as authorized by OAR 918-309-0220;

(f) A limited energy contractor only as authorized by OAR 918-309-0220; and

(g) A registered telecommunications service provider only as authorized by OAR 918-309-0220.

(2) Except as allowed under OAR 918-309-0220(3)(a) and (b), minor labels shall not be used for:

(a) Underground electrical installations;

(b) Electrical installations that require a cover inspection;

(c) Installations involving GFCI or AFCI devices other than 15 or 20 amp, 125-volt receptacles and circuit breakers;

(d) Any electrical installations that are covered by Chapter 5 or Article 680 (Swimming Pools, Fountains, or Similar Installations) of the **National Electrical Code**, as adopted in OAR 918-305-0100, or Chapter 41 of the One- and Two-Family Dwelling Specialty Code, as adopted in OAR 918-480-0005;

(e) Protective signaling; and

(f) New construction.

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

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCA 10-1988, f. & cert. ef. 7-20-88; BCD 5-1994, f. 2-25-94, cert. ef. 7-1-94; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-310-0030; BCD 4-1999, f. & cert. ef. 4-1-99; BCD 4-2002, f. 3-8-02, cert. ef. 4-1-02; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

## 918-309-0220

### Scope of Electrical Work Allowed with Minor Installation Label

Except as provided in OAR 918-309-0200 which allows a person to insist on using a permit rather than a label, or where the transaction involves a component of an appliance exempted under OAR 918-261-0020, minor installation labels shall be used by:

(1) A contractor with a signing supervisor, where the installation does not exceed 240 volts for:

(a) Extension of not more than two existing branch electrical circuits limited to 30 amps each and, if relevant, connection of an appliance authorized under sections (2) and (3) of this rule;

(b) Installation of one new electrical circuit limited to 30 amps and, if relevant, connection of an appliance authorized under sections (2) and (3) of this rule;

(c) Repair or replacement of damaged components of existing electrical equipment including services not to exceed 200 amps, provided a reconnect is not required by the serving utility. For reconnects, see OAR 918-309-0040(10) for services; and

(d) The single installation of the appliances, repair or replacement activities authorized by sections (2) and (3) of this rule;

(e) Replacement of multiple switches, circuit breakers, receptacles, light fixtures, smoke detectors, or GFCI or AFCI circuit breakers and receptacles of 15-20 amp, 125-volt in a dwelling unit.

(2) A limited maintenance specialty contractor or a limited maintenance specialty contractor-HVAC/R where the installation does not exceed 120-240 volts single phase for repair or replacement of:

(a) A furnace, oil or gas, not to exceed 20 amps;

(b) A fan not to exceed 20 amps;

(c) A dishwasher or garbage disposal, not to exceed 20 amps;

(d) A water heater, which involves an electrical circuit, not to exceed 30 amps;

(e) An electrical furnace, air conditioning unit or refrigeration unit;

(f) A defective ballast, or up to five ballasts under one label. (For more than five ballasts, inspections shall be performed as a branch circuit permit or hourly rate authorized under OAR 918-309-0070(8)); or

(g) An item in this section and any related transaction under section (3) of this rule if the contractor employs a licensed general supervising electrician or Class "A" or "B" limited energy technician, the work is within the person's scope of license, and that person does the work allowed.

(3) A restricted energy contractor, limited energy contractor, registered telecommunications service provider, or an electrical contractor using an appropriately licensed person if required to make the installation, may use a minor installation label for:

(a) Installation, repair and replacement in new or existing construction of one-and two family dwellings, of HVAC, telephone, garage door, vacuum systems, door bells, burglar, fire alarm and security systems, and audio/stereo systems not exceeding 100 volt-amperes, in Class 2 or 3 installations; or

(b) Installation, repair and replacement of up to 5 devices under one label for the following installations not exceeding 100 volt-amperes in Class 2 or 3 installations in other existing buildings, provided:

(A) The equipment is not located in an area classified as hazardous, as described in Chapter 5 of the **National Electrical Code**, as adopted in OAR 918-305-0100;

(B) The system does not penetrate any fire protection system(s) or air-handling space(s), as defined in the currently adopted Oregon Electrical Specialty Code; and

(C) The installation is limited to the following

(i) Thermostats;

(ii) Data communication devices;

(iii) Intercom, music and paging devices;

(iv) Door or gate control, monitor or access devices;

(v) Cable television and closed circuit television devices;

(vi) Burglar, security and fire alarm devices, including "Power Limited Fire Alarm Circuits" as defined in Article 760 of the **National Electrical Code**, as adopted in OAR 918-305-0100; or

(vii) Notwithstanding the 5 devices in subsection (3)(b) of this rule, central vacuum clean control devices, one label per system.

(4) This rule does not allow any person to make an installation that is not authorized by the scope of the person's license.



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(5) A limited renewable energy contractor or an electrical contractor using a licensed journeyman or limited renewable energy technician may use a minor label for repair and maintenance of renewable electrical energy systems as set forth in ORS 479.630(17)(a).

(6) A limited pump installation specialty contractor may use a minor label for repair, replacement and maintenance of installed pump or irrigation systems of the same horsepower and voltage, as set forth in ORS 479.630(13).

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

Stat. Auth.: ORS 479.540

Stats. Implemented: ORS 479.540

Hist.: BCA 10-1988, f. & cert. ef. 7-20-88; BCD 5-1994, f. 2-25-94, cert. ef. 7-1-94; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-310-0040; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 4-2001, f. 3-30-01, cert. ef. 4-1-01; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 4-2002, f. 3-8-02, cert. ef. 4-1-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 4-2004, f. 3-31-04, cert. ef. 4-1-04

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**Adm. Order No.:** BCD 5-2004

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 12-1-03

**Rules Amended:** 918-460-0015

**Subject:** Repeals and readopts Section (13) of the rule that adopted Oregon Structural Specialty Code amendments effective October 1, 2003, to correct a technical deficiency in the initial notice of proposed rulemaking. The amendment continues to apply specialty code amendments effective October 1, 2003. Additionally, it incorporates testimony received at the December 16, 2003 public hearing, which proposed changes to certain sections of Chapter 13, Energy Conservation.

**Rules Coordinator:** Richard J. Baumann—(503) 373-7559

## 918-460-0015

### Amendments to the Structural Specialty Code

(1) The Structural Specialty Code is generally readopted every three years coinciding with the national adoption of a nationally recognized Building Code and other referenced supporting nationally recognized codes pursuant to chapter 918, division 8. Amendments adopted are placed in this rule, showing the division reference, the date the board took formal action, a descriptive caption and a short description of the amendment. When the code is readopted, these amendments will be physically integrated into the new code and removed from rule.

(2) On March 3, 1999, the Building Codes Structures Board recommended amending the following **Structural Specialty Code** sections effective April 1, 1999, to adopt revised formulas to correct errors published in **Volume 2 of the 1997 Uniform Building Code**:

(a) Amend **Section 1612.2.1** by changing equation numbers 12-5 and 12-6;

(b) Amend **Section 1921.0** to correct formula;

(c) Amend **Section 1921.2.1.7** to correct formula;

(d) Amend **Section 1921.6.6.5** to correct formulas; and

(e) Delete **Section 1928**.

(3) The amendments to **Sections 1612, 1921, and 1928** are adopted by reference effective April 1, 1999.

(4) On March 3, 1999, the Building Codes Structures Board recommended amending the following **Structural Specialty Code** sections effective October 1, 1999:

(a) **Section 904.2.9** adding references to the fire code and **Appendix chapter 9, division III**;

(b) **Section 1003.3.3.10** adding Exception 4;

(c) **Section 1005.3.3.1** adding Exception 4;

(d) **Section 1006.3.2.3** adding Exception 3;

(e) **Section 1006.3.3.3** adding Exception 4;

(f) **Section 1101.2** clarifying dimensional specifications;

(g) **Section 1104.3** clarifying accessible parking requirements;

(h) **Section 1106.1.10.3** adding an exception;

(i) **Section 1106.1.10.4** adding requirements for accessible doors;

(j) **Section 1108.4.4** adding reference;

(k) **Section 1109.14.2** clarifying where visual alarm signal appliances are required;

(l) **Section 1109.18.2** bringing code into compliance with ADA;

(m) **Section 1109.23.1.3** clarifying where benches are required;

(n) **Sections 1312.1.3.1 and 1312.1.3.2** updating to current window rating standards;

(o) **Section 2318.3.1** making Oregon amendment compatible with model code;

(p) **Section 2320.11.4** clarifying footing and foundation reinforcement requirements;

(q) **Section 3004** clarifying energy conservation requirements;

(r) **Appendix chapter 3**, adding new section 324.7 on guardrail openings;

(s) **Appendix chapter 9, division I, Section 907.2.8** adding references; and

(t) **Appendix chapter 9, new division III** on fire sprinklers.

(5) The amendments to **Sections 904, 1003, 1005, 1006, 1101, 1104, 1106, 1108, 1109, 1312, 2318, 2320, 3004**, Appendix Chapter 3, and Appendix Chapter 9 are adopted by reference effective October 1, 1999.

(6) On January 5, 2000, the Building Codes Structures Board recommended amending the following **Structural Specialty Code** sections effective April 1, 2000:

(a) **Section 308.1** deleting Division 4;

(b) **Section 308.2.2.2** referring to Appendix Chapter 3, Division I and deleting the exception;

(c) **Section 308.2.2.3** deleting all language;

(d) **Table 3-A** deleting Group I, Division 4 Occupancy;

(e) **Section 312A.1.1, Exception 2** deleting reference to Group I, Division 4 and amending Exception 2;

(f) **Table 3-B** adding footnote 7;

(g) **Section 505.3** adding an exception;

(h) **Table 5-A** adding a row for Group I, Division 3;

(i) **Table 5-B** amending types of construction allowed and deleting footnote 7;

(j) **Section 1007.5.8 Exception 2** by adding language;

(k) **Section 1106.1.8** deleting reference to Group I, Division 4 and amending item 5;

(l) **Section 1108.3.1.1** deleting reference to Group I, Division 4 and amending items 3 and 3.1; and

(m) **Section 1109.8.2** deleting reference to Group I, Division 4; and

(n) **Appendix chapter 3, division I** replacing language with Sections 313-323.

(7) The amendments to **Sections 308, 312A, 505, 1007, 1106, 1108 and 1109**, Tables 3-A, 3-B, 5-A and 5-B and Appendix Chapter 3, Division I are adopted by reference effective April 1, 2000.

(8) On April 5, 2000, the Building Codes Structures Board recommended amending the following **Structural Specialty Code** sections effective October 1, 2000:

(a) **Section 106.3.2** to include registration requirements to perform engineering services on significant structures;

(b) **Section 304.1** clarifying outpatient clinic and medical offices definition;

(c) **Section 308** clarifying terminology within health care facilities;

(d) **Section 308.2.2.1** adding an occupancy classification;

(e) **Section 312A** adding definitions and clarifying requirements;

(f) **Tables 3-I-1, 3-I-2 and 3-I-3** clarifying requirements;

(g) **Section 1003.3.3.3** to provide consistency with the dwelling code;

(h) **Section 1101.1** clarifying accessibility requirements;

(i) **Section 1101.2** identifying references for accessible design standards;

(j) **Section 1102** amending definitions;

(k) **Section 1103.2.1** adding references;

(l) **Section 1104** clarifying accessible parking requirements;

(m) **Section 1105.2.1** adding a reference;

(n) **Section 1106.1.1** adding references;

(o) **Section 1106.1.12** adding an exception for storage facilities;

(p) **Section 1106.1.13** clarifying intent of the code;

(q) **Section 1107.1** adding a reference and an exception;

(r) **Sections 1108.1, 1108.1.1.1, 1108.1.1.2, 1108.1.1.3, 1108.1.1.4 and 1108.4.17** by relocating requirements previously in **Section 1106**;

(s) **Section 1108.3.3** adding requirements for accessibility to judicial facilities;

(t) **Section 1108.4.8** deleting a requirement and placing it in new **Section 1110.3.4**;

(u) **Section 1108.4.10** providing consistency with ADA guidelines;

(v) **Section 1108.4.12.1** adding requirements for directional signs;

(w) **Section 1108.5** adding new requirements for judicial, legislative and regulatory facilities;

(x) **Section 1108.6** adding new requirements for detention and correctional facilities;

(y) **Section 1109.1** clarifying language;

# ADMINISTRATIVE RULES

(z) **Section 1109.3.1** adding new general requirements for controls and hardware;

(aa) **Section 1109.4.1** adding general requirements and references;

(bb) **Section 1109.10.6** clarifying clear floor space;

(cc) **Section 1109.12.3** clarifying spout locations;

(dd) **Section 1109.15.1.2** clarifying text telephone requirements;

(ee) **Section 1109.16** clarifying detectable warning requirements;

(ff) **Section 1110.2.1** adding an exception;

(gg) **Sections 1110.6.4.1.1** and **1110.6.4.2.1** clarifying the exceptions;

(hh) **Section 1113.1.1** clarifying requirements for alterations;

(ii) **Section 1203.2.6** adding occupancies;

(jj) **Sections 1302, 1307, 1308, 1312, 1313, 1315, 1316, 1321** and

**1323** making editorial changes;

(kk) **Section 1307.1.3** deleting redundant exception;

(ll) **Section 1312.1.3.3** clarifying window labeling and revising the exception;

(mm) **Section 1312.2.1** correcting prescriptive path approach;

(nn) **Section 1320.1** updating code references;

(oo) **Tables 13-D, 13-E, 13-G, 13-H, 13-I, 13-J** and **13-K** making editorial changes to footnotes and amending tables to specify efficiency requirements;

(pp) **Section 1605.1** clarifying that requirements apply to all portions of structures;

(qq) **Section 1703** removing radiography option and deleting a redundant exception;

(rr) **Section 2106.2.14.1** deleting unnecessary requirement;

(ss) **Section 2213.8.6** correcting typographical error; and

(tt) **Chapter 29** adding plumbing requirements for Group A occupancies.

(9) The amendments to the sections specified in Section (8)(a) through (tt) are adopted by reference effective October 1, 2000.

(10) On April 4, 2001, the Building Codes Structures Board recommended amending the following Structural Specialty Code sections effective October 1, 2001:

(a) **Section 904.2.4.1** to clarify intent of code application;

(b) **Section 1003.3.4.4** to eliminate conflict with other code sections;

(c) **Section 1103.2.2.3** to change the reference to Figure 12b;

(d) **Section 1103.2.2.6** to add reference to Figure 15;

(e) **Section 1105** to delete "drop-off zones" to be consistent with ADAAG;

(f) **Section 1107.1** to delete requirement for an emergency evacuation plan;

(g) **Section 1108.2.2** to reword for clarity;

(h) **Section 1108.4.9.1** to conform to ADA requirements;

(i) **Section 1109.10.1** to create an exception to language that prohibits floor drains;

(j) **Section 1110.6.3** to add a reference;

(k) **Section 1204.1** to add a reference to the **One- and Two-Family Dwelling Specialty Code** for light and ventilation requirements;

(l) **Sections 1301.1.1** and **1301.1.3** to make editorial table reference changes;

(m) **Section 1302** to add a definition for vaulted ceiling;

(n) **Sections 1307.1** and **1307.1.3** to make editorial table reference changes;

(o) **Section 1308.1** to add section number;

(p) **Section 1308.1.4** to add language on economizer cooling;

(q) **Section 1312.1** to add provisions for condition spaces;

(r) **Section 1316.1** and **Table 13-P** to clarify lighting requirements for dwelling units;

(s) **Section 1321.1** to make editorial table reference change;

(t) **Table 13-A** to align the insulation requirement for basement walls to those specified in the **One- and Two-Family Dwelling Specialty Code**, reorganize the footnotes and add a prescriptive Path 10;

(u) **Table 13-B** to renumber and add a new **Table 13-B-2**; and

(v) **Tables 13-D** and **13-E** to delete footnote exempting vertical glazing for merchandise displays

(11) The amendments to the sections specified in Section (10)(a) through (v) are adopted by reference effective October 1, 2001.

(12) On November 7, 2001, the Building Codes Structures Board recommended amending the following Structural Specialty Code sections effective January 1, 2002:

(a) **Section 902, Volume 1**, adopting the **1999 editions of NFPA 13** and **NFPA 13R**; and

(b) **Sections 9.101** and **9.301**, Volume 3, correcting language to agree with the **1999 editions of NFPA 13** and **13R**.

(13) On July 31, 2003, the administrator approved amending the following Structural Specialty Code sections to be effective October 1, 2003:

(a) **Section 101.3**, deleting Appendix Chapter 29;

(b) **Section 106.1**, adding an exception 2 for emergency repairs;

(c) **Section 106.2**, adding language on membrane structures;

(d) **Section 312A.3.3.5.2**, changing "smoke detection" to "fire alarm" systems;

(e) **Section 312A.3.3.5.3**, deleting language and placing in a footnote to **Table 3-I-1**;

(f) **Section 312A.3.3.5.4**, adding requirement that fire alarm and detection systems be "automatic";

(g) **Tables 3-I-1, 3-I-2** and **3-I-3**, relocating footnotes for clarity;

(h) **Section 1201**, updating the edition of ASHRAE Standard 62 to 2001;

(i) **Section 1203.2.4**, clarifying ventilation requirements and adding an exception;

(j) **Section 1203.2.11**, adding paragraph on ventilation requirements;

(k) **Section 1203.2.12**, adding section on ventilation controls for high occupancy areas;

(l) **Chapter 13**, Energy Conservation, amending, reformatting and renumbering entire chapter, based on additional testimony received at a December 16, 2003 public hearing, and approved by the administrator on March 31, 2004;

(A) **Section 1307.1.1.6**, amending requirements for recessed lighting fixtures;

(B) **Section 1313.1**, adding exception for non-permanent lighting;

(C) **Sections 1315.5.1, 1315.5.2**, and **1315.5.3** adding spas, hot tubs, and pools, and adding size threshold for heat recovery;

(D) **Section 1316.1**, requirements for distribution transformers repealed;

(E) **Section 1317.5.5**, adding an exception for packaged HVAC equipment, increase allowable leakage rate, and add reference to 1998 Edition of AMCA Standard;

(F) **Sections 1318.4.2, 1318.4.2.1, 1318.4.2.2**, and **1318.4.2.3**, adding specific provisions for Hospitals and Laboratories, reference a formula in place of a table for brake horsepower, and specifies the selection and sizing of nameplate horsepower;

(m) **Section 2406.3**, clarifying when wired glass may be used;

(n) **Sections 2408.1, 2408.2, 2408.2.1** and 2408.3, prescribing the use of safety glazing in athletic facilities;

(o) **Section 2903.1**, adding an exception on drinking fountains;

(p) Appendix chapter 3, division II, Section 326.2, revising definition of "farm"; and

(q) Appendix chapter 31, division II, Section 3111.2, adding a reference to Article 32 of the **Oregon Fire Code**.

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

Stat. Auth.: ORS 447.231, 447.247, 455.030 & 455.110

Stats. Implemented: ORS 447.247 & ORS 455.110

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000 f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp) f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004.f. & cert. ef. 4-1-06

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## Department of Consumer and Business Services, Oregon Occupational Safety and Health Division Chapter 437

**Adm. Order No.:** OSHA 1-2004

**Filed with Sec. of State:** 3-26-2004

**Certified to be Effective:** 7-1-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 437-002-0120

**Rules Repealed:** 437-002-0133

**Subject:** On December 31, 2003, Federal OSHA published in the Federal Register withdrawal of its proposed Occupational Exposure to Tuberculosis standard. In the same Federal Register, OSHA also published a revocation of 29 CFR 1910.139 Respiratory Protection for M. Tuberculosis. The general industry Respiratory Protection

# ADMINISTRATIVE RULES

Standard, 1910.134 will be applied to respiratory protection against TB.

Oregon OSHA repealed 1910.139 Respiratory Protection for M. Tuberculosis, in Division 2/I, Personal Protective Equipment. Oregon initiated rule 437-002-0133 Oregon Rule for Air Quality in Respirators, also was repealed.

This has a delayed effective date of July 1, 2004.

Please visit OR-OSHA's web site: [www.orosha.org](http://www.orosha.org)

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

## 437-002-0120

### Adoption by Reference

In addition to and not in lieu of any other health and safety codes contained in OAR chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/03, and any subsequent amendments published in the Federal Register and listed below:

(1) 29 CFR 1910.132 General requirements, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 6/30/93, FR vol. 58, no. 124, p. 35306; 4/6/94, FR vol. 59, no. 66, p. 16360; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(2) 29 CFR 1910.133 Eye and face protection, published 6/27/74, Federal Register, vol. 39, p. 23502; 4/6/94, FR vol. 59, no. 66, p. 16360; 3/7/96, FR vol. 61, no. 46, p. 9236; 5/2/96, FR vol. 61, p. 19547.

(3) 29 CFR 1910.134 Respiratory protection, published 1/8/98, Federal Register, vol. 63, no. 5, p. 1270; 4/23/98, FR vol. 63, no. 78, p. 20098.

(4) 29 CFR 1910.135 Occupational head protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362; 3/7/96, FR vol. 61, no. 46, p. 9238; 5/2/96, FR vol. 61, p. 19547.

(5) 29 CFR 1910.136 Occupational foot protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362; 3/7/96, FR vol. 61, no. 46, p. 9238; 5/2/96, FR vol. 61, p. 19547; 5/9/96, FR vol. 61, p. 21228.

(6) 29 CFR 1910.137 Electrical protective equipment, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 1/31/94, FR vol. 59, no. 20, pp. 4435-7.

(7) 29 CFR 1910.138 Hand Protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362.

(8) 29 CFR 1910.139 Respiratory protection for M. tuberculosis, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49748; 2/10/84, FR vol. 49, p. 5322; 4/30/84, FR vol. 49, p. 18295; 6/30/93, FR vol. 58, no. 124, p. 35309; 1/8/98, FR vol. 63, no. 5, p. 1270. Removed, 12/3/03, FR vol. 68, p. 75776-75780 (OR-OSHA Admin. Order 1-2004, f. 3/26/04, ef. 7/1/04).

(9) Appendices: **Appendix A** - References for further information (non-mandatory) **Appendix B** - Non-mandatory compliance guidelines for hazard assessment and personal protective equipment selection.

**NOTE:** These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services; and the **United States Government Printing Office.**

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

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 9-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 3-1994, f. & cert. ef. 8-1-94; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2004, f. 3-26-04, cert. ef. 7-1-04

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

**Adm. Order No.:** WCD 4-2004(Temp)

**Filed with Sec. of State:** 3-22-2004

**Certified to be Effective:** 4-1-04 thru 9-27-04

**Notice Publication Date:**

**Rules Amended:** 436-105-0003, 436-105-0500, 436-105-0540

**Subject:** Temporary amendments to OAR 436-105 extend Employer-at-Injury Program benefits to home care workers who receive payment from the Oregon Department of Human Services. The Home Care Commission has entered into a collective bargaining agreement with Service Employees International Union, Local 503, OPEU. Article 16, Section 1 of the bargaining agreement states "Effective April 1, 2004, upon receipt of client request and authorization, the Employer shall provide workers' compensation insurance coverage

to actively employed Home Care Workers by an appropriate insurer..." Temporary rules are necessary to ensure access to Employer-at-Injury Program benefits for programs that begin on or after April 1, 2004.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-105-0003

### Applicability of Rules

(1) These rules apply to all individual Employer-at-Injury Programs begun on or after April 1, 2004.

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04

## 436-105-0500

### Insurer Participation in the Employer-At-Injury Program

(1) An insurer shall be an active participant in providing reemployment assistance with the employer's consent. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

(2) The insurer shall notify the worker and employer-at-injury in writing of the assistance available from the Employer-at-Injury Program. A notice shall be issued:

(a) Upon acceptance or reopening of a non-disabling or disabling claim; and

(b) Within five days of a worker's first release for work after claim opening unless the release is for regular work.

(3) The notices of Employer-at-Injury Program assistance shall contain the following language:

(a) The notice to the worker shall appear in bold type as follows:

The Reemployment Assistance Program provides Oregon's qualified injured workers help with staying on the job or getting back to work. Because of your injury, your employer may be eligible for assistance to return you to transitional work through the Employer-at-Injury Program while your claim is open. Your employer may contact (insurer name and phone number).

(b) The notice to the employer-at-injury shall appear in bold type as follows:

Because of your worker's injury, you may be eligible for assistance through the Employer-at-Injury Program to return the worker to transitional work while the worker's claim is open. To learn more about the assistance available from the program, please call (insurer name and phone number).

(4) The insurer shall administer the Employer-at-Injury Program according to these rules. The insurer shall assist an employer to:

(a) Obtain a qualifying medical release, pursuant to section (6) of this rule, from the medical service provider;

(b) Identify a transitional work position;

(c) Process employer Wage Subsidy requests specified in OAR 436-105-0520(1);

(d) Make Worksite Modification purchases as specified in OAR 436-105-0520(2);

(e) Make Employer-at-Injury Program purchases as specified in OAR 436-105-0520(3); and

(f) Request Employer-at-Injury Program reimbursement from the division as specified in OAR 436-105-0540.

(5) The insurer may use the Employer-at-Injury Program upon establishing the worker and employer meet the eligibility criteria stated in OAR 436-105-0510(1) and (2).

(6) For purposes of the Employer-at-Injury Program, medical releases must meet the following criteria:

(a) All medical releases must be dated and related to the accepted conditions of the claim. The date the medical release is issued by the medical provider is considered the effective date if an effective date is not otherwise specified;

(b) Two types of medical releases qualify under these rules:

(A) A medical release that states the worker's specific restrictions; or  
(B) A statement by the medical service provider that indicates the worker is not released to regular employment accompanied by an approval of a job description which includes the job duties and physical demands required for the transitional work;

(c) A medical release must cover any period of time for which benefits are requested, except as provided in subsection (f) of this section;

(d) A medical release with no specific end date expires in 30 days, except medical releases that indicate the restrictions are permanent;

# ADMINISTRATIVE RULES

(e) A medical release with a specific end date or follow-up medical appointment date expires on the end date, or the follow-up appointment date, if the worker does not return to the medical service provider for a follow-up appointment, except as provided in subsection (f) of this section; and

(f) If the worker misses a follow-up medical appointment, the medical release will lapse unless, within 14 days of the missed appointment, the medical service provider provides a new medical release or a signed and dated statement that the previous medical release is still in effect.

(7) The insurer shall maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last Employer-at-Injury Program Reimbursement Request. The division may request additional information from the insurer in order to perform and complete an audit. The insurer shall maintain the following information at the authorized claim processing location(s) for future audit by the division:

(a) The worker's claim file;

(b) Documentation from the worker's medical service provider that the worker is unable to perform regular employment due to the injury and dated copies of all work releases from the worker's medical service provider;

(c) A legible copy of the worker's payroll records for the wage subsidy period as follows:

(A) Payroll records shall state the dates (daily), hours worked, wage rate(s), and the worker's gross wages for the wage subsidy period;

(B) Payroll records shall state the wage rate or rates if the worker is paid by any method other than hourly wage. If only part of the period covered by the payroll record is for transitional work, the payroll record must be supplemented with documentation of how the worker's earnings were prorated for the Wage Subsidy; and

(C) If a partial day's reimbursement is requested after a worker is released for transitional work, or prior to returning from a medical appointment with a regular work release, documentation of the time of the medical appointment and hours and wages of transitional work shall be provided for those days.

(d) A legible copy of invoices, proof of payment, and proof of the delivery date of the item(s) for Worksite Modification purchases and Employer-at-Injury Program purchases;

(e) Written justification for Worksite Modification as specified in OAR 436-105-0520(2)(f);

(f) Documentation of the transitional work, which must include the start date, wage and hours, and a description of the job duties; and

(g) Documentation that payments for a home care worker were made to the Oregon Department of Human Services, if applicable.

(8) The insurer may end the Employer-At-Injury Program at any time while the worker's claim is open. The insurer shall end the Employer-At-Injury Program when the worker or employer meet any of the end of eligibility criteria listed in OAR 436-105-0510(3).

Stat. Auth.: ORS 656.340, 656.622, 656.726(4)

Stats. Implemented: ORS 656.340, 656.622

Hist.: WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0090; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; Renumbered from 436-110-0360; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0540; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04

## 436-105-0540

### Employer-at-Injury Program Reimbursement Procedures

(1) The insurer must receive all required documentation for reimbursement within one year from the end of the Employer-at-Injury Program in order to qualify for reimbursement. The insurer shall date stamp each reimbursement request document with the receipt date.

(2) The insurer may request Employer-at-Injury Program reimbursement only once per Employer-at-Injury Program. The insurer shall mail, send by facsimile, hand-deliver, or with prior division approval provide electronically, the request for reimbursement to the division within one year and 30 days from the end of the Employer-at-Injury Program on an **Employer-at-Injury Program Reimbursement Request, Form 2360**, published in Bulletin 260. Reimbursements may include Wage Subsidy, Employer-at-Injury Program Purchases, and Worksite Modification. An administrative cost factor shall be computed by the division and applied to each reimbursement request.

(3) An Employer-at-Injury Reimbursement Request must be a minimum of \$100, not including the administrative cost factor, to be subject to reimbursement.

(4) The insurer may send an Employer-at-Injury Program Reimbursement Request to the division when a claim was initially denied and was subsequently accepted after the Employer-at-Injury Program eligibility ended and more than one year and 30 days have passed. In that case, the insurer shall send a completed *Employer-at-Injury Program Reimbursement Request* to the division within 60 days of the first Order or Stipulation and Order accepting the claim. A copy of the Order accepting the claim, or Stipulation and Order accepting the claim, must be attached.

(5) Amended reimbursement requests must be sent to the division within one year and 30 days from the end of the Employer-at-Injury Program eligibility except as provided in section (7) of this rule. Wage Subsidy start and end dates may be amended only due to typographical errors, if satisfactory evidence of the error is provided. The insurer may not request additional administrative cost reimbursement for filing an amended reimbursement request.

(6) Amendments are to be made on a completed **Employer-at-Injury Program Reimbursement Request, Form 2360**. The amended reimbursement request must cite the corrected information with the statement "Amendment" written across the top of the form. The corrected information should be highlighted.

(7) When the division finds the insurer has submitted an *Employer-at-Injury Program Reimbursement Request* which is incomplete or contains an error, the division may return the form to the insurer for correction. When this occurs, the insurer has 60 days from the date the insurer receives the reimbursement request, or one year and 30 days from the end of Employer-at-Injury Program eligibility, whichever is greater, to make the corrections and return the corrected form to the division.

(8) The insurer shall not use Employer-at-Injury Program costs subject to reimbursement for rate making, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that Employer-at-Injury Program costs do not affect the employer's rates or dividend.

(9) If a Preferred Worker employed by an eligible employer with active Premium Exemption incurs a new injury, the claim is subject to Claim Cost Reimbursement under OAR 436-110. If the worker subsequently enters an Employer-at-Injury Program, program costs are to be separated from claim costs and will not be reimbursed as claim costs.

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

Stat. Auth.: ORS 656.622 & 656.726(4)

Stats. Implemented: ORS 656.622

Hist.: WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93; Renumbered from 436-110-0090; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97; Renumbered from 436-110-0360; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0540; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04

## Department of Environmental Quality Chapter 340

**Adm. Order No.:** DEQ 1-2004

**Filed with Sec. of State:** 4-14-2004

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**Rules Amended:** 340-200-0040, 340-224-0010, 340-224-0030, 340-224-0050, 340-224-0070, 340-224-0080, 340-225-0020, 340-225-0050, 340-225-0090

**Subject:** These rules clarify the requirements for creating and using emission offsets without affecting the stringency. The changes allow offsets to come from outside a designated maintenance area if the reductions creating the emissions offsets affected the same area as the proposed increase in emissions.

**Rules Coordinator:** Rachel Sakata—(503) 229-5659

### 340-200-0040

#### State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A §§ 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be

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submitted to the United States Environmental Protection Agency for approval.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

[NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996 (Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-f1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000, f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04

## 340-224-0010

### Applicability and General Prohibitions

(1) Within designated Nonattainment and Maintenance areas, this division applies to owners and operators of proposed major sources and major modifications of air contaminant sources. Within attainment and unclassifiable areas, this division applies to owners and operators of proposed Federal Major sources and major modifications at Federal Major sources. This division does not apply to owners or operators of proposed non-major sources or non-major modifications. Such owners or operators are subject to other Department rules, including Highest and Best Practicable Treatment and Control Required (OAR 340-226-0100 through 340-226-0140), Notice of Construction and Approval of Plans (OAR 340-210-0205 through 340-210-0250), ACDPs (OAR 340 division 216), Emission Standards for Hazardous Air Contaminants (OAR 340 division 244), and Standards of Performance for New Stationary Sources (OAR 340 division 238).

(2) No owner or operator may begin construction of a major source or a major modification of an air contaminant source without having received an air contaminant discharge permit (ACDP) from the Department and having satisfied the requirements of this division.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0220; DEQ 19-1993, f. & cert. ef. 11-4-93;

DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1900; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2004, f. & cert. ef. 4-14-04

## 340-224-0030

### Procedural Requirements

(1) Information Required. The owner or operator of a proposed major source or major modification must submit all information the Department needs to perform any analysis or make any determination required under this division and OAR 340 division 225. The information must be in writing on forms supplied by the Department and include the information for a Standard ACDP as detailed in OAR 340 division 216.

(2) Other Obligations:

(a) Approval to construct becomes invalid if construction is not commenced within 18 months after the Department issues such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within 18 months of the scheduled time. The Department may extend the 18-month period for good cause. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date;

(b) Approval to construct does not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state or federal law;

(c) Approval to construct a source under an ACDP issued under paragraph (3)(b) of this rule authorizes construction and operation of the source, except as prohibited in subsection (d) of this rule, until the later of:

(A) One year from the date of initial startup of operation of the major source or major modification; or

(B) If a timely and complete application for an Oregon Title V Operating Permit is submitted, the date of final action by the Department on the Oregon Title V Operating Permit application.

(d) Where an existing Oregon Title V Operating Permit would prohibit construction or change in operation, the owner or operator must obtain a permit revision before commencing construction or operation.

(3) Application Processing:

(a) Within 30 days after receiving an application to construct, or any addition to such application, the Department will advise the applicant of any deficiency in the application or in the information submitted. For purposes of this section, the date the Department received a complete application is the date on which the Department received all required information;

(b) Notwithstanding the requirements of OAR 340-216-0040 or OAR 340-218-0040, concerning permit application requirements, the Department will make a final determination on the application within six months after receiving a complete application. This involves performing the following actions in a timely manner:

(A) Making a preliminary determination whether construction should be approved, approved with conditions, or disapproved;

(B) Making the proposed permit available in accordance with the public participation procedures required by OAR 340 division 209 for Category IV. Extension of Construction Permits beyond the 18-month time period in paragraph (2)(a) of this rule are available in accordance with the public participation procedures required by Category II in lieu of Category IV.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 18-1984, f. & ef. 10-16-84; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0230; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1910; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2004, f. & cert. ef. 4-14-04

## 340-224-0050

### Requirements for Sources in Nonattainment Areas

Proposed major sources and major modifications that would emit a nonattainment pollutant within a designated nonattainment area, including VOC or NOx in a designated Ozone Nonattainment Area must meet the requirements listed below:

(1) Lowest Achievable Emission Rate (LAER). The owner or operator must demonstrate that the source or modification will comply with the LAER for each nonattainment pollutant emitted at or above the significant emission rate (SER).

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(a) For a major modification, the requirement for LAER applies only to each emissions unit that emits the pollutant in question and was installed since the baseline period or the most recent New Source Review construction approval for that pollutant, and to each modified emission unit that increases actual emissions of the pollutant in question above the netting basis.

(b) For phased construction projects, the LAER determination must be reviewed at the latest reasonable time before commencing construction of each independent phase.

(c) When determining LAER for a change that was made at a source before the current NSR application, the Department will consider technical feasibility of retrofitting required controls provided:

(A) The change was made in compliance with NSR requirements in effect when the change was made, and

(B) No limit will be relaxed that was previously relied on to avoid NSR.

(d) Individual modifications with potential to emit less than 10 percent of the SER are exempt from this section unless:

(A) They are not constructed yet;

(B) They are part of a discrete, identifiable, larger project that was constructed within the previous 5 years and is equal to or greater than 10 percent of the SER; or

(C) they were constructed without, or in violation of, the Department's approval.

(2) Offsets and Net Air Quality Benefit. The owner or operator must obtain offsets and demonstrate that a net air quality benefit will be achieved as specified in OAR 340-225-0090.

(3) Additional Requirements for Federal Major Sources:

(a) The owner or operator of a source that emits or has the potential to emit 100 tons per year of any regulated NSR pollutant must evaluate alternative sites, sizes, production processes, and environmental control techniques for the proposed source or modification and demonstrate that benefits of the proposed source or modification will significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

(b) The owner or operator of a source that emits or has the potential to emit 100 tons per year of any regulated NSR pollutant must demonstrate that all major sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the state are in compliance, or are on a schedule for compliance, with all applicable emission limitations and standards under the Act.

(c) The owner or operator of a federal major source must meet the visibility impact requirements in OAR 340-225-0070.

(4) Special Exemption for the Salem Ozone Nonattainment area. Proposed major sources and major modifications located in or that impact the Salem Ozone Nonattainment Area are exempt from OAR 340-225-0090 and section (2) of this rule for VOC and NOx emissions with respect to ozone formation in the Salem Ozone Nonattainment area.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0240; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1930; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2004, f. & cert. ef. 4-14-04

## 340-224-0070

### Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas

Proposed new federal major sources or major modifications at federal major sources locating in areas designated attainment or unclassifiable must meet the following requirements:

(1) Best Available Control Technology (BACT). The owner or operator of the proposed major source or major modification must apply BACT for each pollutant emitted at a SER over the netting basis.

(a) For a major modification, the requirement for BACT applies only to:

(A) Each new emissions unit that emits the pollutant in question and was installed since the baseline period or the most recent New Source Review construction approval for that pollutant; and

(B) Each modified emissions unit that increases the actual emissions of the pollutant in question above the netting basis.

(b) For phased construction projects, the BACT determination must be reviewed at the latest reasonable time before commencement of construction of each independent phase.

(c) When determining BACT for a change that was made at a source before the current NSR application, any additional cost of retrofitting required controls may be considered provided:

(A) The change was made in compliance with NSR requirements in effect at the time the change was made; and

(B) No limit is being relaxed that was previously relied on to avoid NSR.

(d) Individual modifications with potential to emit less than 10 percent of the significant emission rate are exempt from this section unless:

(A) They are not constructed yet;

(B) They are part of a discrete, identifiable larger project that was constructed within the previous 5 years and that is equal to or greater than 10 percent of the significant emission rate; or

(C) They were constructed without, or in violation of, the Department's approval.

(2) Air Quality Analysis: The owner or operator of a source subject to this rule must provide an analysis of the air quality impacts for the proposed source or modification in accordance with OAR 340-225-0050 through 340-225-0070. The owner or operator of any source subject to this rule that significantly affects air quality in a designated nonattainment or maintenance area must meet the requirements of net air quality benefit in OAR 340-225-0090.

(3) Air Quality Monitoring: The owner or operator of a source subject to this rule must conduct ambient air quality monitoring in accordance with the requirements in OAR 340-225-0050.

(4) The owner or operator of a source subject to this rule and significantly impacting a PM10 maintenance area (significant air quality impact is defined in OAR 340-200-0020), must comply with the requirements of OAR 340-224-0060(2).

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040]

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 14-1985, f. & ef. 10-16-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 27-1992, f. & cert. ef. 11-12-92; Section (8) Renumbered from 340-020-0241; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0245; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1940; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-2004, f. & cert. ef. 4-14-04

## 340-224-0080

### Exemptions

Temporary emission sources that would be in operation at a site for less than two years, such as pilot plants and portable facilities, and emissions resulting from the construction phase of a new source or modification must comply with OAR 340-224-0050(1), 340-224-0060(1) or 340-224-0070(1), whichever is applicable, but are exempt from the remaining requirements of OAR 340-224-0050, 340-224-0060 and 340-224-0070 provided that the source or modification would not impact a Class I area or an area with a known violation of a National Ambient Air Quality Standard (NAAQS) or an applicable increment as defined in OAR 340 division 202.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-020-0047.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0250; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1950; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 1-2004, f. & cert. ef. 4-14-04

## 340-225-0020

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR-340-200-0020, the definition in this rule applies to this division.

(1) "Allowable Emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

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(a) The applicable standards as set forth in 40 CFR parts 60, 61 and 63;

(b) The applicable State Implementation Plan emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition.

(2) "Background Light Extinction" means the reference levels (Mm-1) shown in the estimates of natural conditions as referenced in the FLAG to be representative of the PSD Class I or Class II area being evaluated.

(3) "Baseline Concentration" means:

(a) Except as provided in subsection (c), the ambient concentration level for sulfur dioxide and PM10 that existed in an area during the calendar year 1978. If no ambient air quality data is available in an area, the baseline concentration may be estimated using modeling based on actual emissions for 1978. Actual emission increases or decreases occurring before January 1, 1978 must be included in the baseline calculation, except that actual emission increases from any source or modification on which construction commenced after January 6, 1975 must not be included in the baseline calculation;

(b) The ambient concentration level for nitrogen oxides that existed in an area during the calendar year 1988.

(c) For the area of northeastern Oregon within the boundaries of the Umatilla, Wallowa-Whitman, Ochoco, and Malheur National Forests, the ambient concentration level for PM10 that existed during the calendar year 1993. The Department may allow the source to use an earlier time period if the Department determines that it is more representative of normal emissions.

(4) "Competing PSD Increment Consuming Source Impacts" means the total modeled concentration above the modeled Baseline Concentration resulting from increased emissions of all other sources since the baseline concentration year that are within the Range of Influence of the source in question. Allowable Emissions may be used as a conservative estimate, in lieu of Actual Emissions, in this analysis.

(5) "Competing NAAQS Source Impacts" means total modeled concentration resulting from allowable emissions of all other sources that are within the Range of Influence of the source in question.

(6) "FLAG" refers to the Federal Land Managers' Air Quality Related Values Work Group Phase I Report. See 66 Federal Register 2, January 3, 2001 at 382 to 383.

(7) "General Background Concentration" means impacts from natural sources and unidentified sources that were not explicitly modeled. The Department may determine this as site-specific ambient monitoring or representative ambient monitoring from another location.

(8) "Predicted Maintenance Area Concentration" means the future year ambient concentration predicted in the applicable maintenance plan. The future year (2015) concentrations to be used for Grants Pass UGB are 89 µg/m<sup>3</sup> (24-hour average) and 21 µg/m<sup>3</sup> (annual average). Future year (2015) concentrations to be used for Klamath Falls UGB are 114 µg/m<sup>3</sup> (24-hour average) and 25 µg/m<sup>3</sup> (annual average).

(9) "Nitrogen Deposition" means the sum of anion and cation nitrogen deposition expressed in terms of the mass of total elemental nitrogen being deposited. As an example, Nitrogen Deposition for NH<sub>4</sub>NO<sub>3</sub> is 0.3500 times the weight of NH<sub>4</sub>NO<sub>3</sub> being deposited.

(10) "Ozone Precursor Distance" means the distance in kilometers from the nearest boundary of a designated ozone nonattainment or maintenance area within which a major new or modified source of VOC or NO<sub>x</sub> is considered to significantly affect that designated area. The determination of significance is made by either the formula method or the demonstration method.

(a) The Formula Method.

(A) For sources with complete permit applications submitted before January 1, 2003: D = 30 km.

(B) For sources with complete permit applications submitted on or after January 1, 2003: D = (Q/40) x 30 km.

(C) D is the Ozone Precursor Distance in kilometers. The value for D is 100 kilometers when D is calculated to exceed 100 kilometers. Q is the larger of the NO<sub>x</sub> or VOC emissions increase from the source being evaluated in tons/year, and is quantified relative to the netting basis.

(D) If a source is located at a distance less than D from the designated area, the source is considered to have a significant effect on the designated area. If the source is located at a distance equal to or greater than D, it is not considered to have a significant effect.

(b) The Demonstration Method. An applicant may demonstrate to the Department that the source or proposed source would not significantly

impact a nonattainment area or maintenance area. This demonstration may be based on an analysis of major topographic features, dispersion modeling, meteorological conditions, or other factors. If the Department determines that the source or proposed source would not significantly impact the nonattainment area or maintenance area under high ozone conditions, the Ozone Precursor Distance is zero kilometers.

(11) "Ozone Precursor Offsets" means the emission reductions required to offset emission increases from a major new or modified source located inside the designated nonattainment or maintenance area or within the Ozone Precursor Distance. Emission reductions must come from within the designated area or from within the Ozone Precursor Distance of the offsetting source as described in OAR 340-225-0090. The offsets determination is made by either the formula method or the demonstration method.

(a) The Formula Method.

(A) Required offsets (RO) for new or modified sources are determined as follows:

(i) For sources with complete permit applications submitted before January 1, 2003: RO = SQ

(ii) For sources with complete permit applications submitted on or after January 1, 2003: RO = (SQ minus (40/30 \* SD)).

(B) Contributing sources may provide offsets (PO) calculated as follows: PO = CQ minus (40/30 \* CD).

(C) Multiple sources may contribute to the required offsets of a new source. For the formula method to be satisfied, total provided offsets (PO) must equal or exceed the required offset (RO).

(D) Definitions of factors used in paragraphs (A) (B) and (C) of this subsection:

(i) RO is the required offset of NO<sub>x</sub> or VOC in tons per year as a result of the source emissions increase. If RO is calculated to be negative, RO is set to zero;

(ii) SQ is the source emissions increase of NO<sub>x</sub> or VOC in tons per year above the netting basis;

(iii) SD is the source distance in kilometers to the nonattainment or maintenance area. SD is zero for sources located within the nonattainment or maintenance area.

(iv) PO is the provided offset from a contributing source and must be equal to or greater than zero;

(v) CQ is the contributing emissions reduction in tons per year quantified relative to contemporaneous pre-reduction actual emissions (OAR 340-268-0030(1)(b)).

(vi) CD is the contributing source distance in kilometers to the nonattainment or maintenance area. For a contributing source located within the nonattainment or maintenance area, CD equals zero.

(b) The Demonstration Method. An applicant may demonstrate to the Department using dispersion modeling or other analyses the level and location of offsets that would be sufficient to provide actual reductions in concentrations of VOC or NO<sub>x</sub> in the designated area during high ozone conditions. The modeled reductions of ambient VOC or NO<sub>x</sub> concentrations resulting from the emissions offset must be demonstrated over a greater area and over a greater period of time within the designated area as compared to the modeled ambient VOC or NO<sub>x</sub> concentrations resulting from the emissions increase from the source subject to this rule. If the Department determines that the demonstration is acceptable, then the Department will approve the offsets proposed by the applicant. The demonstration method does not apply to sources located inside an ozone nonattainment area.

(12) "Range of Influence (ROI)" means:

(a) For PSD Class II and Class III areas, the Range of Influence of a competing source (in kilometers) is defined by:

(A) ROI (km) = Q (tons/year) / K (tons/year km).

(B) Definition of factors used in paragraph (A) of this subsection:

(i) ROI is the distance a source has an effect on an area and is compared to the distance from a potential competing source to the Significant Impact Area of a proposed new source. Maximum ROI is 50 km, however the Department may request that sources at a distance greater than 50 km be included in a competing source analysis.

(ii) Q is the emission rate of the potential competing source in tons per year.

(iii) K (tons/year km) is a pollutant specific constant as defined in the table below: [Table not printed, See Ed. Note.]

(b) For PSD Class I areas, the Range of Influence of a competing source includes emissions from all sources that occur within the modeling domain of the source being evaluated. The Department determines the modeling domain on a case-by-case basis.

# ADMINISTRATIVE RULES

(13) "Source Impact Area" means a circular area with a radius extending from the source to the largest distance to where predicted impacts from the source or modification equal or exceed the Significant Air Quality Impact levels set out in Table 1 of OAR 340 division 200. This definition only applies to PSD Class II areas and is not intended to limit the distance for PSD Class I modeling.

(14) "Sulfur Deposition" means the sum of anion and cation sulfur deposition expressed in terms of the total mass of elemental sulfur being deposited. As an example, sulfur deposition for (NH<sub>4</sub>)<sub>2</sub>SO<sub>4</sub> is 0.2427 times the weight of (NH<sub>4</sub>)<sub>2</sub>SO<sub>4</sub> being deposited.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ

12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-6-03; Administrative correction 11-10-03; DEQ

1-2004, f. & cert. ef. 4-14-04

## 340-225-0050

### Requirements for Analysis in PSD Class II and Class III Areas

Modeling: For determining compliance with the NAAQS and PSD Increments in PSD Class II and Class III areas, the following methods must be used:

(1) A single source impact analysis is sufficient to show compliance with standards and increments if modeled impacts from the source being evaluated are less than the Significant Air Quality Impact levels specified in OAR 340-200-0020, Table 1 for all pollutants.

(2) If the above requirement is not satisfied, the owner or operator of a proposed source or modification being evaluated must perform competing source modeling as follows:

(a) For demonstrating compliance with the PSD Increments (as defined in OAR 340-202-0210, Table 1), the owner or operator of a proposed source or modification must show that modeled impacts from the proposed increased emissions (above the modeled Baseline Concentration) plus Competing PSD Increment Consuming Source Impacts (above the modeled Baseline Concentration) are less than the PSD increments for all averaging times.

(b) For demonstrating compliance with the NAAQS, the owner or operator of a proposed source must show that the total modeled impacts plus total Competing NAAQS Source Impacts plus General Background Concentrations are less than the NAAQS for all averaging times.

(3) Additional Impact Modeling:

(a) When referred to this rule by divisions 222 or 224, the owner or operator of a source must provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification, and general commercial, residential, industrial and other growth associated with the source or modification. As a part of this analysis, deposition modeling analysis is required for sources emitting heavy metals above the significant emission rates as defined in OAR 340-200-0020, Table 2. Concentration and deposition modeling may also be required for sources emitting other compounds on a case-by-case basis;

(b) The owner or operator must provide an analysis of the air quality concentration projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(4) Air Quality Monitoring:

(a)(A) When referred to this rule by division 224, the owner or operator of a source must submit with the application an analysis of ambient air quality in the area impacted by the proposed project. This analysis, which is subject to the Department's approval, must be conducted for each pollutant potentially emitted at a significant emission rate by the proposed source or modification. The analysis must include continuous air quality monitoring data for any pollutant that may be emitted by the source or modification, except for volatile organic compounds. The data must relate to the year preceding receipt of the complete application and must have been gathered over the same time period. The Department may allow the owner or operator to demonstrate that data gathered over some other time period would be adequate to determine that the source or modification would not cause or contribute to a violation of an ambient air quality standard or any applicable pollutant increment. Pursuant to the requirements of these rules, the owner or operator must submit for the Department's approval, a pre-construction air quality monitoring plan. This plan must be submitted in writing at least 60 days prior to the planned beginning of monitoring and approved in writing by the Department before monitoring begins.

(B) Required air quality monitoring must be conducted in accordance with 40 CFR 58 Appendix B, "Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring" (July 1, 2000) and with other methods on file with the Department.

(C) The Department may exempt the owner or operator of a proposed source or modification from preconstruction monitoring for a specific pollutant if the owner or operator demonstrates that the air quality impact from the emissions increase would be less than the amounts listed below or that modeled competing source concentration (plus General Background Concentration) of the pollutant within the Source Impact Area are less than the following significant monitoring concentrations:

(i) Carbon monoxide; 575 ug/m<sup>3</sup>, 8 hour average;

(ii) Nitrogen dioxide; 14 ug/m<sup>3</sup>, annual average;

(iii) PM<sub>10</sub>; 10 ug/m<sup>3</sup>, 24 hour average.

(iv) Sulfur dioxide; 13 ug/m<sup>3</sup>, 24 hour average;

(v) Ozone; Any net increase of 100 tons/year or more of VOCs from a source or modification subject to PSD requires an ambient impact analysis, including the gathering of ambient air quality data. However, requirement for ambient air monitoring may be exempted if existing representative monitoring data shows maximum ozone concentrations are less than 50% of the ozone NAAQS based on a full season of monitoring;

(vi) Lead; 0.1 ug/m<sup>3</sup>, 24 hour average;

(vii) Fluorides; 0.25 ug/m<sup>3</sup>, 24 hour average;

(viii) Total reduced sulfur; 10 ug/m<sup>3</sup>, 1 hour average;

(ix) Hydrogen sulfide; 0.04 ug/m<sup>3</sup>, 1 hour average;

(x) Reduced sulfur compounds; 10 ug/m<sup>3</sup>, 1 hour average.

(D) The Department may allow the owner or operator of a source (where required by divisions 222 or 224) to substitute post construction monitoring for the requirements of (4)(a)(A) for a specific pollutant if the owner or operator demonstrates that the air quality impact from the emissions increase would not cause or contribute to an exceedance of any air quality standard. This analysis must meet the requirements of 340-225-0050(2)(b) and must use representative or conservative General Background Concentration data.

(E) When PM<sub>10</sub> preconstruction monitoring is required by this section, at least four months of data must be collected, including the season(s) the Department judges to have the highest PM<sub>10</sub> levels. PM<sub>10</sub> must be measured in accordance with 40 CFR part 50, Appendix J (July 1, 1999). In some cases, a full year of data will be required.

(b) After construction has been completed, the Department may require ambient air quality monitoring as a permit condition to establish the effect of emissions, other than volatile organic compounds, on the air quality of any area that such emissions could affect.

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

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 1-

2004, f. & cert. ef. 4-14-04

## 340-225-0090

### Requirements for Demonstrating a Net Air Quality Benefit

(1) Demonstrations of net air quality benefit for offsets must include the following: Ozone areas (VOC and NO<sub>x</sub> emissions). For sources capable of impacting a designated ozone nonattainment or maintenance area;

(a) Offsets for VOC and NO<sub>x</sub> are required if the source will be located within the designated area or within the Ozone Precursor Distance.

(b) The amount and location of offsets must be determined in accordance with this subsection:

(i) For new or modified sources locating within a designated nonattainment area, the offset ratio is 1.1:1. These offsets must come from within either the same designated nonattainment area as the new or modified source or another ozone nonattainment area (with equal or higher nonattainment classification) that contributes to a violation of the NAAQS in the same designated nonattainment area as the new or modified source.

(ii) For new or modified sources locating within a designated maintenance area, the offset ratio is 1.1:1. These offsets may come from within either the designated area or the ozone precursor distance.

(iii) For new or modified sources locating outside the designated area, but within the ozone precursor distance, the offset ratio is 1:1. These offsets may come from within either the designated area or the ozone precursor distance.

(iv) Offsets from outside the designated area but within the Ozone Precursor Distance must be from sources affecting the designated area in a comparable manner to the proposed emissions increase. Methods for determining offsets are described in the Ozone Precursor Offsets definition (OAR 340-225-0020(11)).

(c) In lieu of obtaining offsets, the owner or operator may obtain an allocation at the rate of 1:1 from a growth allowance, if available, in an applicable maintenance plan.



# ADMINISTRATIVE RULES

(d) Sources within or affecting the Medford Ozone Maintenance Area are exempt from the requirement for NOx offsets relating to ozone formation.

(e) Sources within or affecting the Salem Ozone Nonattainment Area are exempt from the requirement for VOC and NOx offsets relating to ozone formation.

(2) Non-Ozone areas (PM10, SO2, CO, NOx, and Lead emissions) For a source locating within a designated nonattainment area, the owner or operator must: obtain offsets from within the same designated nonattainment area; provide a minimum of 1:1 offsets for emission increases over the Netting Basis; in the Medford-Ashland AQMA, provide reductions in PM10 emissions equal to 1.2 times the emissions increase over the Netting Basis from the new or modified sources; provide a net air quality benefit within the designated nonattainment area. "Net Air Quality Benefit" means a reduction in concentration at a majority of the modeled receptors and less than a significant impact level increase at all modeled receptors; provide offsets sufficient to demonstrate reasonable further progress toward achieving the NAAQS. For a source locating outside a designated nonattainment area but causing a significant air quality impact on the area, the owner or operator must provide offsets sufficient to reduce the modeled impacts below the significant air quality impact level (OAR 340-200-0020) at all receptors within the designated nonattainment area. These offsets may come from within or outside the designated nonattainment area. For a source locating inside or causing a significant air quality impact on a designated maintenance area, the owner or operator must either provide offsets sufficient to reduce modeled impacts below the significant air quality impact level (OAR 240-200-0020) at all receptors within the designated maintenance area or obtain an allocation from an available growth allowance as allowed by an applicable maintenance plan. These offsets may come from within or outside the designated maintenance area.

(3) The emission reductions used as offsets must be of the same type of pollutant as the emissions from the new source or modification. Sources of PM10 must be offset with particulate in the same size range.

(4) The emission reductions used as offsets must be contemporaneous, that is, the reductions must take effect before the time of startup but not more than two years before the submittal of a complete permit application for the new source or modification. This time limitation may be extended through banking, as provided for in OAR 340 division 268, Emission Reduction Credit Banking. In the case of replacement facilities, the Department may allow simultaneous operation of the old and new facilities during the startup period of the new facility, if net emissions are not increased during that time period. Any emission reductions must be federally enforceable at the time of the issuance of the permit.

(5) Offsets required under this rule must meet the requirements of Emissions Reduction Credits in OAR 340 division 268.

(6) Emission reductions used as offsets must be equivalent in terms of short term, seasonal, and yearly time periods to mitigate the effects of the proposed emissions.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.025  
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0260; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1970; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0111; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-224-0090 & 340-240-0260; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-6-03; Administrative correction 11-10-03; DEQ 1-2004, f. & cert. ef. 4-14-04

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**Rules Adopted:** 340-048-0027, 340-048-0037

**Rules Amended:** 340-048-0005, 340-048-0010, 340-048-0015, 340-048-0020

**Rules Repealed:** 340-048-0035

**Rules Ren. & Amended:** 340-048-0024 to 340-048-0032, 340-048-0025 to 340-048-0042, 340-048-0025 to 340-048-0045, 340-048-0030 to 340-048-0045, 340-048-0040 to 340-048-0050, 340-048-0200 to 340-048-0055

**Subject:** These amendments update procedures for the Department of Environmental Quality's certifications that activities requiring fed-

eral licenses or permits will comply with state water quality requirements and standards. The Department certifies activities pursuant to §401 of the federal Clean Water Act. The amendments also revise the fees charged for certifications of most river dredging, wetland filling, and other instream activities except hydropower licensing and clarify the fee that applies to activities other than dredging or filling.  
**Rules Coordinator:** Rachel Sakata—(503) 229-5659

## 340-048-0005

### Purpose

The purpose of these rules is to describe procedures for processing applications for certification pursuant to Section 401 of the Clean Water Act, 33 USC § 1341, and ORS 468B.035 through 468B.047.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468b.035 & 33 USC 1341

Hist.: DEQ 18-1985, f. & ef. 12-3-85; DEQ 1-1987, f. & ef. 1-30-87; DEQ 2-2004, f. & cert. ef. 4-15-04

## 340-048-0010

### Definitions

As used in these rules:

(1) "Certification" means a written determination by the Director that an activity subject to Section 401 of the Clean Water Act will comply with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317, including water quality standards established pursuant to Section 303 as set forth in OAR chapter 340 division 041, and with other water quality requirements set forth in this division. "Certification" also includes any requirements set forth as conditions of a certification pursuant to Subsection 401(d) of the Clean Water Act to ensure compliance with Sections 301, 302, 306, and 307 of the Clean Water Act, with water quality standards established pursuant to Section 303 of the Clean Water Act as set forth in OAR chapter 340, division 041, and with any other appropriate requirement of state law.

(2) "Clean Water Act" means the Federal Water Pollution Control Act of 1972, Public Law 92-500, as amended.

(3) "Coast Guard" means the U.S. Coast Guard.

(4) "Commission" means the Oregon Environmental Quality Commission.

(5) "Corps" means the U.S. Army Corps of Engineers.

(6) "Department" or "DEQ" means the Oregon Department of Environmental Quality.

(7) "Director" means the Director of the Department of Environmental Quality or the Director's delegate.

(8) "HART" means a Hydroelectric Application Review Team convened pursuant to ORS 543A.075 or 543A.400(4)(b) for the purpose of coordinating state agency actions regarding the federal relicensing and, where applicable, state reauthorization of water rights for an existing hydroelectric project.

(9) "Person" means the United States and agencies thereof, a state and agencies thereof, Tribe and agencies thereof, individual, public or private corporation, political subdivision, local government, partnership, association, firm, trust, estate, or any other legal entity.

Stat. Auth.: ORS 468.035, 468.065, 468B.035

Stats. Implemented: ORS 468B.035 - 468B.047 & 33 USC 1341

Hist.: DEQ 18-1985, f. & ef. 12-3-85; DEQ 5-1997(Temp), f. & cert. ef. 3-3-97; DEQ 1-1998, f. & cert. ef. 3-3-98; DEQ 19-2000, f. & cert. ef. 12-15-00; DEQ 2-2004, f. & cert. ef. 4-15-04

## 340-048-0015

### When Certification Required

Pursuant to Section 401 of the Clean Water Act, an applicant for a federal license or permit to conduct any activity that may result in any discharge to navigable waters, including but not limited to the construction, operation, or decommissioning of facilities, must provide the federal licensing or permitting agency a certification from the department.

Stat. Auth.: ORS 468.035, 468.065, 468B.035

Stats. Implemented: ORS 468B.035 - 468B.047 & 33 USC 1341

Hist.: DEQ 18-1985, f. & ef. 12-3-85; DEQ 2-2004, f. & cert. ef. 4-15-04

## 340-048-0020

### Application for Certification

(1) Applications for certification must be filed with the department, except for applications filed with the Corps pursuant to OAR 340-048-0032.

(2) An application filed with the department must contain, at a minimum, the following information:

(a) The legal name and address of the activity's owner or operator;

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(b) The legal name and address of the owner's or operator's authorized representative, if any;

(c) A description of the activity's location sufficient to locate and distinguish existing and proposed facilities and other features relevant to the water quality effects of the activity;

(d) The names and addresses of contiguous property owners;

(e) A complete written description of the activity, including maps, diagrams, and other necessary information;

(f) The names of affected waterways, lakes, or other water bodies;

(g) Copies of and, as appropriate, cross-references to environmental information submitted to the federal licensing or permitting agency and other environmental information and evaluations as necessary to demonstrate that the activity will comply with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, including water quality standards set forth in OAR chapter 340, division 041, and other appropriate requirements of state law;

(h) A copy of any public notice and supporting information issued by the federal licensing or permitting agency for the activity;

(i) An exhibit that:

(A) Includes land use compatibility findings for the activity prepared by the local planning jurisdiction;

(B) If land use compatibility findings have not been obtained, identifies the specific provisions of the local land use plan and implementing regulations applicable to the activity and describes the relationship between the activity and each of the land use provisions identified in paragraph (A) of this subsection; and

(C) Discusses the potential direct and indirect relationship to water quality of each finding or land use provision;

(j) An exhibit that identifies and describes other requirements of state law applicable to the activity that have any relationship to water quality, including but not limited to requirements under ORS chapter 454 regarding onsite disposal of sewage, ORS chapter 466 regarding spills of petroleum and hazardous substances, ORS chapter 496 regarding fish and wildlife, and ORS chapter 390 regarding recreation and scenic waterways;

(k) For new hydroelectric projects requiring certification, in addition to the information required under subsections (a) through (j) of this section, an exhibit that:

(A) Describes current water quality potentially affected by the proposed project, describes the impact of the proposed project to water quality, evaluates whether the proposed project will cause or contribute to violations of water quality standards adopted pursuant to OAR chapter 340 division 041, and identifies steps to be undertaken by the applicant to prevent violation of water quality standards;

(B) Identifies applicable standards of ORS 543.017, rules adopted by the Water Resources Commission implementing such standards, and rules or standards adopted by other state and local agencies that are consistent with ORS 543.017;

(C) Describes the relationship between the proposed project and each standard or rule identified in accordance with paragraph (B) of this subsection; and

(D) Discusses the potential direct and indirect relationship to water quality of each standard or rule.

(l) For existing hydroelectric projects requiring both certification and reauthorization of water rights, in addition to the information required under subsections (a) through (j) of this section, an exhibit that:

(A) Describes current water quality potentially affected by the existing project or activity, describes the impact of the existing project or activity to water quality, evaluates whether the existing project or activity causes or contributes to violations of water quality standards adopted pursuant to OAR chapter 340 division 041, and identifies steps to be undertaken by the applicant to mitigate or eliminate violation of water quality standards;

(B) Identifies applicable standards under ORS 543A.025(2) through (4), rules adopted by the Water Resources Commission implementing such standards, and rules or standards adopted by other state and local agencies that are consistent with such standards;

(C) Describes the relationship between the project and each of the standards or rules identified in accordance with paragraph (B) of this subsection; and

(D) Discusses the potential direct and indirect relationship to water quality of each standard or rule.

(3) The department may request any additional information necessary to complete an application or to assist the department in evaluating an activity's impacts on water quality. An applicant's failure to complete an application or provide requested additional information within the time specified by the department is grounds for denial of certification if the fail-

ure prevents the department from processing the application within the time allowed by law.

(4) Except for applications coordinated with the Corps as described in OAR 340-048-0032, the department must notify the applicant by certified mail of the date the application is determined to be complete. The application is deemed complete if the department's preliminary review indicates that the information required by section (2) of this rule is provided and that the exhibit required by subsection (2)(i) contains findings of the local planning jurisdiction. If findings of the local planning jurisdiction are not included, the department must forward the exhibit submitted under subsection (2)(i) to the local planning jurisdiction for review and comment. The application is deemed complete when the local planning jurisdiction provides comments to the department, or when 60 days have elapsed, whichever occurs first. If no comment is received from the local planning jurisdiction within the 60 day period, the department must continue to seek information from the planning jurisdiction and proceed with evaluation of the application for certification.

(5) For hydroelectric projects requiring certification, in addition to complying with requirements under these rules applicable to application for certification, the applicant must submit to the department a draft application for certification no later than one year before the applicant files a final application with the Federal Energy Regulatory Commission for a license for the hydroelectric project, unless the department and the applicant agree to a different time for submission of the draft certification application. The draft certification application must contain the information described in section (2) of this rule that is available at the time required for submission of the draft application.

Stat. Auth.: ORS 468.035, 468.065, 468B.035

Stats. Implemented: 33 USC 1341 & ORS 468B.035 - 468B.047, 543A.095

Hist.: DEQ 18-1985, f. & ef. 12-3-85; DEQ 1-1987, f. & ef. 1-30-87; DEQ 5-1997(Temp), f. & cert. ef. 3-3-97; DEQ 1-1998, f. & cert. ef. 3-3-98; DEQ 19-2000, f. & cert. ef. 12-15-00; DEQ 2-2004, f. & cert. ef. 4-15-04

## 340-048-0027

### Public Participation

(1) Except as provided in sections (2) and (3) of this rule, the department must provide written public notice of any proposed certification decision to potentially interested persons and adjacent property owners identified in the application. The notice must describe public participation opportunities, request comments, and identify the proposed certification decision and any related documents as available for public inspection and copying. The department must provide at least 35 days for submission of written comments. If, within 20 days of the public notice, 10 or more persons or an organization representing 10 or more members request a public hearing on the proposed certification decision, the department must provide a hearing within the 35-day public comment period or as soon thereafter as reasonably practicable. The department may also provide a public hearing on a proposed certification decision or provide informational meetings regarding a certification application as it deems appropriate. The Director must consider all comments received in making the final certification decision.

(2) For certification applications subject to coordination with the Corps, public participation will be provided as set forth in OAR 340-048-0032.

(3) For certification applications subject to coordination with a HART, public participation will be provided as set forth in OAR 340-048-0037.

(4) Upon request, the department must add the name of any person or group to the list of recipients of written public notice regarding an activity.

Stat. Auth.: ORS 468.035, 468.065, 468B.035

Stats. Implemented: ORS 468B.035 - 468B.047

Hist.: DEQ 2-2004, f. & cert. ef. 4-15-04

## 340-048-0032

### Dredge and Fill

The department will coordinate with the Corps in the processing of certification applications for activities requiring permits from the Corps pursuant to Section 404 of the Clean Water Act, as follows:

(1) An application to the Corps for a permit constitutes an application for certification, provided that the department may request additional information as described in OAR 340-048-0020(2).

(2) The Corps provides public notice of and opportunity to comment on the applications, including the application for certification, provided that the department, in its discretion, may provide additional opportunity for public comment, including public hearing.

(3) The department must evaluate the certification application in accordance with OAR 340-048-0042(2) and any public comments.

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(4) The Director's certification decision must be forwarded to the applicant and the Corps.

Stat. Auth.: ORS 468.035, 468.065, 468B.035  
Stats. Implemented: ORS 468B.035 & 33USC 1341  
Hist.: DEQ 12-1999, f. & cert. ef. 8-11-99; Renumbered from 340-048-0024; DEQ 2-2004, f. & cert. ef. 4-15-04

## 340-048-0037

### HART Coordination

(1) Certification of an existing hydroelectric project requiring federal relicensing for which a HART is convened must be coordinated through the HART in accordance with ORS 543A.100 through 543A.115. This rule applies to such coordination occurring after the department's receipt of an application for certification. This rule does not apply to the department's participation in the HART for a project in accordance with ORS 543A.075 through 543A.095 before the department's receipt of an application for certification. This rule does not apply to an existing hydroelectric project requiring federal relicensing for which a HART has not been convened; that certification will be processed as otherwise provided in this division. Nothing in this rule affects the authority of the Director to act on an application for certification as necessary to avoid certification being deemed waived under the one-year period prescribed in 33 USC 1341(a)(1).

(2) Upon receipt of proposed recommendations for certification of a hydroelectric project developed by a HART in accordance with ORS 543A.105, the department must provide public notice and at least 60 days for comment on a proposed certification decision based on the HART's recommendations. The department's notice and comment period must run concurrently with the notice and comment period provided by the HART on a proposed unified state position under ORS 543A.105(2). The department notice must be provided in writing to interested persons, request comments within the comment period, and identify the proposed certification decision and related documents as available for public inspection and copying. If within 30 days of the public notice, 10 or more persons or an organization representing more than 10 members request a public hearing on the proposed certification, the department must provide a hearing within the 60-day public comment period or as soon thereafter as is reasonably practicable.

(3) Upon completion of the public comment period, the department must evaluate the application for certification in accordance with OAR 340-048-0042(2) and (4). The Director must make a final certification decision in accordance with the recommendations submitted by the HART under ORS 543A.105(2), unless the Director finds, based on public comment or new information, that certification as recommended by the HART would not ensure that the project will comply with water quality standards set forth in OAR chapter 340, division 041 or be consistent with other appropriate requirements of state law. If the Director's certification decision would differ from the HART recommendations, the Director must seek further recommendation from the HART before issuing a final certification decision. The Director must consider any further recommendation from the HART, then issue a final certification decision to the applicant and the HART.

Stat. Auth.: ORS 468.035, 468.065, 468B.035  
Stats. Implemented: ORS 468B.040-468B.046, 543A.100-543A.110  
Hist.: DEQ 2-2004, f. & cert. ef. 4-15-04

## 340-048-0042

### Certification Decision

(1) Within 90 days after an application is deemed complete by the department pursuant to OAR 340-048-0020(4), the department must provide written notice to the applicant that the certification is granted or denied or that a further specified time period is required to process the application. Any extension of time may not exceed one year from the date the application is deemed complete, except that any extension of time regarding certification of a hydroelectric project subject to licensing by the Federal Energy Regulatory Commission may not exceed one year from the date the application is received by the department.

(2) The department must evaluate whether the activity for which certification is sought will comply with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, water quality standards set forth in OAR chapter 340, division 041, and other appropriate requirements of state law. In making this evaluation, the department may consider, among other things:

(a) Potential alterations to water quality that would either contribute to or cause violations of water quality standards established in OAR chapter 340, division 041;

(b) Existing and potential designated beneficial uses of surface water or groundwater that might be affected by the activity;

(c) Potential water quality impacts from the activity's use, generation, storage, or disposal of hazardous substances, waste chemicals, or sludges;

(d) Potential modifications of surface water quality or of water quantity that might affect water quality;

(e) Potential modifications of groundwater quality that might affect surface water quality;

(f) Potential water quality impacts from the construction of intake, outfall, or other structures associated with the activity;

(g) Potential water quality impacts from wastewater discharges;

(h) Potential water quality impacts from construction activities; and

(i) Compliance with plans applicable under Section 208 of the Clean Water Act.

(3) For new hydroelectric projects requiring certification, the department must evaluate, in addition to the criteria set forth in section (2) of this rule, whether the project will be consistent with:

(a) Standards set forth in ORS 543.017;

(b) Rules adopted by the Water Resources Commission implementing such standards; and

(c) Rules or standards of other state and local agencies that are consistent with the standards set forth in ORS 543.017 and that the Director determines are other appropriate requirements of state law according to 33 USC § 1341(d).

(4) For existing hydroelectric projects requiring certification and reauthorization of water rights, the department must evaluate, in addition to the criteria set forth in section (2) of this rule, whether the project will be consistent with:

(a) Standards set forth in ORS 543A.025(2) through (4);

(b) Rules adopted by the Water Resources Commission implementing such standards; and

(c) Rules or standards of other state or local agencies that are consistent with the standards set forth in ORS 543A.025(2) through (4) and that the Director determines are other appropriate requirements of state law according to 33 USC § 1341(d).

(5) Upon completion of the department's evaluation, including consideration of public comment and, if applicable, coordination through a HART in accordance with OAR 340-048-0037, the Director must issue a decision approving or denying certification for the activity, containing:

(a) The name of the applicant;

(b) The activity's name and federal identification number, if any;

(c) The type of activity;

(d) The name of the affected water body;

(e) The general location of the activity;

(f) Findings whether the activity will comply with the standards and requirements set forth in sections (2) through (4) of this rule, as applicable; and

(g) If certification is approved, conditions the Director determines are necessary to assure compliance with applicable standards and requirements set forth in sections (2) through (4) of this rule for the duration of the federal license or permit.

(6) A certification granted pursuant to this division is valid for the applicant only and is not transferable to another person without the written approval of the department. The department may approve the transfer of a certification to a new owner or operator of the certified activity if the department is provided assurance that the new owner or operator will comply with the certification.

Stat. Auth.: ORS 468.035, 468.065, 468B.035

Stats. Implemented: ORS 468B.035-468B.047, ORS 543.017, ORS 543A.025 & 33 USC 1341

Hist.: DEQ 18-1985, f. & ef. 12-3-85; DEQ 1-1987, f. & ef. 1-30-87; Renumbered from 340-048-0025; DEQ 2-2004, f. & cert. ef. 4-15-04

## 340-048-0045

### Issuance and Appeal of Certification Decision

(1) The department must provide a certification decision to the applicant by mail or personal delivery in the same manner as provided for service of notice under OAR 340-011-0097 and provide written notice by appropriate means to public commenters on the proposed certification decision. Any certification decision must include or be accompanied by a notice of the applicant's opportunity to request a contested case hearing regarding the certification decision.

(2) An applicant dissatisfied with a certification decision, including any conditions to an approved certification, may request a contested case hearing by filing an answer and request for hearing in accordance with

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OAR 340-011-0107 within 20 days of mailing or personal delivery of the notice of the certification decision by the department. The hearing must be conducted in accordance with OAR chapter 340, division 011 regarding contested cases.

(3) For purposes of the one-year period prescribed in 33 USC § 1341, the certification decision is effective upon the Director's issuance of the decision, notwithstanding any request for a contested case hearing by the applicant or other judicial review.

Stat. Auth.: ORS 468.035, 468.065, 468B.035  
Stats. Implemented: ORS 468B.035-468B.047, 543.017, 543A.025, 33 USC 1341  
Hist.: DEQ 18-1985, f. & ef. 12-3-85; Renumbered from 340-048-0025 & 340-048-0030;  
DEQ 2-2004, f. & cert. ef. 4-15-04

## 340-048-0050

### Modification or Revocation of a Certificate

(1) A certification may be modified or revoked by the Director if:

(a) The federal license or permit for the activity is revoked or terminated;

(b) The federal license or permit or the federal licensing or permitting agency allows modification of the activity in a manner inconsistent with the certification;

(c) The certification application contained false or inaccurate information regarding the activity that affects or might affect compliance with water quality standards and requirements;

(d) Changes in conditions regarding the activity or affected waterways since the certification was issued affect or might affect compliance with water quality standards and requirements;

(e) Certification conditions are violated; or

(f) Water quality standards, applicable federal laws, or other appropriate requirements of state law have changed since the certification was issued.

(2) Before modification or revocation of a certification, the department must provide the certification holder and the public with written notice of the department's intent to modify or revoke the certification and at least 30 days to submit written comment. If the certification is for a hydroelectric project, the department must also consult with the HART for the project, if any. Upon request by the certification holder, 10 or more persons, or an organization representing 10 or more members, the department must provide a public hearing on the proposed modification or revocation. After consideration of public comment and, if applicable, consultation with a HART, the Director must determine whether to modify or revoke the certification.

(3) Notice of any modification or revocation must be provided by the department to the certification holder by mail or personal delivery in the same manner as provided for service of notice under OAR 340-011-0097 and to the federal permitting or licensing agency and public commenters by appropriate means. The notice must include or be accompanied by a notice of the certification holder's opportunity to request a contested case hearing regarding the modification or revocation.

(4) A certification holder dissatisfied with a modification or revocation may request a contested case hearing by filing an answer and request for hearing in accordance with OAR 340-011-0107 within 20 days of the department's mailing or personal delivery of the notice. The hearing must be conducted in accordance with OAR chapter 340, division 011 regarding contested cases.

(5) The requirements in this rule governing modification or revocation of a certification do not apply to implementation of certification conditions that by their own terms require modification of an activity to ensure compliance with water quality standards and requirements (e.g., based on monitoring results, adaptive management).

(6) This rule does not apply to new certification requirements the department imposes in response to a notice that a federal agency is considering a license or permit application related to a change to a hydroelectric project or proposed hydroelectric project previously certified by the Director. In such event, the procedures and standards set forth in ORS 468B.045 apply.

Stat. Auth.: ORS 468.035, 468.065, 468B.035  
Stats. Implemented: ORS 183, 468B.035-468B.046 & 33 USC 1341  
Hist.: DEQ 18-1985, f. & ef. 12-3-85; Renumbered from 340-048-0040; DEQ 2-2004, f. & cert. ef. 4-15-04

## 340-048-0055

### Fee Schedule for Certifications

(1) Persons applying for a certification must pay the fees established in this rule. When fees are based on total volume or area, the fees will be

based on the total volume or area specified in the application, not actual volume or area ultimately affected during the term of the certification.

(2) Fees for removal of materials from waters of the state are as follows:

(a) 500 to 9,999 cubic yards — \$950;

(b) 10,000 to 99,999 cubic yards — \$2,800;

(c) 100,000 to 999,999 cubic yards — \$4,700;

(d) 1,000,000 to 9,999,999 cubic yards — \$14,000; and

(e) 10,000,000 cubic yards or more — \$16,000 or the amount specified in section (7) of this rule, whichever is greater.

(3) The fees established in section (2) of this rule will be reduced by 25% in those cases where the Dredged Material Evaluation Framework (DMEF) exclusion criteria for sediment testing are met. [Reference: Dredged Material Evaluation Framework, Lower Columbia River Management Area, November 1998.]

(4) Fees for filling of waters of the state are as follows:

(a) 2 to 4.99 acres — \$950;

(b) 5 to 9.99 acres — \$2,800;

(c) 10 to 14.99 acres — \$4,700; and

(d) 15 acres or more — \$8,000 or the amount specified in section (7) of this rule, whichever is greater.

(5) Only one certification fee is required for a project that includes both removal of material under section (2) of this rule and filling of material under section (4) of this rule in the immediate area of the excavation. The higher of the two fees applies.

(6) The fee for application of salt in ski areas is \$5,000.

(7) For activities described in subsections (2)(e) and (4)(d) of this rule and activities not elsewhere classified in this rule, fees will be based on the estimated number of months of full-time staff equivalent (FTE) required to certify the activity multiplied by \$8,000 (number of months x \$8,000 = fee amount). The estimate of required FTE months will be made by the department. There is no fee for activities requiring less than 2 weeks of FTE.

(8) Fees for certification of a hydroelectric project must be paid in accordance with ORS 468.065(3).

(9) Fees for multi-year projects may be paid on a schedule approved by the department.

(10) All fees are payable to the Business Office, Oregon Department of Environmental Quality.

(11) A fee may be refunded if the department determines that no certification is required or that the wrong application has been filed.

(12) Fees are not charged for activities:

(a) Requiring an operating permit for surface mining under ORS chapter 517;

(b) Relating to commercial sand and gravel removal operations;

(c) Involving removal of less than 500 cubic yards of material; or

(d) Involving a fill of less than two acres.

Stat. Auth.: ORS 468.068, 468B.047

Stats. Implemented: ORS 468.068

Hist.: DEQ 28-1998, f. & cert. ef. 12-22-98; Renumbered from 340-048-0200; DEQ 2-2004, f. & cert. ef. 4-15-04

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## Department of Fish and Wildlife

### Chapter 635

**Adm. Order No.:** DFW 21-2004(Temp)

**Filed with Sec. of State:** 3-18-2004

**Certified to be Effective:** 3-18-04 thru 7-31-04

**Notice Publication Date:**

**Rules Amended:** 635-042-0022, 635-042-0130

**Subject:** Amend rules to extend spring chinook gill net commercial fishing in the Columbia River mainstem. Close the current Level 3 smelt commercial fishery in the mainstem Columbia River and reopen and extend the season as a Level 2 fishery.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

### 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 could exceed sixteen hours in length and may occur on Tuesdays and Thursdays, beginning February 24, 2004,

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depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) A maximum of three white sturgeon may be possessed or sold by each participating vessel during the open periods described in 3(b), 3(c), 3(d), 3(e), 3(f) and 3(g).

(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.

(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.

(a) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon, sturgeon and shad may be taken for commercial purposes by gill net during the following open periods:

- (b) 5 a.m. March 2, 2004 to 9 p.m. March 2, 2004;
- (c) 3 p.m. March 4, 2004 to 7 a.m. March 5, 2004;
- (d) 5 a.m. March 9, 2004 to 5 a.m. March 10, 2004;
- (e) 10 a.m. March 11, 2004 to 10 a.m. March 12, 2004.
- (f) 3 p.m. March 15, 2004 to 6 a.m. March 16, 2004.
- (g) 6 p.m. March 18, 2004 to 9 a.m. March 19, 2004

(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, Elokom-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; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04

## 635-042-0130

### Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River, Zones 1-5, from 3 a.m. to 9 p.m. on the following dates: January 4, 2004, January 6, 2004, January 8, 2004, January 9, 2004, January 11, 2004, January 13, 2004, January 15, 2004, January 16, 2004, January 18, 2004, January 20, 2004, January 22, 2004, January 23, 2004, January 25, 2004, January 27, 2004, January 29, 2004, January 30, 2004, February 1, 2004, February 3, 2004, February 5, 2004, February 6, 2004, February 8, 2004, February 10, 2004, February 12, 2004, February 13, 2004, February 15, 2004, February 17, 2004, February 19, 2004, February 20, 2004, February 22, 2004, February 24, 2004, February 26, 2004, February 27, 2004, February 29, 2004, March 2, 2004, March 4, 2004, March 5, 2004, March

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7, 2004, March 9, 2004, March 11, 2004, March 12, 2004, March 14, 2004, March 16, 2004, March 18, 2004, March 19, 2004, March 21, 2004, March 26, 2004, and March 28, 2004.

(2) It is *unlawful* to use other than the following gear for the taking of smelt in the Columbia River:

(a) Gill nets of a mesh size not more than two inches. Nets may consist of, but are not limited to, monofilament webbing;

(b) Dip nets having a bag frame no greater than 36 inches in diameter;

(c) Trawl nets with:

(A) Head rope not to exceed 25 feet in length;

(B) Foot rope or groundline not to exceed 25 feet in length;

(C) Door size not to exceed three feet by four feet;

(D) Mesh size not to exceed two inches;

(E) Bag length from the center of the head rope to the terminal end of the bunt not to exceed 35 feet;

(F) Breast rope not to exceed five feet;

(G) Bridle rope from rear of doors to foot rope and head rope not to exceed eight feet.

(3) No more than one trawl net at a time may be fished from any fishing vessel to take smelt.

(4) In the Columbia River upstream from Zone 1, it is unlawful to take smelt from a trawl vessel which exceeds 32 feet in overall length.

(5) For the purposes of this rule, Zone 1 is the area downstream of a straight line from a beacon light at Grays Point on the Washington bank to the flashing 4-second red buoy "44" off the easterly tip of Tongue Point on the Oregon Bank.

Stat. Auth.: ORS 183.325, 506.109, 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04

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**Adm. Order No.:** DFW 22-2004(Temp)

**Filed with Sec. of State:** 3-18-2004

**Certified to be Effective:** 3-18-04 thru 3-31-04

**Notice Publication Date:**

**Rules Amended:** 635-042-0145, 635-042-0160

**Subject:** Amend rules related to commercial fishing winter seasons in Youngs Bay and Blind Slough Select Areas.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-042-0145

### Youngs Bay Salmon Season

(1) 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).

(a) In the fishing period of March 20 to March 21, 2004, salmon, sturgeon, and shad may be taken for commercial purposes only in those waters of Youngs Bay extending upstream of the old Highway 101 Bridge (old Youngs Bay Bridge) to the upper boundary at the confluence of the Youngs and Klaskanine rivers.

(b) 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; 6 p.m. March 13 - 12 Noon March 14, 2004; 6 p.m. March 20 - 6 a.m. March 21, 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.

(b) 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 21, 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.

(c) 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 21, 2004.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & 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, cert. ef. 8-7-91, 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. 2-20-03 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; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04

## 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; March 6 - March 7, 2004 and March 13 - March 14, 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 14, 2004.

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(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 76-1998, 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; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04

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**Adm. Order No.:** DFW 23-2004(Temp)

**Filed with Sec. of State:** 3-22-2004

**Certified to be Effective:** 4-1-04 thru 7-31-04

**Notice Publication Date:**

**Rules Amended:** 635-018-0090

**Subject:** Amend rules to allow the harvest of hatchery spring chinook in the Deschutes River.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-018-0090**

**Inclusions and Modifications**

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Central 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 Deschutes River from the mouth at the I-84 bridge upstream to Sherars Falls is open to angling for trout, steelhead and adipose fin-clipped chinook salmon from April 1, 2004 to July 31, 2004.

(a) The bag limit is two adult adipose fin-clipped salmon per day and five adipose fin-clipped jack salmon per day. All nonadipose fin-clipped chinook salmon must be released unharmed.

(b) Catch limits and restrictions applying to trout and steelhead remain unchanged from those listed in the **2004 Oregon Sport Fishing Regulations** for Area 1 of the Deschutes River or as amended by other temporary or permanent administrative rule(s).

(c) It is *unlawful* to angle for steelhead or trout between Sherars Falls and the upper railroad trestle (three miles) after taking a daily bag limit of adult chinook salmon.

Stat. Auth.: ORS 496.138 & 496.146, 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp) f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; 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 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; 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 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-

02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04

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**Adm. Order No.:** DFW 24-2004

**Filed with Sec. of State:** 3-23-2004

**Certified to be Effective:** 3-23-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 635-006-0850, 635-006-0910

**Rules Repealed:** 635-006-0910(T)

**Subject:** Amend rules to require applicants for developmental fisheries permits for the hagfish fishery to submit a business plan at the time of application. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**635-006-0850**

**Developmental Fisheries Species List**

(1) The Developmental Fisheries species, permit and gear restrictions, and landing requirements for renewal of Category A permits are as follows:

(a) FISH:

(A) Pacific hagfish (*Eptatretus stouti*) fishery has a qualifying requirement of five landings. Annual renewal requirements are five landings of at least 1,000 pounds each or a total of 25,000 pounds. In addition, landings must be made in at least three different months. In 2004, hagfish permits are valid for 90 days from date of issue, unless five landings of at least 1,000 pounds each or a total of 25,000 pounds are made within 90 days from date of issue, in which case the permit is valid for the remainder of the year. There are 25 permits for harvest of which there are no trawl permits;

(B) Blue shark (*Prionace glauca*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 5000 pounds each landing or one landing consisting of at least 5000 pounds. There are 10 permits for harvest of which there are no high seas drift net permits and no large mesh gill net permits. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(C) Swordfish (*Xiphias gladius*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Permits are valid for and renewal requirements are calculated from February 1 through January 31 of the following year. There are 20 permits for harvest by floating longline and 10 permits for harvest by other gear. Specially adapted drift/gill net may be permitted. Experimental gear permits may be required. Five single-delivery permits will be issued to those who applied by annual filing date, but did not receive a Developmental Fishery Permit. Gill net gear must conform to California gear restrictions;

(D) Northern anchovy (*Engraulis mordax*) and Pacific herring (*Clupea pallasii*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 15 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(E) Pacific sardine (*Sardinops sagax*) fishery has a qualifying requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Annual renewal requirements are five landings totaling at least 80,000 pounds or landings totaling at least \$25,000, based on ex-vessel price. There are 20 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. Experimental gear permits may be required. This rule incorporates, by reference, the sardine management measures for 2004 included in the Pacific Council List of Decisions for the November 2003 PFMC meeting, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660**, as amended to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Pacific Council decisions and the Federal Regulations may be obtained by contacting the Fish Division at (503) 947-6200;

(b) INVERTEBRATES:

(A) Box crab (*Lopholithodes foraminatus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 25 permits for harvest with pots only;

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(B) Grooved tanner crab (*Chionoecetes tanneri*), Oregon hair crab (*Paralomis multispina*) and scarlet king crab (*Lithodes couesi*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest with pots only;

(C) Spot prawn (*Pandalus platyceros*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing or one landing consisting of at least 1000 pounds. After 2002, new permits for trawl gear will not be issued and trawl permits may be renewed as pot permits. After 2003, permits will be issued for pot gear only; no new permits will be issued until the number of permits issued is below 10, after which there may continue to be 10 permits. Permits are area specific. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(D) Coonstripe shrimp (*Pandalus danae*) and sidestripe shrimp (*Pandalopsis dispar*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing. There are 10 permits for harvest by pot gear;

(E) Bay clams including cockle clams (*Clinocardium nuttallii*), butter clams (*Saxidomus giganteus*), gaper clams (*Tresus capax*, *nuttallii*), native littleneck clams (*Protothaca staminea*), and softshell clams (*Mya arenaria*) fishery has no qualifying and annual renewal requirements for intertidal hand harvest, an unlimited number of permits, and a \$25 permit fee. There are 11 permits (individual or vessel) for subtidal dive harvest, effective March 18, 1997-December 31, 1997, and 10 permits thereafter for statewide harvest and five permits for harvest south of Heceta Head. Qualifying requirements are either five landings consisting of at least 200 pounds each landing or an annual total of 2500 pounds for one calendar year during the qualifying period of January 1, 1990 through October 16, 1995. Annual renewal requirements are either five landings consisting of at least 100 pounds each landing or an annual total of 2500 pounds. An incidental catch of one gaper clam per eight butter clams, or 25 pounds of gaper clams per 100 pounds of butter clams, whichever allows the greater gaper clam incidental catch, is allowed during the closed season notwithstanding OAR 635-005-0020;

(F) Giant octopus (*Octopus dofleini*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest using octopus pots only;

(G) Marine snails (various species) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for subtidal harvest only;

(H) Flat abalone (*Haliotis walallensis*) fishery has a single permit authorized, a 3,000 pound annual quota limit, an annual renewal requirement of 10 landings of at least 20 pounds each landing, a 4-1/2 inch minimum size, year-round season, taken from nonintertidal areas with an abalone iron, and such additional permit conditions as the Director deems appropriate as required by OAR 635-006-870 and 635-006-0880.

(2) The Developmental Fisheries Species List, Category "B," is as follows:

(a) FISH:

- (A) Salmon shark (*Lamna ditropis*);
- (B) Carp (*Cyprinus carpio*);
- (C) Black hagfish (*Eptatretus deani*);
- (D) Yellow perch (*Perca flavescens*);
- (E) Eelpouts (family Zoarcidae);
- (F) Brown bullhead (*Ameiurus nebulosus*);
- (G) Skiffish (*Erilepis zonifer*);
- (H) Northern squawfish (*Ptychocheilus oregonensis*);
- (I) Pacific saury (*Cololabis saira*);
- (J) Pacific sandfish (*Trichodon trichodon*);
- (K) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*);
- (L) Pacific pomfret (*Brama japonica*);
- (M) Slender sole (*Eopsetta exilis*).

(b) INVERTEBRATES:

- (A) Pacific sand crab (*Emerita analoga*);
- (B) Freshwater mussels (families Margaritifera, Anodonta, Gonidea, and Corbicula);
- (C) Ocean cockle clams (*Clinocardium nuttallii*);
- (D) California market squid (*Loligo opalescens*) and other squid (several species);

(E) Fragile urchin (*Alloctrotus fragilis*);

(F) Sea cucumber (*Parastichopus spp.*).

(3) The Developmental Fisheries Species List, Category "C," is as follows:

(a) FISH:

- (A) Spiny dogfish (*Squalus acanthias*);
  - (B) Soupfin shark (*Galeorhinus zyopterus*);
  - (C) Skate (family Rajidae);
  - (D) American shad (*Alosa sapidissima*);
  - (E) Pacific cod (*Gadus macrocephalus*);
  - (F) Pacific flatnose (*Antimora microlepis*);
  - (G) Pacific grenadier (*Coryphaenoides acrolepis*);
  - (H) Jack mackerel (*Trachurus symmetricus*);
  - (I) Chub (Pacific) mackerel (*Scomber japonicus*);
  - (J) Greenstriped rockfish (*Sebastes elongatus*);
  - (K) Redstripe rockfish (*Sebastes proriger*);
  - (L) Shortbelly rockfish (*Sebastes jordani*);
  - (M) Sharpchin rockfish (*Sebastes zacentrus*);
  - (N) Splitnose rockfish (*Sebastes diploproa*);
  - (O) Pacific sanddab (*Citharichthys sordidus*);
  - (P) Butter sole (*Pleuronectes isolepis*);
  - (Q) English sole (*Pleuronectes vetulus*);
  - (R) Rex sole (*Errex zechirus*);
  - (S) Rock sole (*Pleuronectes bilineatus*);
  - (T) Sand sole (*Psettichthys melanostictus*);
  - (U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);
  - (V) Spotted ratfish (*Hydrolagus collieri*);
  - (W) Wolf-eel (*Anarrhichthys ocellatus*);
  - (X) Walleye pollock (*Theragra chalcogramma*).
- (L) Chub (Pacific) mackerel (*Scomber japonicus*);

(b) INVERTEBRATES:

- (A) Red rock crab (*Cancer productus*);
- (B) Purple sea urchins (*Strongylocentrotus purpuratus*);
- (C) Crayfish (*Pacifastacus leniusculus*).

Stat. Auth.: ORS 506.109 & 506.119

Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460 & 506.465

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 87-1995, f. 11-17-95, cert. ef. 11-20-95; FWC 1-1997, f. & cert. ef. 1-16-97; FWC 18-1997(Temp), f. & cert. ef. 3-18-97; FWC 34-1997, f. 6-11-97, cert. ef. 6-15-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 17-1998(Temp), f. & cert. ef. 3-6-98 thru 7-31-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 85-1999, f. & cert. ef. 11-1-99, DFW 89-1999, f. & cert. ef. 11-15-99; DFW 76-2000, f. 11-21-00, cert. ef. 1-1-01; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 41-2003(Temp), f. & cert. ef. 5-12-03 thru 6-21-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 24-2004, f. & cert. ef. 3-23-04

## 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.

(e) In 2004, applications for new hagfish permits must include a business plan. The plan format is provided by ODFW. The business plan may include, but is not limited to, a description of vessels and gear currently owned or expected to purchase, identification of the market, and a letter of intent to buy from a processor.

(2) Number of permits allowed:



# ADMINISTRATIVE RULES

(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.

(d) In 2004, a subcommittee of the Developmental Fishery Board shall evaluate the business plans submitted by hagfish fishery applicants to determine if the applicant is likely to actively prosecute the fishery. If more applicants submit acceptable business plans than there are available new permits, then the available permits will be distributed as otherwise specified in subsections (3)(a) and (b) of this rule.

(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.

(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 & 506.119

Stats. Implemented: ORS 506.129 & 506.450

Hist.: FWC 85-1994, f. 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; DFW 24-2004, f. & cert. ef. 3-23-04

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**Adm. Order No.:** DFW 25-2004(Temp)

**Filed with Sec. of State:** 3-22-2004

**Certified to be Effective:** 3-23-04 thru 7-31-04

**Notice Publication Date:**

**Rules Amended:** 635-042-0022

**Subject:** Amend rules to establish spring chinook tangle net commercial fishing in the Columbia River mainstem.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**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).

# ADMINISTRATIVE RULES

(4) Individual fishing periods could 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) A maximum of three white sturgeon may be possessed or sold by each participating vessel during the open periods described in 3(b), 3(c), 3(d), 3(e), 3(f), 3(g) and 4(b).

(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.

(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.

(a) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon, sturgeon and shad may be taken for commercial purposes by gill net during the following open periods:

- (b) 5 a.m. March 2, 2004 to 9 p.m. March 2, 2004;
- (c) 3 p.m. March 4, 2004 to 7 a.m. March 5, 2004;
- (d) 5 a.m. March 9, 2004 to 5 a.m. March 10, 2004;
- (e) 10 a.m. March 11, 2004 to 10 a.m. March 12, 2004.
- (f) 3 p.m. March 15, 2004 to 6 a.m. March 16, 2004.
- (g) 6 p.m. March 18, 2004 to 9 a.m. March 19, 2004

(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.

(a) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon, sturgeon and shad may be taken for commercial purposes by tangle net during the following open period:

- (b) 9 p.m. March 23 to 5 a.m. March 24, 2004.

(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; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. 3-22-04, cert. ef. 3-23-04 thru 7-31-04

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**Adm. Order No.:** DFW 26-2004(Temp)

**Filed with Sec. of State:** 3-25-2004

**Certified to be Effective:** 3-25-04 thru 7-31-04

**Notice Publication Date:**

**Rules Amended:** 635-042-0022

## ADMINISTRATIVE RULES

**Subject:** Amend rules to extend the spring chinook tangle net commercial fishing season in the Columbia River mainstem.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**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 could 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) A maximum of three white sturgeon may be possessed or sold by each participating vessel during the open periods described in 3(b), 3(c), 3(d), 3(e), 3(f), 3(g), 4(b), and 4(c).

(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.

(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.

(a) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon, sturgeon and shad may be taken for commercial purposes by gill net during the following open periods:

- (b) 5 a.m. March 2, 2004 to 9 p.m. March 2, 2004;
- (c) 3 p.m. March 4, 2004 to 7 a.m. March 5, 2004;
- (d) 5 a.m. March 9, 2004 to 5 a.m. March 10, 2004;
- (e) 10 a.m. March 11, 2004 to 10 a.m. March 12, 2004.
- (f) 3 p.m. March 15, 2004 to 6 a.m. March 16, 2004.
- (g) 6 p.m. March 18, 2004 to 9 a.m. March 19, 2004

(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.

(a) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon, sturgeon and shad may be taken for commercial purposes by tangle net during the following open period:

- (b) 9 p.m. March 23 to 5 a.m. March 24, 2004.
- (c) 9 p.m. March 25 to 5 a.m. March 26, 2004.

(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 submersed 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

# ADMINISTRATIVE RULES

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04

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**Adm. Order No.:** DFW 27-2004(Temp)

**Filed with Sec. of State:** 3-29-2004

**Certified to be Effective:** 3-29-04 thru 7-31-04

**Notice Publication Date:**

**Rules Amended:** 635-042-0022

**Subject:** Amend rules to extend the spring chinook tangle net commercial fishing season and remove the limit restriction on white sturgeon catch in the Columbia River mainstem.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 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 could 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) A maximum of three white sturgeon may be possessed or sold by each participating vessel during the open periods described in 3(b), 3(c), 3(d), 3(e), 3(f), 3(g), 4(b), and 4(c).

(c) Effective March 29, 2004, there is no limit on the number of white sturgeon that may be possessed or sold by each participating vessel.

(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.

(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.

(a) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon, sturgeon and shad may be taken for commercial purposes by gill net during the following open periods:

- (b) 5 a.m. March 2, 2004 to 9 p.m. March 2, 2004;
- (c) 3 p.m. March 4, 2004 to 7 a.m. March 5, 2004;
- (d) 5 a.m. March 9, 2004 to 5 a.m. March 10, 2004;
- (e) 10 a.m. March 11, 2004 to 10 a.m. March 12, 2004.
- (f) 3 p.m. March 15, 2004 to 6 a.m. March 16, 2004.
- (g) 6 p.m. March 18, 2004 to 9 a.m. March 19, 2004

(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.

(a) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon, sturgeon and shad may be taken for commercial purposes by tangle net during the following open period:

- (b) 9 p.m. March 23 to 5 a.m. March 24, 2004.
- (c) 9 p.m. March 25 to 5 a.m. March 26, 2004.
- (d) 7 p.m. March 29 to 5 a.m. March 30, 2004.

(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.

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(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

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04

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**Adm. Order No.:** DFW 28-2004(Temp)

**Filed with Sec. of State:** 4-8-2004

**Certified to be Effective:** 4-12-04 thru 4-15-04

**Notice Publication Date:**

**Rules Amended:** 635-042-0145, 635-042-0160

**Subject:** Amend rules related to commercial fishing winter seasons in Youngs Bay and Blind Slough Select Areas.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-042-0145

### Youngs Bay Salmon Season

(1) 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).

(a) In the fishing period of March 20 to March 21, 2004, and on April 12, 2004, salmon, sturgeon, and shad may be taken for commercial purposes only in those waters of Youngs Bay extending upstream of the old Highway 101 Bridge (old Youngs Bay Bridge) to the upper boundary at the confluence of the Youngs and Klaskanine rivers.

(b) 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;  
6 p.m. March 13 - 12 Noon March 14, 2004;  
6 p.m. March 20 - 6 a.m. March 21, 2004;  
8 p.m. to 12 Midnight April 12, 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;

(c) 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 21, 2004 and during the April 12, 2004 fishing period. 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.

(d) 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 21, 2004.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & 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; FWC 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 15-1999(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. 2-2-02 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; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04

## 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 9:00 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; March 6 - March 7, 2004; March 13 - March 14, 2004; March 20 - March 21, 2004 and April 12, 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) During the April 12, 2004 winter fishery, as identified in (1)(a)(A), the open fishing period is restricted to 8:00 p.m. to 12 Midnight (4 hours).

(c) 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 21, 2004.

(d) 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

# ADMINISTRATIVE RULES

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; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04

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**Adm. Order No.:** DFW 29-2004(Temp)

**Filed with Sec. of State:** 4-15-2004

**Certified to be Effective:** 4-22-04 thru 7-31-04

**Notice Publication Date:**

**Rules Amended:** 635-023-0125

**Subject:** Amend spring sport fishing rules to implement closures on the mainstem Columbia River.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

**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) The Columbia River from I-5 Bridge upstream to Bonneville Dam is closed to angling for salmon, steelhead and shad on Thursdays, Fridays and Saturdays, effective Thursday, 12:01 AM, April 22, 2004 through May 15, 2004.

(4) Effective March 10, 2004 through May 15, 2004, in the mainstem Columbia River upstream of the Rocky Point/Tongue Point line it is unlawful when fishing from vessels which are less than 30' in length, substantiated by Coast Guard documentation or Marine Board Registration, to totally remove from the water any salmon or steelhead required to be released.

(5) 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; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04

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

**Adm. Order No.:** CWP 4-2004

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 1-1-04

**Rules Adopted:** 413-130-0127

**Rules Amended:** 413-130-0125

**Rules Repealed:** 413-130-0125(T), 413-130-0127(T)

**Subject:** This Adoption Assistance rule (413-130-0127) is being adopted because HB 5030 authorized the Department to restore or partially restore reductions to Adoption Assistance (as well as other benefit programs) that were made by HB 5100 (2002) in February 2003. OAR 413-130-0125 is being changed to provide clarification to 413-130-0127.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

**413-130-0125**

**Budgetary Reductions of Adoption Assistance**

(1) In the event that legislative or executive branch actions impacting DHS' budget or expenditure authority makes it necessary for DHS to implement budget reductions to the Adoption Assistance Program, DHS shall notify all recipients of Adoption Assistance of the following:

(a) The reason for the reduction;

(b) The percentage or amount that Adoption Assistance will be reduced; and

(c) The effective date of the reduced Adoption Assistance payment.

(2) Reductions to Adoption Assistance payments pursuant to this rule shall be applied uniformly to all recipients of Adoption Assistance.

(3) Reductions to Adoption Assistance payments pursuant to this rule shall not be subject to negotiation between DHS and the adoptive family.

(4) Reductions to Adoption Assistance payments pursuant to this rule are not subject to a contested case hearing.

(5) Reductions to Adoption Assistance pursuant to this rule shall not constitute a change in circumstances warranting a change in the recipient's Adoption Assistance benefits.

(6) It is the intent of DHS to restore as much as possible any Adoption Assistance which has been reduced by operation of this rule. If additional funding becomes available to DHS to restore, in whole or in part, the reductions to Adoption Assistance payments required by this rule, DHS shall notify all recipients. If legislative or executive branch actions impacting DHS's budget or expenditure authority give DHS the ability and authority to restore, in whole or in part, Adoption Assistance that has been reduced by operation of this rule, DHS will notify all recipients who were affected by the corresponding reduction of Adoption Assistance of the percentage of or amount of the increase, and the effective date of the increase. Any payment increase under this rule shall will be applied uniformly to all recipients of Adoption Assistance who were affected by the corresponding reduction.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.330-418.340

Hist.: CWP 16-2003, f. 1-21-03, cert. ef. 2-1-03; CWP 38-2003(Temp), f. & cert. ef. 11-19-03 thru 5-17-04; CWP 4-2004, f. & cert. ef. 4-1-04

**413-130-0127**

**Adjustments to Adoption Assistance Benefits**

Effective November 1, 2003, adoption assistance benefits payable under an adoption assistance agreement in effect on October 31, 2003 are changed as follows:

(1) Monthly payments are increased by 8.108 percent.

(2) Except as provided in section (3) of this rule, nonrecurring payments and special payments are not changed.

(3) A special payment is increased by 8.108 percent if it was payable under an adoption assistance agreement that was in effect on January 31, 2003; was reduced on February 1, 2003; and remained in effect continuously through October 31, 2003.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 4-2004, f. & cert. ef. 4-1-04

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**Adm. Order No.:** CWP 5-2004

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 1-1-04

**Rules Amended:** 413-120-0100, 413-120-0105, 413-120-0115

**Rules Repealed:** 413-120-0115(T)

**Subject:** These Adoption Assistance rules are being changed provide clarification on documents required to finalize an adoption, to update the name of the Department and to correct formatting and punctuation.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

# ADMINISTRATIVE RULES

## 413-120-0100

### Purpose

These rules define the process for legalizing an adoptive placement for children in the permanent custody of the Department of Human Services (Department).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.529

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; CWP 5-2004, f. & cert. ef. 4-1-04

## 413-120-0105

### Definitions

(1) "Legalization" is the process of giving an adoptive placement legal validity.

(2) "Consent to the Adoption": The Consent to the Adoption documents that the adoptive parents have been investigated and approved by the Department and gives permission for the adoption.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.529

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 22-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 5-2004, f. & cert. ef. 4-1-04

## 413-120-0115

### Procedures

(1) When adoption assistance has been approved, and the adoptive parents decide to use a "qualified vendor" attorney, the Adoption Assistance staff send the family a Qualified Vendor Agreement and the Qualified Vendor Attorney List. The family and the attorney must sign the Qualified Vendor Agreement and return it to the central Adoptions Services Unit. Upon receipt of the adoption decree, the adoption assistance staff will prepare the request to reimburse the attorney in accordance with the Department's contract with the attorney.

(2) If the adoptive parents choose to use an attorney who is not on the Qualified Vendor Attorney List, the adoption assistance staff will send the adoptive parents a Non Vendor Agreement. The adoptive parents must sign the agreement and return it to the Adoption Services Unit. Upon receipt of the adoption decree, the adoption assistance staff will reimburse the adoptive parents at the same rate as for a vendor attorney. The adoptive parents are responsible for any additional charges billed by the attorney and are responsible to reimburse the attorney for those charges.

(3) Department employees may not recommend an attorney to serve as counsel for the prospective parents.

(4) When the central office Adoptions Services Unit has received the request for consent to the adoption and the vendor or non-vendor agreement, the adoption assistance is in place, and the Legal Assistance Specialist has given approval, the Adoptions Services Unit will prepare the consent to be signed by the Adoption Services Manager or another person designated by the Assistant Director for Children, Adults and Families. In addition to the Consent to the Adoption, the Department's Adoption Services Unit will provide the adoptive parents or their attorney with the following documents to be filed with the petition:

(a) A certified copy of the court orders or the original release and surrender documents which show that the Department has permanent custody of the child and the authority to consent to the child's adoption.

(b) ICWA correspondence, if applicable.

(c) Statement of verification that the birth parents and the petitioners have been advised of the voluntary adoption registry.

(d) Documentation regarding compliance with the Interstate Compact on Placement of Children, if applicable.

(e) A copy of a signed legally enforceable Post Adoption Communication Agreement, if available.

(f) Affidavits, if applicable.

(5) After receiving the documents listed in (4), the Department will send the Consent to Adopt to the attorney for the adoptive family. Within 30 calendar days of the date the Department sends the Consent to Adopt, the attorney must file the petition (unless a petition is not required under ORS 419.B529). After the central office Adoptions Services Unit receives a copy of the petition filed with the court, the Department will provide the court with the written court report waiving the 90-day waiting period.

(6) After the Department sends the Consent to Adopt to the attorney, the attorney prepares the petition if required and files it with the court, and the Department sends the written court report to the court, the attorney must, within 30 days following the court's receipt of the report to the court, prepare a decree and send it to the court or schedule an Adoption Ceremony.

(7) The court granting the adoption decree will provide the central office Adoption Services Unit with a copy of the adoption decree.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.307, 109.309, 109.316, 419B.529

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 7-1999, f. & cert. ef. 5-14-99; SOSCF 22-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 39-2003(Temp), f. & cert. ef. 11-25-03 thru 5-21-04; CWP 5-2004, f. & cert. ef. 4-1-04

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**Adm. Order No.:** CWP 6-2004

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 1-1-04

**Rules Amended:** 413-090-0160

**Rules Repealed:** 413-090-0160(T)

**Subject:** These Special Rate/Personal Care Payments rules are being changed to update the rate structure and implementation date due to 2003 legislative actions.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-090-0160

### Costs Reimbursable by DHS

(1) The agency will reimburse costs by the foster parent(s) for extraordinary services and supplies that are required on a daily, weekly, monthly or other continuing basis. The costs are separated into three areas: Costs which are reimbursable to the state under Title IV-E eligible federal guidelines, (CF 172A, Part A); costs paid with state general funds and TANF (CF 172A, Part B); Title XIX eligible federal guidelines, (CF 172A, Part C).

(2) Supervision costs above standard maintenance costs may be paid according to a combination of Title IV-E and TANF or Title XIX allowable costs.

(3) Supervision costs above standard maintenance costs include one or more of the following:

(a) Supervision Eligible for Title IV-E Funding (Part A - 172NPC). Supervision eligible for Title IV-E funding is only for behaviors or direct care needs that are beyond the normal requirements for a child of a similar age and the child does not have a documented diagnosis;

(b) Supervision Eligible for Title XIX (Part C - 172A). Supervision eligible for Title XIX is for behaviors or direct care needs that are beyond the normal requirements for a child of a similar age and the child has a documented diagnosis and an RN assessment and Care Plan has been completed;

(c) Relief Care is only for a child whose documented behavioral supervision needs exceed the normal requirements for a child of a similar age and additional supervision is necessary to the maintenance of the child in the home.

(4) The narrative for any supervision costs must:

(a) Document the behaviors and direct care and supervision needs the child has that are beyond the normal requirements for a child of a similar age;

(b) Describe the necessary interventions and services the foster parent(s) must provide for each special need, including expected outcome which, if not achieved, would require that the child would need placement in a higher level of care program;

(c) Describe the foster parents' skill and experience which enable them to provide appropriate care for the child's special needs and behaviors.

(5) Reimbursement rate structure effective November 1, 2003; A rate structure was established to provide rate parity for similar type activities and equitable rates for similar types of special needs of children. An exception to policy may be granted through documentation and approval (OAR 413-090-0200).

(a) Hourly Rate for Supervision \$4.50.

(b) Transportation Cost — Per Mile \$ .36.

(c) Laundry — Per Additional Load \$1.00.

(d) Relief Care — Hourly Rate \$4.50

(e) Program Educational Expenses Direct Cost Incurred — (Prior Approved).

(f) Diet Cost Direct Cost Incurred — (Prior Approved).

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

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E, Title XIX

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 19-1999, f. 9-15-99, cert. ef. 9-20-99; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 28-2003, f. & cert. ef. 7-31-03; CWP 35-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 6-2004, f. & cert. ef. 4-1-04

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**Adm. Order No.:** CWP 7-2004

**Filed with Sec. of State:** 4-1-2004

# ADMINISTRATIVE RULES

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 1-1-04

**Rules Amended:** 413-090-0010

**Rules Repealed:** 413-090-0010(T)

**Subject:** This Maintenance and Payment Treatment rule regarding foster care rates has been changed to Update the rate structure and implementation date due to 2003 legislative actions.

These rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-090-0010

### Payments — General Guidelines

#### (1) Family Foster Care:

(a) Payment by the Department to foster parents for a child's room, food, clothing, incidentals and cash allowance (known as the regular foster care rate) will be made on a monthly basis, or prorated for portions of a month, after the period during which care has been provided. It will include the day the child enters the home, but exclude the day the child leaves the home. Costs of special care or service in accordance with a written Department service plan may also be provided if essential for the child's well being and if specifically authorized by the Department. See the OAR 413-090-0100 through 0210 Special Rate Policy (CAF Policy I-E.5.1.2);

(b) Regular foster care rates are based upon the age of the child and the type of program services they are receiving; Family Foster Care, Family Shelter Care, Family Group Home. The rate structure is established by the Department subject to the availability of funds and are uniformly applied throughout the state. The current monthly reimbursed rates effective February 1, 2003;

#### (A) Monthly Family Foster Care Rates:

(i) Child's Age — 0-5 — 6-12 — 13-18

(ii) Room/Board/Other — \$ 325 — \$ 322 — \$383

(iii) Clothing Replacement — \$ 45 — \$ 51 — \$73

(iv) Personal Allowance — \$ 8 — \$ 20 — \$29

(v) **Total — \$ 378 — \$393 — \$485**

(B) **Family Shelter Care — \$20.23**

(C) **Foster Family Group Home — \$1,189.**

(c) Payments to foster parents certified by the agency shall be inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment and other legal process under the laws of this state.

(2) **Residential Treatment.** Payment by the Department to purchase of care providers will be made as stipulated in signed contracts.

#### (3) Payments Prohibited:

(a) Payment will not be made for two simultaneous 24 hour out-of-home care services, such as foster care, relative care, family group homes, or residential treatment at the same time;

(b) Neither payment nor utilization credit will be given for duplicate simultaneous contracted treatment services, such as day treatment and residential treatment;

(c) Payment by the Department will not be authorized for the care of children in a home or facility supported by public funds and maintained only as a secure facility under the jurisdiction of a juvenile court;

(d) Any exceptions to these rules must be approved in writing by the director, or if for a Target Planning Child, by the CAF Target Planning and Consultation Committee. Exceptions will be considered only when federal funds will not be claimed.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.470

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1999, f. & cert. ef. 3-5-99; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 27-2003, f. & cert. ef. 7-31-03; CWP 34-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 7-2004, f. & cert. ef. 4-1-04

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**Adm. Order No.:** CWP 8-2004

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 1-1-04

**Rules Adopted:** 413-070-0982

**Rules Amended:** 413-070-0900, 413-070-0905, 413-070-0915, 413-070-0917, 413-070-0920, 413-070-0925, 413-070-0930, 413-070-0935, 413-070-0937, 413-070-0940, 413-070-0945, 413-070-0950, 413-070-0955, 413-070-0960, 413-070-0965, 413-070-0970, 413-070-0980, 413-070-0981

**Rules Repealed:** 413-070-0915(T), 413-070-0935(T), 413-070-0937(T), 413-070-0980(T), 413-070-0981(T), 413-070-0982(T)

**Subject:** These Guardianship Assistance rules are being changed because Guardianship payment reductions effective February 1, 2003 were restored beginning November 1, 2003. The Department was initially authorized in July, 1999 by the Department of Health and Human Services (HHS), Administration for Children and Families, to operate a Guardianship Assistance demonstration project for three years. HHS has provided verbal approval of their granting an extension of the Guardianship project for an additional five years. Policy changes reflect that extension and the removal of all references to the Guardianship project ending in September, 2003. These rule changes also include the addition of an entitlement for guardians, recipients and applicants to request a fair hearing concerning disputes that may arise in the administration of the subsidized guardianship program. These rules are also being changed to reflect Senate Bill 70 of Oregon Laws 2003. These rules are also be changed to reflect new Department terminology and to correct formatting and punctuation.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-070-0900

### Purpose

(1) The State of Oregon, Department of Human Services (the Department) received federal approval in July, 1999 from the Department of Health and Human Services (HHS), Administration for Children and Families, to operate a Guardianship Assistance demonstration project pursuant to Section 1130 of the Social Security Act (the Act); Titles IV-E and IV-B of the Act; and Public Law 103-432. HHS reserves the right to withdraw the approval for Oregon to operate this project. Tribal participation is described below in OAR 413-070-0917. Under the Title IV-E waiver demonstration project, relatives and foster parents who are providing care for certain children meeting specific eligibility criteria and in the custody of the Department may have an opportunity to assume a complete parenting role by becoming the child's legal guardian. The Guardianship Assistance program, modeled after the Federal Adoption Assistance Program, creates another permanency option for children. Many caretakers making a permanent commitment to children in their care will benefit from the financial and medical assistance offered under the demonstration project.

(2) The purpose of these rules (OAR 413-070-0900 to 413-070-0982) is to set forth criteria used to determine eligibility for a subsidized guardianship as a permanency planning option for children in substitute care. Adoption is usually the preferred permanent plan when children cannot successfully be reunited with their parents, but this choice is not viable for all. The Department is expanding the choices for children and families to include the establishment of legal custody and guardianship for children for whom adoption does not best serve the permanency needs of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0905

### Definitions

For the purpose of these rules: "Guardianship Assistance" means financial or medical benefits to guardian families for costs associated with the needs of the child under their guardianship. Benefits may be in the form of cash or Medicaid coverage or nonrecurring legal costs in establishing the guardianship or Title XIX Personal Care payments.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0915

### Eligibility

(1) Under the Title IV-E waiver, federal terms and conditions, and state legislative approval, the Department operates a guardianship demonstration project providing guardianship assistance to eligible children. Children in foster care for whom the Department is making a IV-E foster care maintenance payment (including children in tribal custody) may participate in the project. Children in foster care are ineligible to participate in the project when responsibility for their substitute care placement or Title



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XIX maintenance payment rests with the county mental health or developmental disability system.

(2) Under the terms and conditions of the Guardianship Assistance demonstration project, children and their caretakers must meet the State-established criteria to participate in the demonstration.

(3) There is no limit to the number of eligible children who may participate in the Guardianship Assistance demonstration project. However, the project is time-limited. Should federal funding end, children found eligible for and receiving Guardianship Assistance prior to the termination of the demonstration project will continue to be eligible for the program, which will be funded without federal participation if necessary.

(4) The Department offers this permanency option only if other permanency goals, including a return to the parents or adoption, are determined not to be in the child's best interests. The Department represents the guardianship option to families as one that will normalize and stabilize family life, empower care givers in assuming the complete parenting role, and minimize the level of state intrusion into their lives. For example, because the children will no longer be committed to the custody of the Department, the care givers will no longer be required to get permission from the Department local office to take the child out-of-state for any reason.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0917

### Eligibility for Tribal Participation

A child eligible for benefits under Title IV-E who is in the legal care and custody of a tribe having a Title IV-E agreement with the Department may be considered for participation in the Title IV-E Guardianship Assistance demonstration project. The following policies apply to tribal children:

(1) A tribal child of any age in the legal care and custody of the tribe in a related or unrelated certified foster home may be considered for participation in the Guardianship Assistance demonstration project.

(2) A foster home certified by the tribe that meets tribal standards for a licensed foster home is considered to meet the Department's licensing requirements.

(3) The tribe must make a separate visit to the home to conduct a specialized guardianship study of the Department's design to assess whether continual placement with the current care giver as the child's legal guardian is in the best interests of the child and meets the child's needs for safety and permanency.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0920

### Policy

The Department will determine the child's eligibility for Title IV-E foster care maintenance payments commencing the first of the month prior to the month in which the prospective guardian signs the application for guardianship assistance through the date the application was signed. The Department or a participating tribe may consider a legal guardianship as a permanent plan for a child provided the following conditions are met:

(1) The child has been in the Department's or the participating tribe's legal custody for more than twelve months. The Department will waive this requirement in certain situations, when a written justification meeting the requirements of OAR 413-110-0330 is prepared by the Department's local office or by the tribe. The justification for an exception must be reviewed and approved by the Department local Branch Permanency/Adoption Committee or tribal committee and the Department local Child Welfare Program Manager or tribal manager. Final approval to waive this requirement must be obtained from the Department's Adoption Services Manager or the manager's designee.

(2) The child is in foster care and receiving a Title IV-E foster care payment or the child is in foster care and is:

(a) A child temporarily ineligible for benefits under Title IV-E because of the receipt of a lump-sum benefit. The child may be eligible for assisted guardianship once the lump sum is expended;

(b) A child for whom Title IV-E payments are being made while an SSI application is pending; or

(c) A child eligible for Title IV-E foster care payments whose SSI has been terminated.

(3) The child has a stable and positive relationship with a prospective guardian and has lived for at least six months in the home of the prospective guardian. The Department's Adoption Services Manager may waive the six-month placement requirement for sibling groups if at least one sibling meets all other eligibility criteria for subsidized guardianship.

(4) The prospective guardian is an approved certified relative or provider or an approved certified foster parent who meets the certification requirements in OAR 413-100-0040.

(5) The child's prospective guardian is a relative or, if the prospective guardian is not a relative, the child has reached the age of 12. The Department will waive the age requirement for:

(a) The members of a sibling group placed with a non-relative if at least one sibling is 12 years of age or older and meets all other subsidized guardianship criteria.

(b) Children of any age in the legal care and custody of the Confederated Tribes of the Warm Springs Reservation, Confederated Tribes of Grande Ronde, Confederated Tribes of Siletz Indians, or the Coquille Indian Tribe; these tribes have a Title IV-E intergovernmental agreement with the Department.

(c) ICWA-identified children in the care and custody of the Department if the tribe supports and approves the plan of guardianship with the current caretaker.

(6) The child cannot safely return home. This requirement is met if reunification with the child's parents is not possible and the Department has determined through a Branch Permanency/Adoption Committee or Council review that adoption is not an appropriate plan (see OAR 413-110-0300 to 413-110-0360 and 413-110-0200 to 413-110-0252).

(7) The Department and the prospective guardian agree that the child and the prospective guardian can maintain a stable relationship and function effectively without Department supervision.

(8) A Department committee has formally assessed the placement and has found that continuation of the placement is in the child's best interests because the placement supports the safety, permanency, and well-being of the child.

(9) The child has no ongoing care or financial needs beyond basic maintenance and does not require the services of a case manager; the child has needs, but they do not require continued agency funding (for instance needs covered by insurance); or the child has needs that can be met through the guardian's use of community resources and the guardian has agreed to access or continue to use those services.

(10)(a) The parents or other persons legally recognized and identified as having a parental relationship with the child have provided written consent to the establishment of a guardianship;

(b) The Department:

(A) Has obtained a relinquishment or termination of parental rights;

(B) Has provided notice to the legally recognized non-consenting parents of the permanency plan or guardianship;

(C) Has conducted a reasonable and prudent search to locate and notify the legally recognized parents; or

(D) Has obtained a death certificate.

(11) A court order terminates the order for Department or tribal care, custody, and supervision in the guardianship order.

(12) A court sets aside or modifies an order of permanent commitment to the Department, thereby relieving the Department of its responsibility for the child, including the case in which a birth parent has voluntarily relinquished custody so that guardianship may be granted to another individual.

(13) The child has legal resident status, or is an immigrant or citizen of the United States, and is under the care of a relative caretaker who is residing in this county legally.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0925

### Guardian Family Requirements

In order for the Department to approve a potential guardian family for Guardianship Assistance, the family must:

(1) Include a certified foster parent who is providing care to a child being considered for participation in the demonstration project. The foster parent must have a strong commitment to the child, be a safe and suitable placement, and meet agency standards for ongoing care of the child as determined by a family study or specialized guardianship assessment.

(2) Include a foster parent or relative care giver who has demonstrated the commitment and ability necessary to provide a safe, permanent home

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for the child for at least the past six months as verified through a guardian-ship assessment.

(3) Require no significant ongoing case-work services at the time the guardianship is established and demonstrate an ability to safeguard the welfare of the child, including protection from all persons and situations that brought the child into care.

(4) Have a means of financial support and connections to community resources.

(5) Agree to comply with the requirements of the Child Support Program, for instance by:

(a) Submitting an application for child support services in connection with each of the child's parents.

(b) Upon obtaining the right to receive child support, assigning to the Department the right to receive:

(A) Current support payments;

(B) All support payments that accrue before or after the child is placed with the guardian; and

(C) All support payments that are required by a subsequent order of child support.

(c) Cooperating with the Division of Child Support and the Department as required by the rules of the Child Support Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0930

### Guardianship Assistance Payments and Medical Coverage

(1) The Guardianship Assistance rate cannot exceed the sum of the child's most recent monthly basic foster care rate and Title XIX personal care rate minus any regular monthly benefit other than child support payments made on behalf of the child. A child residing outside Oregon may receive a payment based on the out-of-state basic foster-care rate.

(2) The child's eligibility for Title XIX personal care payments and services continues while the child remains eligible, but the amount of the personal care payment is subject to reduction if the need for hours of personal care has decreased.

(3) The Department will not authorize a special one-time payment or a monthly special care rate other than the Title XIX personal-care payment.

(4) The guardianship assistance payment is established and paid as follows:

(a) The Department considers all sources of income, except child support payments, that are available to the child when determining the monthly assistance rate.

(b) The guardian must become payee for any benefits the child receives other than child support payments, except that the guardian may assign to the Department benefits received irregularly by the guardian to avoid adjustments in the Guardianship Assistance benefits.

(c) The guardianship assistance payment is calculated by taking the difference between the child's benefit income, which does not include child support payments, and the most recent payment for foster care and personal care payment. For example, if the child receives Social Security benefits, that income is deducted from the total standard basic rate and personal care rate when determining the amount of the guardianship assistance payment.

(d) The Guardianship Assistance monthly benefit is contingent upon the guardian's compliance with the requirement to cooperate with the Division of Child Support and in doing what it or the Department deems necessary with respect to child support enforcement services. The Department may terminate or suspend benefits effective the date the Department determines the guardian has failed to comply.

(5) An eligible child participating in this waiver demonstration receives a full range of services under the Medicaid program, which includes health care services and mental health care services. A child who moves out-of-state is entitled to continue to receive Medicaid services from the Department.

(6) The effective date of services is the date all parties have signed the guardianship assistance agreement or the date of the court order of guardianship, whichever is later. It is expected that a court order will not be obtained before the case is approved by the Department's central office for Guardianship Assistance.

(7) If a child receiving guardianship assistance benefits is placed in substitute care, the Department will evaluate the change in circumstances and will adjust the guardianship assistance benefits if appropriate. If the family is involved in the child's treatment, and the plan is for the child to return home, the family may ask to have the guardianship assistance benefits suspended, continued, or adjusted to reflect current expenses. If the

child returns to the care of the guardian, the Department reviews the guardianship assistance rates.

(8) A guardianship assistance payment to a legal guardian who was a Department-certified foster parent for the child prior to becoming a court-designated guardian is inalienable, may not be assigned or transferred, and is exempt from execution, levy, attachment, garnishment, and other legal process under the laws of Oregon.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0935

### The Agreement

(1) Before a family may receive guardianship assistance benefits, there must be a written guardianship assistance agreement between the Department and the guardian for the financial support of the child in question. The agreement must:

(a) Include the consent of the guardian.

(b) List the monthly benefit the Department is offering.

(c) Include the guardian's consent to and acceptance of the monthly cash benefit the Department is offering.

(d) Include the guardian's understanding that the benefit may not be greater than the basic foster care rate and personal care payment last paid while the child was in foster care; that no retroactive basic rate payment increase may be authorized; and that an increase in assistance payments is effective the first day of the month in which the request for benefits is made.

(e) Include a statement that the guardian understands that the benefit may be adjusted on an annual basis based upon an agreement between the agency and the guardian.

(f) Include a provision for a reduction to the guardian assistance payment in the event a legislative or executive branch action affecting the Department's budget or expenditure authority makes it necessary for the Department to implement budget reductions to the Guardian Assistance Program.

(g) Include the guardian's understanding that the guardian is required to submit an application for child support enforcement services from each of the child's parents.

(h) Include a statement that the guardian understands that the guardian, upon acquiring the right to receive child support, is required to assign to the Department the right to receive:

(A) Current support payments;

(B) Support payments that accrue before or after the child was placed with the guardian; and

(C) Support payments that are imposed by a subsequent order of child support.

(i) Include a statement that the guardian understands that the guardian is required to cooperate with the Division of Child Support and the Department as required by the rules of the Child Support Program.

(j) Include a statement that the guardian understands that the basic guardianship assistance monthly payment is contingent upon the guardian's cooperation with the requirements of the Child Support Program.

(2) The agreement also provides that each child for whom the Department is providing a benefit remains eligible for medical assistance when a guardianship is established.

(3) The Department maintains the written agreement between the Department and the guardian according to the Department's policy in effect at the time the guardianship is established.

(4) The Department reviews each guardianship agreement annually.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0937

### Court Orders

(1) At the guardianship hearing the case worker must ask the court to issue a guardianship order. The caretaker is ineligible for foster care payments once guardianship is effective and the Department's custody is terminated.

(2) Guardianship Assistance may be approved whether the order of guardianship is permanent or temporary and whether it is ordered by the juvenile court or probate court.

# ADMINISTRATIVE RULES

(3) The Department will not approve guardianship assistance if the court establishes guardianship and orders the Department to continue supervision of the child or guardian.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0940

### Title IV-E Guardianship Assistance Eligibility

(1) The Department administers the Guardianship Assistance program in order to provide continued financial support for children placed with financially needy appointed guardians.

(2) The guardianship appointment, monthly subsidy, and services continue without court involvement. The Department terminates or suspends, as appropriate, guardianship assistance payments on the day one of the following conditions occurs:

- (a) The child reaches age 18 or is emancipated, whichever comes first.
- (b) Child custody or guardianship is awarded to another individual.
- (c) The child dies.
- (d) The child marries.
- (e) The guardian dies or terminates the guardianship.
- (f) The child is adopted.
- (g) The child is placed in substitute care.

(3) The Department may terminate or suspend, as appropriate, guardianship assistance payment if:

- (a) The child is incarcerated for more than 30 days;
- (b) The child is out of the home for more than a 30-day period or is no longer living in the home;
- (c) The guardian is no longer legally responsible for the financial support of the child or the child is no longer receiving financial support from the guardian; or

(d) The annual report required by OAR 413-070-0945 is not filed with the Department within 30 days of the anniversary date of the court's appointment of the guardians.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0945

### Annual Reviews of Eligibility and Reports to the Court

(1) The Department must review a child's eligibility for Guardianship Assistance on an annual basis. In connection with the review, the guardian must file a written report with the court within 30 days after each anniversary of the court appointment of guardianship and must submit a copy of the report to the Department's central office Adoption Services Unit within 30 days after each anniversary date of the court's appointment of guardianship.

(2) The Department holds the guardianship assistance check if the guardian does not submit to the Department the report required by section (1) of this rule.

(3) The Department assesses children receiving Guardianship Assistance payments for personal care annually in the local office. The assessment is conducted by a registered nurse. Personal care assessments are not conducted more frequently than annually except under unusual circumstances. Upon receiving a request from the central office Adoption Services Unit, the registered nurse who provides the personal care services must complete and submit to the central office Adoption Services Unit an assessment of the child's current personal care needs.

(4) The basic Guardianship Assistance rate does not automatically increase. A guardian may request an increase in the child's subsidy up to the current rate of pay for the child's age, or up to the current rate of pay given cost of living increases or other legislatively approved increases for the basic foster care. A retroactive basic rate increase may not be authorized for a period ending prior to the first day of the month in which the request is made.

(5) The Department may adjust the Guardianship Assistance benefit when income used to calculate the basic Guardianship Assistance monthly payment changes.

(6) A review of the child's eligibility is not required for 12 months after the guardianship assistance application is signed, and during this time period it is not necessary to confirm that the child continues to be deprived of parental support as long as the child meets all other eligibility requirements to receive Guardianship Assistance.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 19-2003(Temp), f. & cert. ef. 1-23-03 thru 6-20-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0950

### Eligibility Retention

A child eligible for guardianship assistance may remain eligible, if removed from the guardianship, according to the following provisions:

(1) If a child eligible for guardianship assistance is removed from the guardianship placement and placed in foster care, the Department reviews continued eligibility for Title IV-E foster care based on the child's deprivation of parental support and the child's financial circumstances. The guardian's income is not considered during this review, nor is the guardian obligated to pay child support upon the child's return to substitute care. Eligibility for Title IV-E benefits may be re-established based on the child's original removal from the parental or relative home if the child continues to be deprived of parental support; the child meets personal financial eligibility criteria; and all court-related findings related to an initial removal are met.

(2) A child previously determined eligible for Guardianship Assistance who subsequently is placed in foster care but is then removed from foster care remains eligible for Guardianship Assistance without regard to whether the child is deprived of parental support at the time of child's return to the guardian's care and without regard to the child's eligibility status while in foster care.

(3) A child moving from Guardianship Assistance to adoption remains eligible for Title IV-E adoption assistance.

(4) The Department does not re-establish the dependency of a child placed into guardianship under this demonstration project unless the Department determines there is cause for removal from the guardian's home due to abuse or neglect or unless the Department would otherwise re-establish dependency for reasons unrelated to the expiration of the waiver or the termination of this demonstration, such as a change in the care giver's circumstances that leaves the care giver unable to care for the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0955

### Guardian Responsibilities for Agency Notification

The guardian of a child receiving Guardianship Assistance benefits must notify the Department central office responsible for guardianship assistance or adoption assistance if:

(1) A change in circumstances indicates that there is no longer a need for Guardianship Assistance.

(2) The guardian has a change of address.

(3) The guardian is planning to move out-of-state.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0960

### Vendor Attorney and Legal Payments

(1) The Department pays for some costs incurred in the establishment of a court-appointed guardian of a child (see OAR 413-090-0500 to 413-090-0550, "Payments for Providing Direct Client Legal Services").

(2) The local Department office may authorize payment for reimbursement of or payment for the cost to publish notice of the agency's intent to establish guardianship for absent parents.

(3) The local Department office may not authorize payment for legal services provided in connection with a contested case.

Stat. Auth.: ORS 418.005

Stats. Implemented: Title IV-E, Title IV-B, PL 103-432

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0965

### Selection Criteria

(1) The Department does not impose a means test for prospective guardians with respect to Guardianship Assistance benefits or for the selection of a guardian.

(2) Participation by a family in the demonstration is not mandatory.

# ADMINISTRATIVE RULES

(3) In the demonstration, members of a sibling group are placed together unless the local Department office explicitly determines that it is not in the best interests of the children to be placed together.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0970

### Guardianship Social Services and Supports

(1) The Department provides care takers a range of services before a guardianship is established. The Department provides an orientation to the family to assure that all family members understand the benefits and responsibilities of all participants in the guardianship demonstration project. The orientation may include biological and legal parents when possible, particularly when the intra- and inter-familial tensions between the birth parent and care givers affect the child's and family's well-being.

(2) Guardians have the same access to local Department services after the guardianship has been established as do adoptive parents, including access to the Oregon Post Adoption Resource Center, or other contracted resource center, and crisis intervention services.

(3) Upon the establishment of a guardianship, the caseworker must have an exit conference with the guardian family and the child and must ensure the guardian family has phone numbers to call for services, if needed. The caseworker must advise the guardian family to call Intake Screening to request services in the county in which they reside. The case worker must explain that requesting services does not place the guardianship in jeopardy. In the closing casework narrative, the caseworker must document that the family has been informed of their rights and responsibilities and their right to access to post-guardianship services.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0980

### Budgetary Reductions of Guardianship Assistance

(1) If a legislative or executive branch makes it necessary for the Department to reduce funding for the Guardianship Assistance Program, the Department notifies recipients of Guardianship Assistance of the following:

- (a) The reason for the reduction.
- (b) The percentage or amount that the Guardianship Assistance will be reduced.
- (c) The effective date of the reduced Guardianship Assistance payment.

(2) Reductions to Guardianship Assistance payments:

- (a) Are applied uniformly to all recipients of Guardianship Assistance.
- (b) Are not subject to negotiation between the Department and the guardian family.

(c) Do not constitute a change in circumstances warranting a change in the recipient's Guardianship Assistance benefits.

(3) It is the intent of the Department to restore as much as possible any reduction of Guardianship Assistance described in section (1) of this rule. In that event, the Department notifies recipients of Guardianship Assistance of the percentage of or amount of the increase and the effective date of the increase.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 19-2003(Temp), f. & cert. ef. 1-23-03 thru 6-20-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0981

### Rate Changes

(1) Effective February 1, 2003, the monthly payments payable under all Guardianship Assistance agreements in effect on January 31, 2003, are reduced as follows:

(a) A 7.5 percent reduction to the base rate of Guardianship Assistance payments is applied uniformly to all recipients of Guardianship Assistance. Oregon's new monthly basic rates are:

- (A) Child's Age — 0-5 — 6-12 — 13-18;
- (B) Base rate — \$350 — \$364 — \$449.

(b) The Personal Care Rate portion of Guardianship Assistance, which provides payment for additional support and supervision of the child, is reduced by ten percent to \$4.15 per hour.

(2) Effective November 1, 2003, the monthly payments payable under all Guardianship Assistance agreements in effect on October 31, 2003, are changed as follows:

(a) An 8.108 percent increase to the base rate of Guardianship Assistance payments is applied uniformly to all recipients of Guardianship Assistance. Oregon's new monthly basic rates are:

(A) For children under six years of age — \$378.

(B) For children who have reached six years of age but are under the age of 13 — \$393.

(C) For children who have reached 13 years of age but are under the age of 19 — \$485.

(b) A 2.444 percent increase to the Personal Care Rate portion of Guardianship Assistance, which provides payment for additional support and supervision of the eligible child. This rate is increased to \$4.61 per hour.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 20-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 36-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04

## 413-070-0982

### Fair Hearings

Guardians, recipients of guardianship assistance, and applicants for guardianship assistance are entitled to the opportunity for hearing as provided in ORS 183.310 to 183.550 concerning disputes that arise in the administration of the subsidized guardianship program.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04

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**Adm. Order No.:** CWP 9-2004

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 1-1-04

**Rules Amended:** 413-120-0150, 413-120-0155, 413-120-0165, 413-120-0175

**Rules Repealed:** 413-120-0175(T)

**Subject:** These Adoption Assistance rules are being updated and cite the documents required by the Department to send to the attorney for filing with the court for the adoption decree to be issued when an adoption petition has not been filed. These rules are also being changed to update Department terminology and correct formatting and punctuation.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-120-0150

### Definitions

(1) "Adoption Decree" means a decree which a court issues, pursuant to a petition for adoption, setting forth the facts of the case and ordering that from the date of the decree the child, to all legal intents and purpose, is the child of the petitioner.

(2) "Home Study" means a written evaluation of the prospective adoptive parent(s)' suitability to adopt and parent a child who may be placed for adoption. The home study is completed prior to the filing of a petition to adopt, in accordance with the Department's reporting format and standards, and states whether or not the prospective adoptive parents meet the minimum standards for adoptive homes as set forth in DHS CAF administrative rules, OAR 413-0120-0300 through 413-120-0310.

(3) "Legalization" means the process of giving an adoptive placement legal validity.

(4) "Petition for Adoption" means a petition, filed in circuit court by any person, for leave to adopt another person.

(5) "Placement Report" means a comprehensive written report and recommendation to the court prepared after the filing of a petition and after the child is placed for the purpose of adoption. The report is completed in accordance with the Department's prescribed reporting format and includes information about the child's background and placement; medical and genetic history; birth parent(s)' history; status and adjustment of the child in the adoptive home; and status and adjustment of the child's prospective adoptive parent(s).

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 419B.529  
Hist.: SOSCF 12-1999, f. & cert. ef. 7-6-99; SOSCF 48-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 9-2004, f. & cert. ef. 4-1-04

# ADMINISTRATIVE RULES

## 413-120-0155

### Conditions for Not Filing a Petition for Adoption

Pursuant to ORS 419B.529 and notwithstanding ORS 109.309, a prospective adoptive parent is not required to file a petition for adoption if all of the following conditions are in place:

(1) A juvenile court that is a circuit court has entered an order of permanent commitment of the child to DHS pursuant to ORS 419B.527, or the parent has signed and Department of Human Services Office of Safety and Permanency for Children has accepted a release and surrender to the Department and a certificate of irrevocability and waiver as provided in ORS 418.270 regarding the child.

(2) DHS has completed a home study that finds the prospective adoptive parent(s) suitable to adopt the child and consents to the adoption; and

(3) The adoptive parent(s) elect to legalize the adoption through the juvenile court.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 419B.529

Hist.: SOSCF 12-1999, f. & cert. ef. 7-6-99; SOSCF 48-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 9-2004, f. & cert. ef. 4-1-04

## 413-120-0165

### Requirements Prior to Proceeding to Legalization of the Adoption

When the supervision period is concluded and the Adoption Services Unit receives a request from the adoptive parent(s) or their legal representative to proceed with finalization of the adoption in the juvenile court, the Adoption Services Unit shall assure that the following requirements have been met or processes have been completed before proceeding with forwarding the matter to the juvenile court for legalization:

(1) The requirements of the Indian Child Welfare Act (ICWA) have been met (OAR 413-070-0100 through 0260).

(2) If applicable, the requirements of the Interstate Compact on Placement of Children have been met (OAR 413-040-0200 through 0330).

(3) The birth parent(s) and petitioners have been advised of the Voluntary Adoption Registry (OAR 413-130-0300 through 0360).

(4) The worker has assessed the child's need for openness in adoption, and if appropriate to the case, has provided information to the adoptive parent(s) and facilitated the development of a Post Adoption Communication Agreement (OAR 413-120-0610 through 0650); and

(5) The child has been referred to the Adoption Assistance Program; and if the child meets the criteria, a written Adoption Assistance Agreement has been completed, (OAR 413-130-0000 through 0110). If the adoptive parent(s) decline to participate in the Adoption Assistance Program, the worker must obtain a statement signed by the adoptive parent(s) which says that they have been fully informed of the availability of the Adoption Assistance Program and waive their rights to these benefits now and in the future.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 419B.529

Hist.: SOSCF 12-1999, f. & cert. ef. 7-6-99; SOSCF 48-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 9-2004, f. & cert. ef. 4-1-04

## 413-120-0175

### Court Filing Requirements

When the requirements of OAR 413-120-0165 have been met, the Adoption Services Unit will send the following to the attorney selected by the adoptive family, and the attorney must file with the court:

(1) A written consent to the adoption.

(2) A placement report requesting the juvenile court to enter a decree of adoption.

(3) Indian Child Welfare Act statement, ORS 109.309(10)(a-b).

(4) Statement regarding Voluntary Adoption Registry Notification, ORS 109.35.

(5) Documentation regarding compliance with the Interstate Compact on Placement of Children, Article IV, ORS 417.200.

(6) Adoption Disclosure Statement, form CF 960.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 419B.529

Hist.: SOSCF 12-1999, f. & cert. ef. 7-6-99; CWP 40-2003(Temp), f. & cert. ef. 11-25-03 thru 5-21-04; CWP 9-2004, f. & cert. ef. 4-1-04

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

Adm. Order No.: OMAP 22-2004

Filed with Sec. of State: 3-22-2004

Certified to be Effective: 3-22-04

Notice Publication Date: 10-1-03

Rules Amended: 410-120-1295

**Subject:** The General Rules program Administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for services provided to clients. Due to a statutory change made by HB 2511 section 16 and HB 3624 section 12, during the 2003 legislative session, 410-120-1295 is amended to reflect a change in how FCHPs will reimburse non-contracted hospital. Type A and Type B hospital reimbursement is not changed by this amendment.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-1295

### Non-Participating Provider

(1) For purposes of this rule, a provider enrolled with the Office of Medical Assistance Programs (OMAP) that does not have a contract with an OMAP-contracted managed care plan is referred to as a non-participating provider.

(2) For covered services that are subject to reimbursement from the managed care plan, a nonparticipating provider, other than a hospital governed by (3)(b) below, must accept from the OMAP-contracted managed care plan, as payment in full, the amount that the provider would be paid from OMAP if the client was fee-for-service.

(3) The OMAP-contracted FCHP that does not have a contract with a hospital, is required to reimburse, and hospitals are required to accept as payment in full the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727).

(b) All other non-participating hospitals, not designated as a rural access or Type A and Type B hospital will receive reimbursement based upon the following:

(A) Inpatient service rates are based upon the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(B) Outpatient service rates are based upon the capitation rates developed for the budget period, at the level of charges, multiplied by the statewide average cost to charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04

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Adm. Order No.: OMAP 23-2004(Temp)

Filed with Sec. of State: 3-23-2004

Certified to be Effective: 3-23-04 thru 8-15-04

Notice Publication Date:

Rules Amended: 410-120-1295, 410-141-0420

**Subject:** The General Rules and OHP administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. Rules 410-120-1295 and 410-141-0420 are temporarily amended to give an immediate clarification for hospitals and managed care organizations about how to apply the formula established under the new reimbursement methodology to claims for reimbursement for services to medical assistance clients.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-120-1295

### Non-Participating Provider

(1) For purposes of this rule, a provider enrolled with the Office of Medical Assistance Programs (OMAP) that does not have a contract with an OMAP-contracted managed care plan is referred to as a non-participating provider.

(2) For covered services that are subject to reimbursement from the managed care plan, a nonparticipating provider, other than a hospital governed by (3)(b) below, must accept from the OMAP-contracted managed care plan, as payment in full, the amount that the provider would be paid from OMAP if the client was fee-for-service.

(3) The OMAP-contracted FCHP that does not have a contract with a hospital, is required to reimburse, and hospitals are required to accept as payment in full the following reimbursement:

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(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727).

(b) All other non-participating hospitals, not designated as a rural access or Type A and Type B hospital, for dates of service on or after October 1, 2003 reimbursement will be based upon the following:

(A) Inpatient service rates are based upon the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(B) Outpatient service rates are based upon the capitation rates developed for the budget period, at the level of charges, multiplied by the statewide average cost to charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(4) The geographic factor, and the statewide average unit costs for inpatient service rates for subsection (3)(i) and for outpatient service rates for subsection (3)(ii), are calculated by the department's contracted actuarial firm. The inpatient and outpatient reimbursement table adopted for the period October 1, 2003 to September 30, 2004 will be posted on the department's website at <http://www.dhs.state.or.us/policy/healthplan/guides/hospital/>.

Stat. Auth.: ORS 209

Stats. Implemented: ORS 414.743

Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04

## 410-141-0420

### Billing and Payment Under the Oregon Health Plan

(1) All billings for Oregon Health Plan Clients to Prepaid Health Plans (PHPs) and to OMAP, shall be submitted within four (4) months and twelve (12) months, respectively, of the date of service, subject to other applicable OMAP billing rules. Submissions shall be made to PHPs within the four — (4) month time frame except in the following cases:

(a) Pregnancy;

(b) Eligibility issues such as retroactive deletions or retroactive Enrollments;

(c) Medicare is the primary payor;

(d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of Provider to certify the OMAP Member's eligibility); or

(e) Third Party Resource (TPR). Pursuant to 42 CFR 36.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payor of last resort and is not considered an alternative resource or TPR.

(2) Providers must be enrolled with OMAP to be eligible for Fee-for-Service (FFS) payment by OMAP. Mental health Providers, except Federally Qualified Health Centers, must be approved by the Local Mental Health Authority (LMHA) and the Office of Mental Health and Addiction Services (OMHAS) before enrollment with OMAP. Providers may be retroactively enrolled, in accordance with OAR 410-120-1260, Provider enrollment.

(3) Providers, including mental health Providers, do not have to be enrolled with OMAP to be eligible for payment for services by PHPs except that Providers who have been excluded as Medicare/Medicaid Providers by OMAP, CMS or by lawful court orders are ineligible to receive payment for services by PHPs.

(4) Providers shall verify, before rendering services, that the OMAP Member is eligible for the Medical Assistance Program on the date of service and that the service to be rendered is covered under the Oregon Health Plan Benefit Package of Covered Services. Providers shall also identify the party responsible for covering the intended service and seek pre-authorizations from the appropriate payor before rendering services. Providers shall inform OMAP Members of any charges for non-covered services prior to the services being delivered.

(5) Capitated Services:

(a) PHPs receive a Capitation Payment to provide services to OMAP Members. These services are referred to as Capitated Services;

(b) PHPs are responsible for payment of all Capitated Services. Such services should be billed directly to the PHP, unless the PHP or OMAP specifies otherwise. PHPs may require Providers to obtain preauthorization to deliver certain Capitated Services.

(6) Payment by the PHP to Providers for Capitated Services is a matter between the PHP and the Provider, except as follows:

(a) Pre-authorizations:

(A) PHPs shall have written procedures for processing pre-authorization requests received from any Provider. The procedures shall specify time frames for:

(i) Date stamping pre-authorization requests when received;

(ii) Determining within a specific number of days from receipt whether a pre-authorization request is valid or non-valid;

(iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(iv) The specific number of days following receipt of the additional information that a redetermination must be made;

(v) Providing services after office hours and on weekends that require preauthorization;

(vi) Sending notice of the decision with Appeal rights to the OMAP Member when the determination is made to deny the requested service as specified in 410-141-0263.

(B) PHPs shall make a determination on at least 95% of Valid Pre-Authorization requests, within two working days of receipt of a preauthorization or reauthorization request related to urgent services; alcohol and drug services; and/or care required while in a skilled nursing facility. Pre-authorizations for prescription drugs must be completed and the pharmacy notified within 24 hours. If a pre-authorization for a prescription cannot be completed within the 24 hours, the PHP must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHP shall notify Providers of such determination within 2 working days of receipt of the request;

(C) For all other pre-authorization requests, PHPs shall notify Providers of an approval, a denial or a need for further information within 14 calendar working days of receipt of the request. PHPs must make reasonable efforts to obtain the necessary information during that fourteen (14) day period. However, the PHP may use an additional 14 days to obtain follow-up information, if the PHP justifies the need for additional information and how the delay is in the interest of the OMAP Member. The PHP shall make a determination as the OMAP Member's health condition requires, but no later than the expiration of the extension. PHPs shall notify OMAP Members of a denial within five (5) working days from the final determination using an OMAP or OMHAS approved client notice format.

(b) Claims Payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

(i) Date stamping claims when received;

(ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(iii) The specific number of days allowed for follow up of pended claims to obtain additional information;

(iv) The specific number of days following receipt of additional information that a determination must be made; and

(v) Sending notice of the decision with Appeal rights to the OMAP Member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90% of Valid Claims within 45 calendar days of receipt and at least 99% of Valid Claims within 60 calendar days of receipt. PHPs shall make an initial determination on 99% of all claims submitted within 60 calendar days of receipt;

(C) PHPs shall provide written notification of PHP determinations when such determinations result in a denial of payment for services, for which the OMAP Member may be financially responsible. Such notice shall be provided to the OMAP Member and the treating Provider within fourteen

(14) calendar days of the final determination. The notice to the OMAP Member shall be an OMAP or OMHAS approved notice format and shall include information on the PHPs internal appeals process, and the Notice of Hearing Rights (OMAP 3030) shall be attached. The notice to the Provider shall include the reason for the denial;

(D) PHPs shall not require Providers to delay billing to the PHP;

(E) PHPs shall not require Medicare be billed as the primary insurer for services or items not covered by Medicare, nor require non-Medicare approved Providers to bill Medicare;

(F) PHPs shall not deny payment of Valid Claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the OMAP Member's Clinical Record;

(G) PHPs shall not delay nor deny payments because a co-payment was not collected at the time of service.

(c) FCHPs and MHOs are responsible for payment of Medicare co-insurances and deductibles up to the Medicare or PHP's allowable for covered services the OMAP Member receives within the PHP, for authorized

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referral care, and for Urgent Care Services or Emergency Services the OMAP Member receives from non-contracted Providers. FCHPs and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care OMAP Members receive from non- PHP Providers;

(d) FCHPs shall pay transportation, meals and lodging costs for the OMAP Member and any required attendant for out-of-state services (as defined in General Rules) that the FCHP has arranged and authorized when those services are available within the state, unless otherwise approved by OMAP;

(e) PHPs shall be responsible for payment of covered services provided by a Non-Participating Provider that were not pre-authorized if the following conditions exist:

(A) It can be verified that the Participating Provider ordered or directed the covered services to be delivered by a Non-Participating Provider; and

(B) The covered service was delivered in good faith without the preauthorization; and

(C) It was a covered services that would have been pre-authorized with a Participating Provider if the PHP's referral protocols had been followed;

(D) The PHP shall be responsible for payment to Non-Participating Providers (Providers enrolled with OMAP that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to Providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(7) Other Services:

(a) OMAP Members enrolled with PHPs may receive certain services on an OMAP FFS basis. Such services are referred to as Non-Capitated Services;

(b) Certain services must be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though such services are then paid by OMAP on an OMAP FFS basis. Before providing services, Providers should contact the PHPs identified on the OMAP Member's Medical Care Identification or, for some mental health services, the CMHP. Alternatively, the Provider may call the OMAP Provider Services Unit to obtain information about coverage for a particular service and/or pre-authorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate OMAP administrative rules and Provider guides, including rates and billing instructions;

(d) Providers shall bill OMAP directly for Non-Capitated Services in accordance with billing instructions contained in the Provider guides;

(e) OMAP shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions and Provider guides;

(f) OMAP will not pay a Provider for provision of services for which a PHP has received a Capitation Payment unless otherwise provided for in OAR 410-141-0120;

(g) When an item or service is included in the rate paid to a medical institution, a residential facility or foster home, provision of that item or service is not the responsibility of OMAP, OMHAS, nor a PHP except as provided for in OMAP rules and Provider guides (e.g., Capitated Services that are not included in the nursing facility all-inclusive rate).

(h) FCHPs that contract with non-public teaching hospitals will reimburse those hospitals for Graduate Medical Education (GME), if the hospitals are:

(A) Neither a type A nor type B hospitals;

(B) Not paid according to a type A or type B payment methodology; and,

(C) In remote areas greater than 60 miles from the nearest acute care hospital, with a graduate medical student teaching program.

(i) FCHPs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment which the FCHP would make for the same service(s) furnished by a Provider, who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500, Excluded Services and Limitations for OHP Clients.

(9) OHP Clients who are enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per client/per month payment to provide Primary Care Management Services, in accordance with OAR 410-141-0410, Primary Care Manager Medical Management;

(b) PCMs provide Primary Care access, and management services for Preventive Services, primary care services, referrals for specialty services, limited inpatient hospital services and outpatient hospital services. OMAP payment for these PCM managed services is contingent upon PCCM authorization;

(c) All PCM Managed Services are covered services that shall be billed directly to OMAP in accordance with billing instructions contained in the OMAP Provider guides;

(d) OMAP shall pay at the OMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Provider guides.

(10) OHP Clients who are not enrolled with a PHP receive services on an OMAP FFS basis:

(a) Services may be received directly from any appropriate enrolled OMAP Provider;

(b) All services shall be billed directly to OMAP in accordance with billing instructions contained in the OMAP Provider guides;

(c) OMAP shall pay at the OMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Provider guides.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04

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**Adm. Order No.:** OMAP 24-2004

**Filed with Sec. of State:** 3-30-2004

**Certified to be Effective:** 3-30-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 410-121-0157

**Subject:** 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) 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 the Office of Medical Assistance Programs (OMAP) on all their drug products. OMAP will reimburse providers only for outpatient drug products manufactured or labeled by companies participating in this program.

(2) Names and Labeler Code numbers for participants in the Medicaid Drug Rebate Program are the responsibility of and maintained by CMS. OMAP receives this information from CMS in the form of numbered and dated Releases. OMAP includes in rule by reference, Release #127, dated November 4, 2003 and #128, dated January 21, 2004, and the OMAP Master Pharmaceutical Manufacturer's Rebate list, alphabetical and numeric, by manufacturer. This information is available on the Department of Human Services website or on the CMS website 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

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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 National Drug Code (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; OMAP 24-2004, f. & cert. ef. 3-30-04

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**Adm. Order No.:** OMAP 25-2004

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 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

**Rules Repealed:** 410-122-0105, 410-122-0120, 410-122-0140

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

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-122-0030

### Pricing

(1) The Office of Medical Assistance Programs (OMAP) will reimburse for the lowest level of service, which will meet the medical appropriateness.

(2) Rental fees include:

- (a) Delivery;
- (b) Training in the use of the equipment;
- (c) Pick-up;
- (d) Routine service, maintenance and repair;
- (e) Moving equipment to new residence, if coverage is to continue.

(3) Purchase price includes delivery, assembly, adjustments, if needed, and training in the use of the equipment or supply.

(4) Repair of equipment includes pick-up and delivery. Travel time shall not be billed to OMAP or the client.

(5) OMAP payment will be based on either OMAP's maximum allowable rate or billed rate whichever is the lesser:

(a) Pricing for E1399 and K0108 is addressed respectively in section (6) and (7) of this rule;

(b) For situations involving Medicare, Third Party Resource (TPR) or Alternate Resource, see General rules OAR 410-120-1280 (Billing) and 410-120-1340 (Payment).

(6) E1399:

(a) E1399 will be reimbursed at 80% (eighty percent) of the manufacturer's suggested retail price (MSRP) up to the maximum reimbursable

amount of \$ 2,500. Total reimbursement is capped at \$ 2,500 per item. See example in Table 122-0030-1;

(b) When no MSRP is available through manufacturer, provider (supplier or vendor or retailer) must submit one of the following to OMAP and specify price per individual piece of an item:

- (A) Manufacturer's invoice; or
- (B) Manufacturer's wholesale price; or
- (C) Manufacturer's list price; or
- (D) Acquisition cost (includes shipping); or
- (E) Cost factor; or
- (F) Manufacturer's bill to provider.

(c) When no MSRP is available, reimbursement will be calculated as manufacturer's invoice, wholesale price, list price, acquisition cost, cost factor or bill to provider, whichever is the lowest plus 20% (twenty percent) of the bill (invoice price or wholesale price or list price or acquisition cost or cost factor) up to the maximum reimbursable amount of \$ 2,500. See example in Table 122-0030-2;

(d) If (6)(b)(A-F) are not available, provider must submit an "estimated price" of an item as expected by provider and stipulated between manufacturer and provider. Reimbursement will be calculated as estimated price plus 20% of estimated price up to the maximum reimbursable amount of \$ 2,500 per line item;

(e) For an item billed at or above \$100: When requesting prior authorization, provider (supplier or vendor or retailer) must submit a copy of manufacturer's invoice, wholesale price, list price, acquisition cost, cost factor, bill or estimated price to provider as expected from manufacturer, manufacturer's part number and item description. Depending on the case, OMAP may require item picture(s) from the provider;

(f) For an item billed with E1399, the provider may be requested to submit written verification of E1399 code through an organization such as SADMERC (Statistical Analysis Durable Medical Equipment Regional Carrier) or AOPA (American Orthotic & Prosthetic Association) when no specific HCPCS code is available for that item and item category is not specified in current OMAP — DME rules (OAR 410 Division 122 rules);

(g) When an item is specifically addressed as related to E1399 code in current OMAP — DME rules, OAR 410-122-0190, 410-122-0208, 410-122-0250, 410-122-0365, 410-122-0375 and 410-122-0580, no SADMERC or AOPA clarification is required;

(h) Manufacturer's part number (MPN) is described in section 8 of this rule;

(i) When an item's MSRP is expected to be higher than \$3,120 or manufacturer's bill or invoice cost plus 20% is expected to be higher than \$2,500, provider must submit documentation showing less expensive alternative was considered by the prescriber. The prescriber must document the reason the less expensive alternative is not medically appropriate, expected hours per day usage of new equipment, hours of usage of current equipment, and if there is any expected change in outcome. The item will be reviewed by OMAP on a case by case basis.

(7) K0108:

(a) K0108 will be reimbursed at 80% (eighty percent) of MSRP up to the maximum reimbursable amount of \$1,000. Total reimbursement is capped at \$1,000 per item;

(b) When no MSRP is available through manufacturer, provider (supplier or vendor or retailer) must submit one of the following to OMAP and specify price per individual piece of an item:

- (A) Manufacturer's invoice; or
- (B) Manufacturer's wholesale price; or
- (C) Manufacturer's list price; or
- (D) Acquisition cost (includes shipping); or
- (E) Cost factor; or
- (F) Manufacturer's bill to provider.

(c) When no MSRP is available, reimbursement will be calculated as manufacturer's invoice, wholesale price, list price, acquisition cost, cost factor or bill to provider, whichever is the lowest plus 20% (twenty percent) of the bill (invoice price or wholesale price or list price or acquisition cost or cost factor) up to the maximum reimbursable amount of \$1,000;

(d) If (7)(b) (A - F) above are not available provider must submit an "estimated price" of an item as expected by provider and stipulated between manufacturer and provider. Reimbursement will be calculated as estimated price plus 20% of estimated price up to the maximum reimbursable amount of \$1,000 per item;

(e) When requesting prior authorization, provider (supplier or vendor or retailer) must submit a copy of manufacturer's invoice, wholesale price, list price, acquisition cost, cost factor, bill or estimated price to provider as expected from manufacturer, manufacturer's part number and item descrip-



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tion. Depending on the case, OMAP may require item picture (s) from the provider;

(f) Manufacturer's part number (MPN) is described in section 8 of this rule;

(g) When an item's MSRP is expected to be higher than \$1,250 or manufacturer's bill or invoice cost plus 20% is expected to be higher than \$1,000, provider must submit documentation showing less expensive alternative was considered by the prescriber. The prescriber must document the reason the less expensive alternative is not medically appropriate, expected hours per day usage of new equipment, hours of usage of current equipment, and if there is any expected change in outcome. The item will be reviewed by OMAP on a case by case basis.

## (8) Manufacturer Part Number (MPN)

(a) Each manufacturer provides a Manufacturer Part Number (MPN) to identify that manufacturer's part. It is a specification used by manufacturer to store a part in an illustrated part catalog (graphics and text);

(b) MPN uniquely identifies a part when used together with Manufacturer code (External Manufacturer), which is the own name used by the manufacturer and not the manufacturer name provided by other.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 9-1993, f. & cert. ef. 4-1-93; HR 18-1993, f. & cert. ef. 8-9-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; 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 69-2002(Temp), f. 11-15-02, cert. ef. 12-1-02 thru 5-1-03; OMAP 36-2003, f. & cert. ef. 5-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 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. Failure to obtain PA for a service as indicated in rule, is not reimbursable by the Office of Medical Assistance Programs. 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 services not covered by Medicare. 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 durable medical equipment provider.

(3) Prior authorization authorities for PA requests (or for changes to existing PA's) are as follows:

(a) Services for clients identified on the Office of Medical Assistance Programs (OMAP) Medical Care ID as Medically Fragile Children's Unit clients are prior authorized by the Department of Human Service's (DHS) Medically Fragile Children's Unit;

(b) Services for clients identified on the OMAP Medical Care ID as being enrolled in the fee-for-service (FFS) Medical Case Management (MCM) program are prior authorized by the MCM contractor;

(c) Services for clients identified on the 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 Children's Services Division) (CSD) are prior authorized by OMAP. All required documentation must be submitted to OMAP.

(d) Most services for clients identified on the OMAP Medical Care ID as Seniors and People with Disabilities (SPD) (formerly Senior and Disabled Services Division) (SSD) are prior authorized by the local branch office designated on the OMAP Medical Care ID. All required documentation must be submitted to the local branch office designated on the OMAP Medical Care ID. Services for SPD clients authorized by OMAP only are noted throughout the DMEPOS rulebook immediately following the code description.

(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) An authorization 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; OMAP 20-2004(Temp), f. & cert. ef. 3-15-04 thru 4-30-04; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0060

### Medicare/Medical Assistance Program Services

(1) For services provided to clients with both Medicare and Medical Assistance Program coverage, bill Medicare first, except when the item(s) is not covered by Medicare.

(2) Services not covered by Medicare should be billed directly to the Office of Medical Assistance Programs on an OMAP 505 with the appropriate two-digit Third Party Resource (TPR) code in field 9.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: 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 461-024-0050; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0080

### Coverage and Exclusions

(1) Items will not be purchased by the Office of Medical Assistance Programs (OMAP) when less expensive alternatives are available which will substantially meet the need.

(2) Equipment which is primarily and customarily used for a non-medical purpose will not be approved for payment, although the item has some medically related use.

(3) OMAP does not cover items which primarily serve the following purpose:

(a) Convenience of client or caregiver;

(b) Cosmetic;

(c) Education;

(d) Equipment of questionable usefulness or questionable therapeutic value;

(e) New equipment of unproven value;

(f) Personal comfort;

(g) Transportation.

(4) Equipment and services not medically appropriate are excluded from coverage by OMAP (see "Medically Appropriate Services and Items" in the OMAP General Rules rulebook), also:

(a) Criteria as listed with individual codes is considered the medical appropriateness for that item; and

(b) If no criteria is listed or there are questions about the criteria, medical appropriateness is determined by OMAP;

(c) Unless stated otherwise, the number of units per month is limited by medical appropriateness.

(5) Equipment and supplies are not covered under some benefit packages (see General Rules — 410-120-1210).

(6) Equipment not covered for purchase, rent or repair by OMAP, includes, but is not limited to the following (or similar or related equipment): [Table not included. See ED. NOTE.]

[ED. NOTE: Tables 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 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 24-1990(Temp), f. & cert. ef. 7-27-90; HR 6-1991, f. & cert. ef. 1-18-91; Renumbered from 461-024-0020; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0180

### Procedure Codes

(1) The Office of Medical Assistance Programs (OMAP) rules for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) are to be used in conjunction with HCPCS. When billing for durable medical equipment and supplies, use the procedure codes listed in the

# ADMINISTRATIVE RULES

DMEPOS rules. When billing for orthotics and prosthetic equipment and supplies, use the American Orthotics and Prosthetic Association (AOPA) publication, prepared by the AOPA.

(2) Questions concerning the coding of items should be referred to the Medicare Statistical Analysis DMERC (SADMERC) Palmetto Government Benefits Administrators or the AOPA. Written verification of coding from SADMERC or AOPA will be accepted as true and correct, at OMAP's discretion.

(3) Any durable medical equipment needed during an inpatient hospital stay is paid as part of the inpatient reimbursement to the hospital and is therefore the responsibility of the hospital.

(4) For prior authorization (PA) contacts, see OAR 410-122-0040.

(5) Buy-ups are prohibited. "Buy-up" refers to a situation in which a client wants to upgrade to a higher level of service than he or she is eligible for; e.g., a heavy-duty walker instead of a regular walker. Refer to the OMAP General Rules for specific language on buy-ups. An Advanced Beneficiary Notice (ABN) constitutes a buy-up and is prohibited.

(6) Equipment is considered purchased and becomes the property of the client, after 16 consecutive months of rental from the same provider or whenever the purchase price is reached. The rental period begins with the initial date of service and all rental charges apply to the purchase price:

(a) Consecutive months are defined as any period of continuous use where no more than a 60 day break occurs unless the item is for a Medicare/Medical Assistance Program client and is in the Medicare capped rental program, then continue to bill Medicare for maintenance, per Medicare's schedule;

(b) Any needed repairs or maintenance after the 16th month of rental or OMAP purchase, whichever comes first, is the responsibility of OMAP, based on client eligibility.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 7-1990, f. 3-30-89, cert. ef. 4-1-89; Renumbered from 461-024-0200; HR 13-1991, f. & cert. ef. 3-1-91; Renumbered from 410-122-0100; 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 26-1994, f. & cert. ef. 7-1-94; 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 12-1999(Temp), f. & cert. ef. 4-1-99 thru 9-1-99; OMAP 26-1999, f. & cert. ef. 6-4-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 54-2001(Temp), f. 10-31-01, cert. ef. 11-1-01 thru 4-15-02; OMAP 63-2001, f. 12-28-01, cert. ef. 1-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0190

### Equipment and Services Not Otherwise Classified

(1) Documentation must support that the procedure code billed is accurate and is appropriate.

(2) Medical appropriateness and prescription requirements also apply.

(3) The level of reimbursement should not be considered as a factor in the use of these procedure codes.

(4) Each item requested must be itemized with description and amount.

(5) Procedure Codes:

(a) A4335, Incontinence supply; miscellaneous (not covered for clients under three years of age) — PA required — the Office of Medical Assistance Programs (OMAP) will purchase:

(A) Limited to 360 units per month, based on medical appropriateness of any combination of products (i.e., adult diapers and inserts). Limitation is waived if documentation supporting increased medically appropriate usage is reviewed and prior authorized by the OMAP Medical Unit;

(B) Includes but is not limited to pad-in-pant systems.

(b) A4421, Ostomy supply; miscellaneous — PA required — OMAP will purchase;

(c) A4649, Surgical supply; miscellaneous, includes, but is not limited to antiseptic towelettes. Antiseptic towelettes are covered only for intermittent urinary catheterizations when other methods of cleansing are not available — PA required — OMAP will purchase;

(d) A6261, Wound filler, not elsewhere classified, gel/paste (1 unit of service = 1 fluid ounce) — PA required — OMAP will purchase;

(e) A6262, Wound filler, not elsewhere classified, dry form (1 unit of service = 1 gram) — PA required — OMAP will purchase;

(f) A9900, Miscellaneous DME supply, accessory, and/or service component of another HCPCS code — includes but is not limited to — PA required — OMAP will purchase:

(A) Dale(tm) tracheostomy tube holder;

(B) Dale(tm) tracheostomy tube holder for neonates/infants.

(g) E1399, Durable medical equipment, miscellaneous — PA required — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent — This code may be covered for payment from OMAP when client is a resident of a nursing facility, check when obtaining PA — For back-up equipment use modifier TW — includes but is not limited to:

(A) Use for walker gliders. Not covered for a client in a nursing facility;

(B) Use for oxymiser cannula. Not covered for clients in a nursing facility;

(C) Use for hydraulic bath tub lift. Not covered for clients in a nursing facility;

(D) Use for heavy duty or extra wide rehab shower/commode chair. Not covered for clients in a nursing facility;

(E) Use for routine maintenance for client-owned ventilator.

(i) Proof of manufacturer's suggested maintenance schedule must be submitted when requesting PA;

(ii) Bill E1340 for labor charges.

(F) Not used for:

(i) Wheelchair base;

(ii) Repairs.

(G) Use for gait belt:

(i) Indications and coverage. Gait belts are covered when:

(I) Client is 60 pounds or greater; and

(II) The care provider is trained in the proper use; and

(III) The client meets one of the following criteria: The client may be able to walk independently, but needs a minor correction of ambulation; or the client needs minimal or standby assistance to walk alone; or the client requires assistance with transfer.

(ii) Documentation:

(I) Documentation of medical appropriateness from the prescribing practitioner must be kept on file by the DME provider;

(II) Documentation must include documentation that the care provider is trained in proper use.

(h) L0999, Addition to spinal orthosis, not otherwise specified — PA required — OMAP will purchase; Also covered for payment by OMAP when client is a resident of a nursing facility;

(i) L8239, Elastic support, not otherwise specified — PA required — OMAP will purchase; Also covered for payment by OMAP when client is a resident of a nursing facility.

(7) Repairs:

(a) Repairs to equipment which a client is purchasing or already owns are covered when necessary to make the equipment serviceable. If the expense for repairs exceeds the estimated expense of purchasing or renting another item of equipment for the remaining period of medical need, no payment can be made for the amount of the excess;

(b) Technicians are DME provider staff professionally trained through product or vendor-based training, technical school training (e.g., electronics) or through apprenticeship programs with on-the-job training;

(c) A written description of the nature of the repair and an itemization of the parts and labor time involved must be kept in the DME supplier's file;

(d) Documentation of medical appropriateness is only required if:

(A) The equipment was not provided by the repairing provider; or

(B) The client's medical condition has changed; or

(C) The client has other equipment of similar use (e.g., power and manual wheelchair).

(e) If equipment is sent to the manufacturer for repair or non-routine service, the manufacturer must itemize the invoice as to parts, labor time (documentation of start and stop time is not required), shipping and handling. Shipping and handling will not be reimbursed;

(f) E1340, Repair or non-routine service requiring the skill of a technician, labor component, per 15 minutes — OMAP will repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned equipment;

(g) K0462, Temporary replacement for client-owned equipment being repaired, any type — PA required — OMAP will rent; Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned equipment:

(A) Use the price of the HCPCS code that corresponds to equipment being repaired;

(B) Use for client-owned equipment that is being repaired (e.g., wheelchair, hospital bed) or the replacement equipment (e.g., power chair being repaired and manual chair as replacement) whichever is least costly;

(C) Include the manufacturer, brand name, model name, and model number of the temporary replacement item;

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- (D) Limited to one month;
- (E) Prescription not required.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 9-1993, f. & cert. ef. 4-1-93; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0200

### Pulse Oximeter

(1) Indications and Limitations of Coverage. May be covered if the client has evidence of more than three desaturations below 88% per month and at least one of the following conditions exist:

(a) The client exhibits signs or symptoms of acute respiratory dysfunction;

(b) The client has chronic lung disease, chest trauma, severe cardiopulmonary disease, or neuromuscular disease involving the muscles of respiration;

(c) The client is on a ventilator and there is a need to adjust the ventilator settings, wean from the ventilator or to monitor for an acute change in condition;

(d) The client has a chronic condition resulting in hypoxemia and there is a need to assess supplemental oxygen requirements and/or a therapeutic regimen.

(e) The device must provide a printout which documents an adequate number of sampling hours, per cent of oxygen saturation and an aggregate of the results. This information must be reviewed and evaluated by the treating practitioner on a regular basis;

(f) Routine use of pulse oximetry monitoring is not covered (example: a patient with chronic, stable cardiopulmonary problems).

(2) Documentation. Submit the following documentation for review:

(a) A practitioner order that clearly specifies the medical appropriateness for pulse oximetry testing. The prescription must include a primary ICD-9-CM code that supports the medical appropriateness;

(b) Documentation of signs/symptoms/medical condition exhibited by the client that require continuous pulse oximetry monitoring as identified by the need for oxygen titration, frequent suctioning or ventilator adjustments;

(c) Plan of treatment that identifies a trained individual available to perform the testing, document the frequency and the results and implement the appropriate therapeutic intervention, if necessary;

(d) In addition, an appropriate history and physical exam and progress notes must be available for review, upon request.

(e) For an initial request, approval may be given for no longer than the first three months of rental;

(f) Continued approval beyond the initial authorization, is based on ongoing review of above documentation including appropriate and regular medical oversight and direction to support the need, including an identified intervention plan by the treating practitioner.

(3) Procedure Codes:

(a) A4606, Oxygen probe for use with client-owned oximeter device, replacement — PA required — The Office of Medical Assistance Programs (OMAP) will purchase;

(b) E0445, Oximeter device for measuring blood oxygen levels non-invasively, per month — PA required — OMAP will rent and repair — Item considered purchased after 16 months of rent. Quantity (units) is one on a given date of service;

(c) The allowable rental fee includes all equipment, supplies, services routine maintenance and necessary training for the effective use of the pulse oximeter.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 32-1999, f. & cert. ef. 10-1-99; 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 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0202

### Continuous Positive Airway Pressure System (CPAP)

(1) Indications and Coverage:

(a) Sleep Disordered Breathing — Obstructive apnea, central apnea, mixed apnea, and sleep hypopnea syndrome. Covered if the polysomnogram indicates:

(A) An Apnea Hypopnea Index (AHI) > 10 per hour of sleep; and

(B) The apnea-hypopnea index (AHI) is defined as the average number of episodes of apneas and hypopneas per hour and must be based on a minimum of two hours of recording time without the use of a positive airway pressure device, reported by polysomnogram. The AHI may not be extrapolated or projected;

(C) Oxygen saturation related to an apneic or hypopneic event which is less than 90%.

(b) Upper airway resistance syndrome (UARS). Covered when both the following criteria are met:

(A) An arousal index > 15; and

(B) Significant excessive daytime sleepiness as defined by any of the following:

(i) Epworth sleepiness scale > 10; or

(ii) History of moderate or severe sleepiness; or

(iii) Multiple Sleep Latency Test (MSLT) with a mean sleep latency < 8.

(C) Definition of moderate and severe sleepiness per “Sleep-Related Breathing Disorders in Adults: Recommendations for Syndrome Definition and Measurement Techniques in Clinical Research; The Report of an American Academy of Sleep Medicine Task Force” published in Sleep, Volume 22, Number 5, 1999:

(i) “Moderate: Unwanted sleepiness or involuntary sleep episodes occur during activities that require some attention. Examples include uncontrollable sleepiness that is likely to occur while attending activities such as concerts, meetings, or presentations. Symptoms produce moderate impairment of social or occupational function.”;

(ii) “Severe: Unwanted sleepiness or involuntary sleep episodes occur during activities that require more active attention. Examples include uncontrollable sleepiness while eating, during conversation, walking, or driving. Symptoms produce marked impairment in social or occupational function.”

(2) Documentation:

(a) To be submitted with request for prior authorization (PA) and kept on file by the DME provider:

(A) Summary of events from the polysomnogram report performed in a certified sleep laboratory;

(B) Medical justification from the prescribing practitioner;

(C) Oxygen saturation reports, if required;

(D) Prescribing practitioner history and physical examination.

(b) To be submitted with the request for PA for purchase after the two-month rental period is completed;

(c) Proof of efficacy and compliance from the prescribing practitioner.

(3) Other:

(a) A two-month rental period is required for CPAP prior to purchase. Rental price starting with the initial date of service, regardless of payor, applies to purchase price;

(b) Clients currently using CPAP can continue to use without having to meet the new criteria.

(4) Procedure Codes:

(a) E0601, Continuous Airway Pressure Device (CPAP) — PA required — The Office of Medical Assistance Programs (OMAP) will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility — Item considered purchased after 16 months of rent;

(b) Accessories for CPAP:

(A) A7030, Full face mask used with positive airway pressure device, each — one per 12 months — PA required — OMAP will purchase. Also covered for payment by OMAP when client is a resident of a nursing facility;

(B) A7031, Face mask interface, replacement for full face mask, each one per 12 months — PA required — OMAP will purchase. Also covered for payment by OMAP when client is a resident of a nursing facility;

(C) A7032, Replacement cushion for nasal application device, each, two per month — PA required — OMAP will purchase, Also covered for payment by OMAP when client is a resident of a nursing facility;

(D) A7033, Replacement pillows for nasal application device, pair, two per month — PA required — OMAP will purchase. Also covered for payment by OMAP when client is a resident of a nursing facility;

(E) A7034, Nasal interface (mask or cannula type) used with positive airway pressure device, with or without head straps, one per three months,

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— PA required — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(F) A7035, Headgear, used with positive airway pressure device — one per six months, — PA required — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(G) A7036, Chin strap, used with positive airway pressure device — one per six months — PA required — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(H) A7037, Tubing, used with positive airway pressure device — one per one month — PA required — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(I) A7038, Filter, disposable, used with positive airway pressure device — two per one month, — PA required — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(J) A7039, Filter, non-disposable, used with positive airway pressure device — one per six months, — PA required — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(K) A7044, Oral interface used with positive airway pressure device, each — PA required — OMAP will purchase. Also covered for payment by OMAP when client is a resident of a nursing facility;

(L) A7046, Water chamber for humidifier, used with positive airway pressure device, replacement, each — PA required — OMAP will purchase — Item considered purchased after 16 months of rent. Also covered for payment by OMAP when client is a resident of a nursing facility;

(M) E0561, Humidifier, non-heated, used with positive airway pressure device — PA required — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent. Also covered for payment by OMAP when client is a resident of a nursing facility;

(N) E0562, Humidifier, heated, used with positive airway pressure device — PA required — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent. Also covered for payment by OMAP when client is a resident of a nursing facility;

(O) S8186, Swivel adapter — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: 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 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0203

### Oxygen and Oxygen Equipment

(1) Children (under age 21):

(a) Coverage Criteria: Prescribing practitioner must determine medical appropriateness;

(b) Documentation: DME providers must retain documentation of medical appropriateness from prescribing practitioner.

(2) Adults: Coverage Criteria:

(a) Home oxygen therapy is covered only if all of the following conditions are met:

(A) The treating prescribing practitioner has determined that the client has a severe lung disease or hypoxia-related symptoms that might be expected to improve with oxygen therapy; and

(B) The client's blood gas study meets the criteria stated below; and

(C) The qualifying blood gas study was performed by a prescribing practitioner or by a qualified provider or supplier of laboratory services; and

(D) The qualifying blood gas study was obtained under the following conditions:

(i) If the qualifying blood gas study is performed during an inpatient hospital stay, the reported test must be the one obtained closest to, but no earlier than two days prior to the hospital discharge date; or

(ii) If the qualifying blood gas study is not performed during an inpatient hospital stay, the reported test must be performed while the client is in a chronic stable state — i.e., not during a period of acute illness or an exacerbation of their underlying disease; and

(E) Alternative treatment measures have been tried or considered and deemed clinically ineffective.

(b) Coverage of oxygen therapy is not available for the following conditions:

(A) Angina pectoris in the absence of hypoxemia. This condition is generally not the result of a low oxygen level in the blood and there are other preferred treatments;

(B) Dyspnea without cor pulmonale or evidence of hypoxemia;

(C) Severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities but in the absence of systemic hypoxemia. There is no evidence that increased PO<sub>2</sub> will improve the oxygenation of tissues with impaired circulation;

(D) Terminal illnesses that do not affect the respiratory system;

(E) Stationary oxygen as a backup for a concentrator is the responsibility of the oxygen provider.

(3) Laboratory Evidence:

(a) Group I:

(A) Coverage criteria includes any of the following:

(i) An arterial PO<sub>2</sub> at or below 55 mm Hg or an arterial oxygen saturation at or below 88 percent taken at rest (awake); or

(ii) An arterial PO<sub>2</sub> at or below 55 mm Hg, or an arterial oxygen saturation at or below 88 percent, taken during sleep for a client who demonstrates an arterial PO<sub>2</sub> at or above 56 mm Hg or an arterial oxygen saturation at or above 89% while awake; or

(iii) A decrease in arterial PO<sub>2</sub> more than 10 mm Hg, or a decrease in arterial oxygen saturation more than 5 percent taken during sleep associated with symptoms or signs reasonably attributable to hypoxemia (e.g., cor pulmonale, "P" pulmonale on EKG, documented pulmonary hypertension and erythrocytosis); or

(iv) An arterial PO<sub>2</sub> at or below 55 mm Hg or an arterial oxygen saturation at or below 88 percent, taken during exercise for a client who demonstrates an arterial PO<sub>2</sub> at or above 56 mm Hg or an arterial oxygen saturation at or above 89 percent during the day while at rest. In this case, oxygen is provided for during exercise if it is documented that the use of oxygen improves the hypoxemia that was demonstrated during exercise when the client was breathing room air.

(B) Initial coverage for clients meeting Group I criteria is limited to 12 months or the prescribing practitioner-specified length of need, whichever is shorter.

(b) Group II:

(A) Coverage — criteria include the presence of:

(i) An arterial PO<sub>2</sub> of 56-59 mm Hg or an arterial blood oxygen saturation of 89 percent at rest (awake), during sleep, or during exercise (as described under Group I criteria); and

(ii) Any of the following:

(I) Dependent edema suggesting congestive heart failure; or

(II) Pulmonary hypertension or cor pulmonale, determined by measurement of pulmonary artery pressure, gated blood pool scan, echocardiogram, or "P" pulmonale on EKG (P wave greater than 3 mm in standard leads II, III, or AVF); or

(III) Erythrocythemia with a hematocrit greater than 56 percent.

(B) Initial coverage for clients meeting Group II criteria is limited to three months or the prescribing practitioner specified length of need, whichever is shorter.

(c) Group III — Home use of oxygen is presumed not medically appropriate for clients with arterial PO<sub>2</sub> levels at or above 60 mm Hg, or arterial blood oxygen saturation at or above 90%.

(d) Blood Gas Study:

(A) The qualifying blood gas study must be performed by a CLIA (Clinical Laboratory Improvement Amendments) certified laboratory. A supplier is not considered a qualified provider or a qualified laboratory for purposes of this policy. In addition, the qualifying blood gas study may not be paid for by any supplier. This prohibition does not extend to blood gas studies performed by a hospital certified to do such tests;

(B) The qualifying blood gas study may be performed while the client is on oxygen as long as the reported blood gas values meet the Group I or Group II criteria;

(C) For Initial Certifications, the blood gas study reported on the Certificate of Medical Necessity (CMN) or reasonable facsimile, must be the most recent study obtained prior to the Initial Date indicated in Section A of the CMN and this study must be obtained within 30 days prior to that Initial Date;

(D) For clients initially meeting Group I criteria, the most recent blood gas study prior to the thirteenth month of therapy must be reported on the Recertification CMN;

(E) For clients initially meeting Group I criteria, if the estimated length of need on the Initial CMN is less than lifetime and the prescribing practitioner wants to extend coverage, a repeat blood gas study must be performed within 30 days prior to the date of the Revised Certification;

(F) For clients initially meeting Group II criteria, the most recent blood gas study which was performed between the 61st and 90th day following Initial Certification must be reported on the Recertification CMN;

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(G) When a qualifying test is not obtained between the 61st and 90th day of home oxygen therapy, but the client continues to use oxygen and a test is obtained at a later date, coverage would resume beginning with the date of that test if that test meets Group I or II criteria;

(H) For clients initially meeting Group II criteria, if the estimated length of need on the Initial CMN is less than lifetime and the prescribing practitioner wants to extend coverage, a repeat blood gas study must be performed within 30 days prior to the date of the Revised Certification;

(I) For any Revised CMN, the blood gas study reported on the CMN must be the most recent test performed prior to the Revised date;

(J) When both arterial blood gas (ABG) and oximetry tests have been performed on the same day under the same conditions (i.e., at rest/awake, during exercise, or during sleep), only report the ABG PO<sub>2</sub> on the CMN. If the ABG PO<sub>2</sub> result is not a qualifying value, home oxygen therapy is not covered regardless of the oximetry test result;

(K) Oxygen Saturation (Oximetry) Tests — Must not be performed by the DME supplier or anyone financially associated with or related to the DME supplier.

(4) Portable Oxygen Systems: A portable oxygen system is covered if the client is mobile within the home and the qualifying blood gas study was performed while at rest (awake) or during exercise. If the only qualifying blood gas study was performed during sleep, portable oxygen is not covered. If coverage criteria are met, a portable oxygen system is usually separately payable in addition to the stationary system.

(5) Standby Oxygen: Oxygen PRN or oxygen as needed is not covered.

(6) Topical Oxygen: Oxygen for topical use is not covered.

(7) Documentation:

(a) Certificate of Medical Necessity (CMN) is a required documentation to support the medical indication;

(b) The Certificate of Medical Necessity (CMN) form for home oxygen is CMS form 484. This form is used for initial certification, recertification, and changes in the oxygen prescription. This form or other documentation of medical appropriateness must be reviewed and signed by the treating prescribing practitioner and kept on file by the DME provider;

(c) Initial CMN is required:

(A) Prior to billing; provider (supplier or vendor) shall keep documentation on file showing their communication with prescriber to obtain CMN prior to delivery;

(B) If more than 3 months pass between the "initial date" of the CMN or the time a CMN is completed and signed by the physician, and the item being ordered is delivered to client, a new completed and signed CMN is required;

(C) The blood gas study reported on the initial CMN must be the most recent study obtained prior to the Initial Date and this study must be obtained within 30 days prior to that Initial Date;

(D) When there has been a change in the client's condition that has caused a break in medical appropriateness of at least 60 days plus whatever days remain in the rental month during which the need for oxygen ended. This indication does not apply if there was just a break in billing because the client was in a hospital, nursing facility, or hospice, but the client continued to need oxygen during that time;

(E) When the client initially qualified in Group II, repeat blood gas studies were not performed between the 61st and 90th day of coverage, but a qualifying study was subsequently performed. The initial date on this new CMN may not be any earlier than the date of the subsequent qualifying blood gas study;

(d) Recertification CMN is required:

(A) Three months after Initial Certification — if oxygen test results on the Initial Certification are in Group II. The blood gas study reported must be the most recent study, which was performed between the 61st and 90th day following the Initial Date;

(B) 12 months after Initial Certification — if oxygen test results on the Initial Certification are in Group I. The blood gas study reported must be the most recent blood gas study prior to the thirteenth month of therapy. This CMN also establishes lifetime.

(e) Revised CMN is required:

(A) When a portable oxygen system is added subsequent to Initial Certification of a stationary system. In this situation, there is no requirement for a repeat blood gas study unless the initial qualifying study was performed during sleep, in which case a repeat blood gas study must be performed while the client is at rest (awake) or during exercise within 30 days prior to the Revised Date;

(B) When the length of need expires — if the prescribing practitioner specified less than lifetime length of need on the most recent CMN. In this

situation, a revised blood gas study must be performed within 30 days prior to the Revised Date;

(C) When there is a new treating prescribing practitioner but the oxygen order is the same. In this situation, there is no requirement for a repeat blood gas study;

(D) If there is a new supplier, that supplier must obtain a new CMN. It would be considered a Revised CMN;

(E) Submission of a Revised CMN does not change the Recertification schedule specified above;

(F) If the indications for a Revised CMN are met at the same time that a Recertification CMN is due, file the CMN as a Recertification CMN.

(f) New Order Required: In the following situations, a new order must be obtained and kept on file by the supplier, but neither a new CMN nor a repeat blood gas study are required:

(A) Prescribed maximum flow rate changes but remains within one of the following categories:

(i) Less than 1 LPM (Liters Per Minute);

(ii) 1-4 LPM;

(iii) Greater than 4 LPM.

(B) Change from one type of system to another (i.e., concentrator, liquid, gaseous).

(8) Oxygen users before March 1, 1991, will continue to receive services and are not subject to the above criteria.

(9) For client entering OMAP FFS (Fee-For-Service) from either Fully Capitated Health Plan (FCHP), Managed Care Organization (MCO / HMO/Health Plan), ASO (Administrative Service Organization), PCO (Physician Care Organization) or from non-OMAP FFS:

(a) An initial CMN must be obtained by provider (supplier or vendor), however the blood gas study on the initial CMN does not have to be obtained within 30 days prior to the initial date, but must be the most recent study obtained while the patient was either in the Fully Capitated Health Plan (FCHP), Managed Care Organization (MCO/HMO/ Health Plan), ASO (Administrative Service Organization), PCO (Physician Care Organization) or from non-OMAP FFS under the testing guideline specified in sections (3) through section (7) of this rule;

(b) Provider (supplier or vendor) must follow the requirement for recertification and revised CMN if that applies per section (7) of this rule.

(10) Procedure Codes:

(a) E1390 Oxygen concentrator, single delivery port, capable of delivering 85 percent or greater oxygen concentration at the prescribed flow rate, per month — the Office of Medical Assistance Programs (OMAP) will rent — Covered for payment by OMAP if nursing facility resident uses more than 1,000 liters per day. All equipment and supplies needed for the operation of the concentrator are included in the rental fee;

(b) E1391 Oxygen concentrator, dual delivery port, capable of delivering 85 percent or greater oxygen concentration at the prescribed flow rate, per month — the Office of Medical Assistance Programs (OMAP) will rent — Covered for payment by OMAP if nursing facility resident uses more than 1,000 liters per day. All equipment and supplies needed for the operation of the concentrator are included in the rental fee;

(c) Oxygen enriching systems:

(A) E1405, Oxygen and water vapor enriching system with heated delivery — OMAP will rent — Also covered for payment by OMAP when client is a resident of a nursing facility;

(B) E1406, Oxygen and water vapor enriching system without heated delivery — OMAP will rent — Also covered for payment by OMAP when client is a resident of a nursing facility.

(d) Compressed gas:

(A) E0424, Stationary compressed gaseous oxygen system, rental, per month; includes container, contents, regulator, flowmeter, humidifier, nebulizer, cannula or mask and tubing — OMAP will rent;

(B) E0425, Stationary compressed gaseous system purchase; includes regulator, flowmeter, humidifier, nebulizer, cannula or mask, and tubing — OMAP will purchase — OMAP will repair;

(C) E0430, Portable gaseous oxygen system, purchase; includes regulator, flowmeter, humidifier, cannula or mask, and tubing — OMAP will purchase — OMAP will repair;

(D) E0431, Portable gaseous oxygen system, rental; includes portable container, regulator, flowmeter, humidifier, cannula or mask, and tubing, per month — OMAP will rent;

(E) E0441, Oxygen contents, gaseous, (for use with owned gaseous stationary systems or when both a stationary and portable gaseous system are owned), one month supply = 1 unit — OMAP will purchase;

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(F) E0443, Portable oxygen contents, gaseous, (for use only with portable gaseous systems when no stationary gas or liquid system is used), one month supply = 1 unit — OMAP will purchase.

(e) Liquid oxygen:

(A) E0434, Portable liquid oxygen system, rental; includes portable container, supply reservoir, humidifier, flowmeter, refill adaptor, contents gauge, cannula or mask, and tubing;

(B) E0435, Portable liquid oxygen system, purchase; includes portable container, supply reservoir, flowmeter, humidifier, contents gauge, cannula or mask, tubing and refill adaptor — OMAP will purchase — OMAP will repair;

(C) E0439, Stationary liquid oxygen system, rental; includes container, contents, regulator, flowmeter, humidifier, nebulizer, cannula or mask, and tubing, per month — OMAP will rent;

(D) E0440, Stationary liquid system, purchase; includes use of reservoir, contents indicator, regulator, flowmeter, humidifier, nebulizer, cannula or mask, and tubing — OMAP will purchase — OMAP will repair;

(E) E0442, Oxygen contents, liquid, (for use with owned liquid stationary system or when both a stationary and portable liquid system are owned), one month supply = 1 unit — OMAP will purchase;

(F) E0444, Portable oxygen contents, liquid, (for use only with portable liquid systems when no stationary gas or liquid system is used), one month supply = 1 unit — OMAP will purchase.

(f) Oxygen supplies:

(A) E0455, Oxygen tent, excluding croup or pediatric tents, per month — OMAP will rent;

(B) E0550, Humidifier, durable for extensive supplemental humidification during IPPB treatments or oxygen delivery — Not to be billed in addition to E0424, E0431, E0434, E0439, E0450, E0455, E0460, E1400, E1401, E1402, E1403, E1404, E1405 or E1406 — OMAP will purchase — OMAP will rent and repair; Item considered purchased after 16 months of rent;

(C) E0555, Humidifier, durable, glass or autoclavable plastic, bottle type, for use with regulator or flowmeter — Not to be billed in addition to E0424, E0431, E0434, E0439, E0450, E0455, E0460, E1400, E1401, E1402, E1403, E1404, E1405, or E1406 — OMAP will purchase;

(D) E0560, Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery — Not to be billed in addition to E0424, E0431, E0434, E0439, E0450, E0455, E0460, E1400, E1401, E1402, E1403, E1404, E1405, or E1406 — OMAP will purchase — OMAP will rent and repair — Item considered purchased after 16 months of rent;

(E) E0605, Vaporizer, room type — OMAP will purchase;

(F) E1353, Regulator (yoke or other) — OMAP will purchase — OMAP will repair;

(G) E1355, Stand/rack for oxygen tank — OMAP will purchase.

(11) Table 122-0203: [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced is available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0205

### Respiratory Assist Devices

(1) As referenced in this policy, non-invasive positive pressure respiratory assistance (NPPRA) is the administration of positive air pressure, using a nasal and/or oral mask interface which creates a seal, avoiding the use of more invasive airway access (e.g., tracheostomy).

(2) Indications and Coverage — General:

(a) The “treating prescribing practitioner” must be one who is qualified by virtue of experience and training in non-invasive respiratory assistance, to order and monitor the use of respiratory assist devices (RAD);

(b) For the purpose of this policy, polysomnographic studies must be performed in a sleep study laboratory, and not in the home or in a mobile facility. It must comply with all applicable state regulatory requirements;

(c) For the purpose of this policy, arterial blood gas, sleep oximetry and polysomnographic studies may not be performed by a DME supplier. A DME supplier is not considered a qualified provider or supplier of these tests for purposes of this policy’s coverage and payment guidelines. This prohibition does not extend to the results of studies conducted by hospitals certified to do such tests;

(d) If there is discontinuation of usage of E0470 or E0471 device at any time, the supplier is expected to ascertain this, and stop billing for the equipment and related accessories and supplies.

(3) Initial coverage criteria for E0470 and E0471 devices (first three months):

(a) For a RAD to be covered, the treating prescribing practitioner must fully document in the client’s medical record symptoms characteristic of sleep-associated hypoventilation, such as:

(A) Daytime hypersomnolence;

(B) Excessive fatigue;

(C) Morning headache;

(D) Cognitive dysfunction;

(E) Dyspnea, etc.

(b) A RAD (E0470, E0471) used to administer NPPRA therapy is covered for those clients with clinical disorder groups characterized as:

(A) Restrictive thoracic disorders (i.e., progressive neuromuscular diseases or severe thoracic cage abnormalities); or

(B) Severe chronic obstructive pulmonary disease (COPD); or

(C) Central sleep apnea (CSA); or

(D) Obstructive sleep apnea (OSA) (E0470 only); and

(E) Who also meet the following criteria:

(i) Restrictive Thoracic Disorders:

(I) There is documentation in the client’s medical record of a progressive neuromuscular disease (for example, amyotrophic lateral sclerosis) or a severe thoracic cage abnormality (for example, post-thoracoplasty for TB); and

(II) An arterial blood gas PaCO<sub>2</sub>, done while awake and breathing the client’s usual FIO<sub>2</sub>, is  $\geq$  45 mm Hg; or

(III) Sleep oximetry demonstrates oxygen saturation less than or equal to 88% for at least five continuous minutes, done while breathing the client’s usual FIO<sub>2</sub>;

(IV) For progressive neuromuscular disease (only), maximal inspiratory pressures less than 60 cm/H<sub>2</sub>O or forced vital capacity is less than 50% predicted; and

(V) Chronic obstructive pulmonary disease does not contribute significantly to the client’s pulmonary limitation;

(VI) If all above criteria are met, either a E0470 or E0471 device (based upon the judgment of the treating prescribing practitioner) will be covered for clients within this group of conditions for the first three months of NPPRA therapy (see below for continued coverage after the initial three months). If all of the above criteria are not met, then E0470 or E0471 and related accessories will be denied as not medically appropriate.

(ii) Severe COPD:

(I) An arterial blood gas PaCO<sub>2</sub>, done while awake and breathing the client’s usual FIO<sub>2</sub>, is  $\geq$  52 mm Hg; and

(II) Sleep oximetry demonstrates oxygen saturation less than or equal to 88% for at least five continuous minutes, done while breathing oxygen at 2 LPM or the client’s usual FIO<sub>2</sub> (whichever is higher); and

(III) Prior to initiating therapy, OSA (and treatment with CPAP) has been considered and ruled out;

(IV) If all of the above criteria for clients with COPD are met, a E0470 device will be covered for the first three months of NPPRA therapy (see below for continued coverage after the initial three months). A E0471 device will not be covered for a client with COPD during the first two months, because therapy with a E0470 device with proper adjustments of the device’s settings and client accommodation to its use will usually result in sufficient improvement without the need of a back-up rate. See below for coverage of a E0471 device for COPD after two month’s use of a E0470 device;

(V) If the above criteria are not met, then E0470 and E0471 are not covered.

(iii) Central Sleep Apnea, i.e., apnea not due to airway obstruction:

(I) Prior to initiating therapy, a complete facility-based, attended polysomnogram must be performed documenting the following:

(I)(a) The diagnosis of central sleep apnea (CSA); and

(I)(b) The exclusion of obstructive sleep apnea (OSA) as the predominant cause of sleep-associated hypoventilation; and

(I)(c) The ruling out of CPAP as effective therapy if OSA is a component of the sleep-associated hypoventilation; and

(I)(d) Oxygen saturation less than or equal to 88% for at least five continuous minutes, done while breathing the client’s usual FIO<sub>2</sub>; and

(I)(e) Significant improvement of the sleep-associated hypoventilation with the use of a E0470 or E0471 device on the settings that will be prescribed for initial use at home, while breathing the client’s usual FIO<sub>2</sub>;

(II) If all above criteria are met, either a E0470 or E0471 device (based upon the judgment of the treating prescribing practitioner) will be covered for clients with documented CSA conditions for the first three

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months of NPPRA therapy (see below for continued coverage after the initial three months);

(III) If all of the above criteria are not met, then E0470 or E0471 and related accessories are not covered.

(iv) Obstructive Sleep Apnea (OSA):

(I) A complete facility-based, attended polysomnogram, has established the diagnosis of obstructive sleep apnea; and

(II) A single level device (E0601, Continuous Positive Airway Pressure Device (CPAP)) has been tried and proven ineffective;

(III) If the above criteria are met, a E0470 device will be covered for the first three months of NPPRA therapy. See below for continued coverage after the initial three months;

(IV) A E0471 device is not medically appropriate if the primary diagnosis is OSA.

(c) Continued coverage beyond the first three months of therapy:

(A) Clients covered for the first 3 months of a E0470 or E0471 device must be re-evaluated to establish the medical appropriateness of continued coverage by the Office of Medical Assistance Programs (OMAP) beyond the first three months. While the client may need to be evaluated at earlier intervals after this therapy is initiated, the re-evaluation upon which OMAP will base a decision to continue coverage beyond this time must occur within 61 to 90 days of initiating therapy by the treating prescribing practitioner. There must be documentation in the client's medical record about the progress of relevant symptoms and client usage of the device up to that time. Failure of the client to be consistently using the E0470 or E0471 device for an average of four hours per 24-hour period by the time of this 61-90 day re-evaluation would represent non-compliant utilization for the intended purposes and expectations of benefit of this therapy. This would constitute reason for OMAP to deny continued coverage as not medically appropriate;

(B) Aside from the above documentation in the client's medical records, the following items of documentation must be obtained by the supplier of the device for continuation of coverage beyond three months:

(i) A signed and dated statement completed by the treating prescribing practitioner no sooner than 61 days after initiating use of the device, declaring that the client is compliantly using the device (an average of 4 hours per 24 hour period) and that the client is benefiting from its use; and

(ii) An Evaluation of Respiratory Assist Device (OMAP 2461) completed by the client no sooner than 61 days after initiating use of the device (see below). A copy of this form is in the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) provider guide for you to copy and use. A copy is also available at OMAP's website but OMAP does not furnish paper copies.

(C) If the above criteria are not met, continued coverage of a E0470 or E0471 device and related accessories will be denied as not medically appropriate;

(D) For Group II clients (COPD) who qualified for a E0470 device, if at a time no sooner than 61 days after initial issue and compliant use of a E0470 device, the treating prescribing practitioner believes the client requires a E0471 device, the E0471 device will be covered if the following criteria are met:

(i) An arterial blood gas PaCO<sub>2</sub>, repeated no sooner than 61 days after initiation of compliant use of the E0470, done while awake and breathing the client's usual FIO<sub>2</sub>, still remains  $\geq$  52 mm Hg; and

(ii) A sleep oximetry, repeated no sooner than 61 days after initiation of compliant use of a E0470 device, and while breathing with the E0470 device, demonstrates oxygen saturation less than or equal to 88% for at least five continuous minutes, done while breathing oxygen at 2 LPM or the client's usual FIO<sub>2</sub> (whichever is higher); and

(iii) A signed and dated statement from the treating prescribing practitioner, completed no sooner than 61 days after initiation of the E0470 device, declaring that the client has been compliantly using the E0470 device (an average of four hours per 24 hour period) but that the client is NOT benefiting from its use; and

(iv) An Evaluation of Respiratory Assist Device (OMAP 2461) completed by the client, no sooner than 61 days after initiation of the E0470 device.

(d) Coding Guidelines:

(A) For devices previously coded as K0532, after the effective date of this policy, code K0532 as E0470, and if the K0533 is being used with a noninvasive interface to administer NPPRA therapy, code as E0471;

(B) For devices previously billed as K0194 (intermittent assist device with CPAP device, with humidifier), use codes E0470 and E0561 to continue billing after the effective date of this policy.

(e) Documentation:

(A) To be submitted with request for prior authorization (PA) and the original kept on file by the supplier:

(i) An order for all equipment and accessories including the client's diagnosis, an ICD-9-CM code signed and dated by the treating prescribing practitioner;

(ii) Summary of events from the polysomnogram, if required under indications and coverage;

(iii) Arterial blood gas results, if required under indications and coverage;

(iv) Sleep oximetry results, if required under indications and coverage;

(v) Treating prescribing practitioner statement regarding medical symptoms characteristic of sleep-associated hypoventilation, including, but not limited to daytime hypersomnolence, excessive fatigue, morning headache, cognitive dysfunction, and dyspnea;

(vi) Other treatments that have been tried and failed. To be submitted in addition to the above at the fourth month review.

(B) A copy of the Evaluation of Respiratory Assist Device (OMAP 2461) completed and signed by the client, family member or caregiver;

(C) Clients currently using BiPapS and BiPap ST are not subject to the new criteria;

(D) Procedure Codes — Table 122-0205. [Table not included. See ED, NOTE.]

[ED, NOTE: Tables & Publications referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: 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 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0209

### Tracheostomy Care Supplies

(1) Indications and Coverage: For a client following an open surgical tracheostomy which has been open or is expected to remain open for at least three months.

(2) Documentation: A prescription for tracheal equipment which is signed by the prescribing practitioner must be kept on file by the DME supplier. The prescribing practitioner's records must contain information which supports the medical appropriateness of the item ordered.

(3) Procedure Codes:

(a) A4481, Tracheostomy filter, any type, any size, each — the Office of Medical Assistance Programs (OMAP) will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(b) A4483, Moisture exchanger, disposable — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(c) A4623, Tracheostomy, inner cannula — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(d) A4625, Tracheostomy care kit for new tracheostomy contains one plastic tray, one basin, one pair of sterile gloves, tube brush, three pipe cleaners, one pre-cut tracheostomy dressing, one roll of gauze, four 4x4 sponges, two cotton tip applicators, 30" twill tape — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility. One tracheostomy care kit per day is covered for two weeks following an open surgical tracheostomy;

(e) A4626, Tracheostomy cleaning brush, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(f) A4629, Tracheostomy care kit for established tracheostomy contains one tube brush, two pipe cleaners, two cotton tip applicators, 30" twill tape, two 4x4 sponges; OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility. One tracheostomy care kit per day is considered necessary for routine care of a tracheostomy, starting with post-operative day 15;

(g) A7501, Tracheostoma valve, including diaphragm, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(h) A7502, Replacement diaphragm/faceplate for tracheostoma valve, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(i) A7503, Filter holder or filter cap, reusable, for use in a tracheostoma heat and moisture exchange system, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

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(j) A7504, Filter for use in a tracheostoma heat and moisture exchange system, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(k) A7505, Housing, reusable without adhesive, for use in a heat and moisture exchange system and/or with a tracheostoma valve, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(l) A7506, Adhesive disc for use in a heat and moisture exchange system and/or with tracheostoma valve, any type, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(m) A7507, Filter holder and integrated filter without adhesive, for use in a tracheostoma heat and moisture exchange system, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(n) A7508, Housing and integrated adhesive, for use in a tracheostoma heat and moisture exchange system and/or with a tracheostoma valve, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(o) A7509, Filter holder and integrated filter housing, and adhesive, for use as a tracheostoma heat and moisture exchange system, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(p) A7520, Tracheostomy/laryngectomy tube, non-cuffed, polyvinylchloride (PVC), silicone or equal, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(q) A7521, Tracheostomy/laryngectomy tube, cuffed, polyvinylchloride (PVC), silicone or equal, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(r) A7522, Tracheostomy/laryngectomy tube, stainless steel or equal (sterilizable and reusable), each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(s) A7524, Tracheostoma stent/stud/button, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(t) A7525, Tracheostomy mask, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(u) A7526, Tracheostomy tube/collar, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(v) S8189, Tracheostomy supply, not otherwise classified — Prior authorization required by OMAP — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; 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; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; 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 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0210

### Ventilators

(1) The hospital discharge planner, case manager, or prescribing practitioner should call the DME provider directly. The DME provider will fax or mail the request for prior authorization (PA).

(2) The DME provider is responsible for providing written medical justification within the first 30 days to continue authorization for further services.

(3) If written justification is not received, there will be no further authorization.

(4) The following criteria will be used to determine payment:

(a) Documentation of being unable to wean from ventilator or unable to wean from use at night; or

(b) Documentation that alternate means of ventilation were used without success; or

(c) Client ready for discharge is currently on a ventilator and has been on the ventilator more than ten days.

(5) A back-up battery, generator, and resuscitation bag will be provided, if necessary.

(6) The allowable rental fee for the ventilator is to include all equipment, supplies, services and training necessary for the effective use of the ventilator.

(7) Routine maintenance is included in the rental fee.

(8) All respiratory therapy services needed are included in the rental fee.

(9) The ventilator provider must supply 24-hour emergency coverage.

(10) An emergency telephone number must be available 24-hours day from the ventilator provider.

(11) The client must have a telephone or reasonable access to one. The Office of Medical Assistance Programs (OMAP) will not be responsible for providing a telephone for the client.

(12) The following criteria will be used to determine payment for a back-up ventilator:

(a) The client is more than 60 minutes from the nearest hospital or back-up ventilator and has no documented spontaneous respirations; or

(b) Documentation supports medical appropriateness; or

(c) The client needs to be transported frequently with portable ventilator, and their ventilator is not a portable model; or

(d) The ventilator is used at maximum performance with high pressure and rate.

(13) Back-up ventilator:

(a) A back-up ventilator will be reimbursed at half the allowable rate;

(b) For back-up ventilator, use modifier TW — back-up equipment;

(c) Back-up ventilator users before April 1, 1992, will continue to receive services and are not subject to the above criteria.

(14) Procedure Codes — Table 122-0210. [Table not included. See ED, NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; 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; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; 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 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0340

### Wheelchair Options/Accessories

(1) Indications and Coverage:

(a) Covered if client meets the criteria for wheelchair. An option/accessory is not covered if its primary benefit is to allow the client to perform leisure or recreational activities;

(b) The options/accessories are necessary for the client to perform one or more of the following actions:

(A) Function in the home;

(B) Perform instrumental activities of daily living.

(c) Use K0108 for replacement wheelchair parts if no other code is appropriate;

(d) Use of pressure mapping device for specialized seating and positioning is included in the price of the wheelchair base, accessories or options.

(2) Documentation: Documentation of medical appropriateness which has been filled out, signed, and dated by the treating prescribing practitioner (for example, CMN) must be kept on file by the DME provider.

(3) Arm of Chair:

(a) E0973, Wheelchair accessory, adjustable height, detachable armrest, complete assembly, each — the Office of Medical Assistance Programs will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent: covered if the client requires an arm height that is different than what is available using non-adjustable arms and the client spends at least two hours per day in the wheelchair;

(b) K0015, Detachable, non-adjustable height armrest, each — the Office of Medical Assistance Programs (OMAP) will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(c) K0017, Detachable, adjustable height armrest, base, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent. Covered if the client requires an arm height that is different than that available using non-adjustable arms and the client spends at least two hours per day in the wheelchair;

(d) K0018, Detachable, adjustable height armrest, upper portion, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent.



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Covered if the client requires an arm height that is different than that available using non-adjustable arms and the client spends at least two hours per day in the wheelchair;

(e) K0019, Arm pad, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(f) K0020, Fixed, adjustable height armrest, pair — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent. Covered if the client requires an arm height that is different than that available using non adjustable arms and the client spends at least two hours per day in the wheelchair;

(g) K0106, Arm trough, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent.

(4) Back of Chair:

(a) E0966, Manual wheelchair accessory, headrest extension, each-PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(b) E0971, Anti-tipping device, wheelchair — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(c) E0974, Manual wheelchair accessory, anti-rollback device, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(d) E0982, Wheelchair accessory, back upholstery, replacement only, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(A) Included in the allowance for a heavy duty or extra heavy duty wheelchair;

(B) Not medically appropriate if used in conjunction with other manual wheelchair bases;

- (i) Covered if used with a power wheelchair base and;
- (ii) The client weighs more than 200 pounds.

(e) E1226, Manual wheelchair accessory, fully reclining back, each — OMAP will purchase, rent and repair. Also covered for payment by OAMP when client is a resident of a nursing facility — Item considered purchased after 16 month of rent;

(A) Covered if the client spends at least two hours per day in the wheelchair and has one or more of the following conditions/needs:

- (i) Quadriplegia;
- (ii) Fixed hip angle;
- (iii) Trunk or lower extremity casts/braces that require the reclining back feature for positioning;

(iv) Excess extensor tone of the trunk muscles;

(v) Client needs to rest in a recumbent position two or more times during the day and transfer between wheelchair and bed is very difficult.

(B) Use for fully reclining back which is manually operated.

(f) K0023, Solid back insert, planar back, single density foam, attached with straps — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent — A prefabricated back seating module which is incorporated into a wheelchair base;

(g) K0024, Solid back insert, planar back, single density foam, with adjustable hook-on hardware — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent — A prefabricated back seating module which is incorporated into a wheelchair base.

(5) Seating Systems:

(a) Item is individually made for a client using:

(A) A plaster model of the client;

(B) A computer-generated model of the client (CAD-CAM technology); or

(C) Detailed measurements of the client used to create a curved foam custom fabricated component.

(b) Not used for seating components that are ready made but subsequently modified to fit an individual client;

(c) Indications and Coverage: Seating systems are covered when:

(A) The client has a significant spinal deformity and/or severe weakness of the trunk muscles; and

(B) The client's need for prolonged sitting tolerance, postural support to permit functional activities, or pressure reduction cannot be met adequately by a prefabricated seating system; and

(C) The client is expected to be in the wheelchair at least two hours per day.

(d) K0115, Seating systems, back module, posterior-lateral control, with or without lateral supports, custom fabricated for attachment to wheelchair base — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(e) K0116, Seating systems, combined back and seat module, custom fabricated for attachment to wheelchair base. A one-piece system including both back and seat component — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility.

(6) Seat:

(a) E0962, 1" cushion, for wheelchair, any type — OMAP will purchase;

(b) E0963, 2" cushion, for wheelchair, any type — OMAP will purchase;

(c) E0964, 3" cushion, for wheelchair, any type — OMAP will purchase;

(d) E0965, 4" cushion, for wheelchair, any type — OMAP will purchase;

(e) E0981, Wheelchair accessory, seat upholstery, replacement only, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(f) E0985, Wheelchair accessory, seat lift mechanism, — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(g) E0992, Manual wheelchair accessory, solid seat insert — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(A) Includes hardware;

(B) Covered when the client spends at least two hours per day in the wheelchair.

(h) E2201, Manual wheelchair accessory, nonstandard seat frame, width greater than or equal to 20 inches and less than 24 inches — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(i) E2202, Manual wheelchair accessory, nonstandard seat frame width, 24-27 inches — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent

(j) E2203, Manual wheelchair accessory, nonstandard seat frame depth, 20 to less than 22 inches — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(k) E2204, Manual wheelchair accessory, nonstandard seat frame depth, 22 to 25 inches — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(l) E2340, Power wheelchair accessory, nonstandard seat frame width, 20-23 inches — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(m) E2341, Power wheelchair accessory, nonstandard seat frame width, 24-27 inches — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(n) E2342, Power wheelchair accessory, nonstandard seat frame depth, 20 or 21 inches — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if

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supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(o) E2343, Power wheelchair accessory, nonstandard seat frame depth, 22-25 inches — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(p) K0056, Seat height < 17" or > 21" for a high strength, lightweight or ultralightweight wheelchair — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent. Covered only if the ordered item is at least 2" greater than or less than a standard option and the client's dimensions justify the need.

(7) Footrest/Legrest:

(a) E0951, Heel loop/holder, with or without ankle strap, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(b) E0952, Toe loop/holder, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(c) E0990, Wheelchair accessory, elevating leg rest, complete assembly, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent; Use for the repair or replacement of an elevating leg rest for a client-owned wheelchair; Covered if the client has a musculoskeletal condition or the presence of a cast or brace which prevents 90 degree flexion at the knee, has significant edema of the lower extremities that requires having an elevating leg rest or criteria for a reclining back option are met, and the client has a wheelchair with a reclining back.

(d) E0995, Wheelchair accessory, calf rest/pad, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(e) E1020, Residual limb support system for wheelchair — OMAP will purchase, rent, and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(f) K0037, High mount flip-up footrest, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(g) K0038, Leg strap, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(h) K0039, Leg strap, H style, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(i) K0040, Adjustable angle foot-plate, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(j) K0041, Large size foot-plate, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(k) K0042, Standard size foot-plate, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(l) K0043, Footrest, lower extension tube, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(m) K0044, Footrest, upper hanger bracket, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(n) K0045, Footrest, complete assembly — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of

a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(o) K0046, Elevating leg rest, lower extension tube, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent. Covered if the client has a musculoskeletal condition or the presence of a cast or brace which prevents 90 degree flexion at the knee, has significant edema of the lower extremities that requires having an elevating leg rest, or criteria for a reclining back option are met, and the client has a wheelchair with a reclining back;

(p) K0047, Elevating leg rest, upper hanger bracket, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent. Covered if the client has a musculoskeletal condition or the presence of a cast or brace which prevents 90 degree flexion at the knee, has significant edema of the lower extremities that requires having an elevating leg rest, or criteria for a reclining back option are met, and the client has a wheelchair with a reclining back;

(q) K0050, Ratchet assembly — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(r) K0051, Cam release assembly, footrest or leg rest, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(s) K0052, Swing-away, detachable footrests, each, replacement — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent. Included in allowance for the wheelchair base;

(t) K0053, elevating footrests, articulating (telescoping), each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent. Covered if the client has a musculoskeletal condition, or the presence of a cast or brace which prevents 90 degree flexion at the knee, has significant edema of the lower extremities that requires having an elevating leg rest, or criteria for a reclining back option are met;

(u) K0195, elevating leg rests, pair (for use with capped rental wheelchair base) — OMAP will rent — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair. Covered if the client has a musculoskeletal condition, or the presence of a cast or brace which prevents 90 degree flexion at the knee, has significant edema of the lower extremities that requires having an elevating leg rest, or criteria for a reclining back option are met.

(8) Hand rims Without Projections:

(a) K0059, Plastic coated hand rim, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(b) K0060, Steel hand rim, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(c) K0061, Aluminum hand rim, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent.

(9) Hand rims with Projections: E0967, Manual wheelchair accessory, hand rim with projections, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent.

(10) Rear Wheels:

(a) K0064, Zero pressure tube (flat free inserts), any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(b) K0065, Spoke protectors, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

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(c) K0066, Solid tire, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(d) K0067, Pneumatic tire, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent — If both a pneumatic tire and pneumatic tire tube are provided on the same date, bill both K0067 and K0068;

(e) K0068, Pneumatic tire tube, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent — If both a pneumatic tire and pneumatic tire tube are provided on the same date, bill both K0067 and K0068;

(f) K0069, Rear wheel assembly, complete, with solid tire, spokes or molded, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(g) K0070, Rear wheel assembly, complete, with pneumatic tire, spokes or molded, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent.

### (11) Front Casters:

(a) K0071, Front caster assembly, complete, with pneumatic tire, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(b) K0072, Front caster assembly, complete, with semi-pneumatic tire, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(c) K0073, Caster pin lock, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(d) K0074, Pneumatic caster tire, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(e) K0075, Semi-pneumatic caster tire, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(f) K0076, Solid caster tire, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(g) K0077, Front caster assembly, complete, with solid tire, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(h) K0078, Pneumatic caster tire tube, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent.

### (12) Wheel Lock:

(a) E0961, Manual wheelchair accessory, wheel lock brake extension (handle), each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(b) E0974, Manual wheelchair accessory, anti-rollback device, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent. Covered if the client able to propel self and needs the device because of rams;

(c) K0081, Wheel lock assembly, complete, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent.

### (13) Batteries/Chargers for Motorized/Power Wheelchair:

(a) E2360, Power wheelchair accessory, 22 NF non-sealed lead acid battery, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair. Separately payable from the purchased wheelchair base;

(b) E2361, Power wheelchair accessory, 22 NF sealed lead acid battery, each (e.g., gel cell, absorbed glassmat) — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair. Separately payable from the purchased wheelchair base;

(c) E2362, Power wheelchair accessory, Group 24 non-sealed lead acid battery, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair. Separately payable from the purchased wheelchair base;

(d) E2363, Power wheelchair accessory, Group 24 sealed lead acid battery, each (e.g., gel cell, absorbed glassmat) — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair. Separately payable from the purchased wheelchair base;

(e) E2364, Power wheelchair accessory, U-1 non-sealed lead acid battery, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair. Separately payable from the purchased wheelchair base;

(f) E2365, Power wheelchair accessory, U-1 sealed lead acid battery, each (e.g., gel cell, absorbed glassmat) — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair. Separately payable from the purchased wheelchair base;

(g) E2366, Power wheelchair accessory, Battery charger, single mode, for use with only one battery type, sealed or non-sealed, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(A) Covered if criteria for a power wheelchair are met;

(B) There will be no additional allowance if a dual mode charger is used;

(C) A battery charger is included in the allowance for a power wheelchair base (K0010-K0014);

(D) A battery charger should be billed separately only when it is a replacement.

### (14) Motorized/Power Wheelchair Parts:

(a) E1002, Wheelchair accessory, power seating system, tilt only — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(b) E1003, Wheelchair accessory, power seating system, recline only, without shear reduction — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(c) E1004, Wheelchair accessory, power seating system, recline only, with mechanical shear reduction — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(d) E1005, Wheelchair accessory, power seating system, recline only, with power shear reduction — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(e) E1006, Wheelchair accessory, power seating system, combination tilt and recline, without shear reduction — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(f) E1007, Wheelchair accessory, power seating system, combination tilt and recline, with mechanical shear reduction — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(g) E1008, Wheelchair accessory, power seating system, combination tilt and recline, with power shear reduction — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when

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client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(h) E1010, Wheelchair accessory, addition to power seating system, power leg elevation system, including leg rest, each — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(i) E2320, Power wheelchair accessory, hand or chin control interface, remote joystick or touchpad, proportional, including all related electronics, and fixed mounting hardware—PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(j) E2321, Power wheelchair accessory, hand control interface, remote joystick, nonproportional, including all related electronics, mechanical stop switch, and fixed mounting hardware — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(k) E2322, Power wheelchair accessory, hand control interface, multiple mechanical switches, nonproportional, including all related electronics, mechanical stop switch, and fixed mounting hardware — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(l) E2323, Power wheelchair accessory, specialty joystick handle for hand control interface, prefabricated — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(m) E2324, Power wheelchair accessory, chin cup for chin control interface — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(n) E2325, Power wheelchair accessory, sip and puff interface, nonproportional, including all related electronics, mechanical stop switch, and manual swingaway mounting hardware — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(o) E2326, Power wheelchair accessory, breath tube kit for sip and puff interface — PA required — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(p) E2327, Power wheelchair accessory, head control interface, mechanical, proportional, including all related electronics, mechanical direction change switch, and fixed mounting hardware — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(q) E2328, Power wheelchair accessory, head control or extremity control interface, electronic, proportional, including all related electronics and fixed mounting hardware — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(r) E2329, Power wheelchair accessory, head control interface, contact switch mechanism, nonproportional, including all related electronics, mechanical stop switch, mechanical direction change switch, head array, and fixed mounting hardware — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(s) E2330, Power wheelchair accessory, head control interface, proximity switch mechanism, nonproportional, including all related electronics, mechanical stop switch, mechanical direction change switch, head array, and fixed mounting hardware—PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(t) K0090, Rear wheel tire for power wheelchair, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP

when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(u) K0091, Rear wheel tire tube other than zero pressure for power wheelchair, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(v) K0092, Rear wheel assembly for power wheelchair, complete, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(w) K0093, Rear wheel zero pressure tire tube (flat free insert) for power wheelchair, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(x) K0094, Wheel tire for power base, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(y) K0095, Wheel tire tube other than zero pressure for each base, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(z) K0096, Wheel assembly for power base, complete, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(aa) K0097, Wheel zero pressure tire tube (flat free insert) for power base, any size, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(bb) K0098, Drive belt for power wheelchair — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(cc) K0099, Front caster for power wheelchair, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent.

### (15) Shock absorbers:

(a) E1015, Shock absorber for manual wheelchair, each — OMAP will purchase, rent and repair — PA required. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(b) E1016, Shock absorber for power wheelchair, each — OMAP will purchase, rent and repair — PA required. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(c) E1017, Heavy duty shock absorber for heavy duty or extra heavy duty manual wheelchair, each — PA required — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(d) E1018, Heavy duty shock absorber for heavy duty or extra heavy duty power wheelchair — OMAP will purchase, rent and repair — PA required. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent.

### (16) Miscellaneous Accessories:

(a) E0950, Wheelchair accessory, tray, each — the Office of Medical Assistance Programs will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair;

(b) E0955, Wheelchair accessory, headrest, cushioned, prefabricated, including fixed mounting hardware, each — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair;

(c) E0956, Wheelchair accessory, lateral trunk or hip support, prefabricated, including fixed mounting hardware, each — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair;

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(d) E0957, Wheelchair accessory, medial thigh support, prefabricated, including fixed mounting hardware, each — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair;

(e) E0958, Manual wheelchair accessory, one-arm drive attachment, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent. Covered if the client propels the chair himself/herself with only one hand and the need is expected to last at least six months;

(f) E0959, Manual wheelchair accessory, each, adapter for amputee, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(g) E0960, Wheelchair accessory, shoulder harness/straps or chest strap, including any type mounting hardware — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(h) E0972, Wheelchair accessory, transfer board or device, each, — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(i) E0978, Wheelchair accessory, safety belt/pelvic strap, each — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(j) E0983, Manual wheelchair accessory, power add-on to convert manual wheelchair to motorized wheelchair, joystick control — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(k) E0984, Manual wheelchair accessory, power add-on to convert manual wheelchair to motorized wheelchair, tiller control — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(l) E0986, Manual wheelchair accessory, push-rim activated power assist — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(m) E1028, Wheelchair accessory, manual swingaway, retractable or removable mounting hardware for joystick, other control interface or positioning accessory — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(n) E1029, Wheelchair accessory, ventilator tray, fixed — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(o) E1030, Wheelchair accessory, ventilator tray, gimbaled — PA required — OMAP will purchase, rent and repair — Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(p) K0104, Cylinder tank carrier, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(q) K0105, IV hanger, each — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(r) K0108, Wheelchair component or accessory, not otherwise specified — Prior authorization (PA) required — OMAP will purchase, rent and repair. Also covered for payment by OMAP when client is a resident of a nursing facility if supplied for client-owned wheelchair — Item considered purchased after 16 months of rent;

(A) Each item requested must be itemized with a clear description of item, manufacturer, model name number, Manufacturer's Suggested Retail Price (MSRP) and price;

(B) For option or accessories in which coverage rules have not been explicitly defined, the prescribing practitioner's order must include the item

and a statement describing why that feature is medically appropriate in the particular client;

(C) Used for but not limited to:

(i) Nonstandard seat dimensions that do not fall under specific codes;

(ii) Accessories or options for a new wheelchair and replacement parts for a wheelchair being repaired;

(iii) Thigh abduction pommels;

(iv) Seat backs or cushions that do not fall under specific codes;

(v) Non-joystick control devices;

(vi) Upgraded electronics;

(vii) Custom fabricated seat component when billing for a two-piece seating system (use K0115 for the custom fabricated back component);

(viii) Nonstandard seat height that does not fall under specific codes, (e.g., 16" height);

(ix) Roho mini max for wheelchair back;

(s) K0452, Wheelchair bearings, any type — OMAP will purchase — also covered for payment by OMAP when client is a resident of a nursing facility, if supplied for client-owned wheelchair.

(17) Pressure Pads:

(a) E0176, Air pressure pad or cushion, non-positioning — PA required — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(b) E0178, Gel or gel-like pressure pad or cushion, non-positioning — PA required — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(c) E0179, Dry pressure pad or cushion, non-positioning — OMAP will purchase;

(d) E0192, Low pressure and positioning equalization pad for wheelchair — PA required — OMAP will purchase and repair — Also covered for payment by OMAP when client is a resident of a nursing facility.

Stat. Auth.: ORS 409

Stat. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; 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 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0365

### Standing and Positioning Aids

(1) Indications and coverage: If a client has one aid that meets his/her medical needs, regardless of who obtained it, the Office of Medical Assistance Programs (OMAP) will not provide another aid of same or similar function.

(2) Documentation — to be submitted for prior authorization (PA) and kept on file by the Durable Medical Equipment (DME) provider:

(a) Documentation of medical appropriateness, which has been reviewed and signed by the prescribing practitioner;

(b) The care plan outlining positioning and treatment regime, and all DME currently available for use by the client;

(c) An order which has been signed and dated by the prescribing practitioner;

(d) The documentation for customized positioner must include objective evidence that commercially available positioners are not appropriate;

(e) Each item requested must be itemized with description of product, make, model number, and manufacturers suggested retail price (MSRP);

(f) Submit Positioner Justification form (OMAP 3155) or reasonable facsimile, with recommendation for most appropriate equipment. This must be submitted by physical therapist, occupational therapist, or prescribing practitioner when requesting a PA;

(3) List of all DME owned or available for client's use.

(4) A gait belt is covered when a client weighs 60 lbs. or more, the care provider is trained in the proper use, and the client can walk independently, but needs a minor correction of ambulation, or, needs minimal or standby assistance to walk alone, or, requires assistance with transfer. Use code E1399.

(5) Procedure Codes:

(a) E0638, Standing frame system, any size, with or without wheels. Prior authorization required — OMAP will purchase, rent and repair if the following criteria are met:

(A) The client must be sequentially evaluated by a physical therapist or occupational therapist to make certain they are able to tolerate and obtain medical benefit from standing positioner;

(B) The client must be following a therapy program initially established by physical or occupational therapist;

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(C) The weight of client must not exceed manufacturer's weight capacity;

(D) The client has demonstrated compliance with other programs;

(E) The client has demonstrated ability to utilize independently or with caregiver;

(F) The client has demonstrated successful trial period in monitored setting;

(G) The client does not have access to equipment from another source;

(H) The home must be able to accommodate the equipment;

(I) Not covered:

(i) Electric mobility option

(b) E1399, Durable medical equipment, miscellaneous, includes, but is not limited to: Sidelyer (includes accessories) — PA required — OMAP will purchase and repair — Covered if the following criteria are met:

(A) The client has contractures that are capable of being reduced or fixed contractures; or

(B) The client has positioning and support needs that cannot be met with other positioning devices; or

(C) Positioning is needed to prevent reflux during feeding; and

(D) Must be sequentially evaluated by a physical or occupational therapist to make certain able to tolerate and obtain medical benefit; and

(E) Must be following a therapy program initially established by a physical or occupational therapist; and

(F) The caregiver and/or family are capable of using the equipment appropriately; and

(G) The home must be able to accommodate the equipment.

(c) E1399, Durable medical equipment, miscellaneous, includes, but is not limited to: Custom positioner — PA required — OMAP will purchase and repair:

(A) Labor is included in the purchase price;

(B) Not used for positioners that are ready-made and subsequently modified to fit an individual client;

(C) The positioner is considered customized when it is virtually impossible to meet another person's positioning needs in the equipment;

(D) Custom positioner is covered if the following criteria are met:

(i) The configuration of the client's body cannot be supported by commercially available positioners due to size, orthopedic deformities, physical deformities or pressure ulcers;

(ii) Must be sequentially evaluated by a physical or occupational therapist to make certain able to tolerate and obtain medical benefit;

(iii) Must be following a therapy program initially established by a physical or occupational therapist;

(iv) The home must be able to accommodate the equipment;

(v) The caregiver and/or family are capable of using the equipment appropriately.

(d) E1399, Durable medical equipment, miscellaneous, includes, but is not limited to: Prone stander, supine stander or board — PA required — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent. Covered if the following criteria are met:

(A) The client must be sequentially evaluated by a physical therapist or occupational therapist to make certain able to tolerate and obtain medical benefit from standing positioner;

(B) The client must be following a therapy program initially established by physical or occupational therapist;

(C) The weight of client must not exceed manufacturer's weight capacity;

(D) The client has demonstrated compliance with other programs;

(E) The client has demonstrated ability to utilize independently or with caregiver;

(F) The client has demonstrated successful trial period in monitored setting;

(G) The client does not have access to equipment from another source; and

(H) The home must be able to accommodate the equipment.

(e) E1399, Durable medical equipment, miscellaneous, includes, but is not limited to: Accessories for standing frame — PA required — OMAP will purchase and repair — Covered if the following criteria are met:

(A) Cannot be successfully positioned in equipment without specified accessories;

(B) The client must be sequentially evaluated by a physical therapist or occupational therapist to make certain able to tolerate and obtain medical benefit from standing positioner;

(C) The client must be following a therapy program initially established by physical or occupational therapist;

(D) The weight of client must not exceed manufacturer's weight capacity;

(E) The client has demonstrated compliance with other programs;

(F) The client has demonstrated ability to utilize independently or with caregiver;

(G) The client has demonstrated successful trial period in monitored setting;

(H) The client does not have access to equipment from another source;

(I) The home must be able to accommodate the equipment.

(6) Criteria for Specific Accessories:

(a) Back support:

(A) Needed for balance, stability, or positioning assistance;

(B) Has extensor tone of the trunk muscles;

(C) Does not have trunk stability to support themselves while being raised or while completely standing.

(b) Tall back:

(A) The client is over 5'11" tall;

(B) The client has no trunk control at all and needs additional support;

(C) The client has more involved need for assistance with balance, stability, or positioning.

(c) Hip guides:

(A) Lacks motor control and/or strength to center hips;

(B) Has asymmetrical tone which causes hips to pull to one side;

(C) Spasticity;

(D) Low tone or high tone;

(E) Need for balance, stability, or positioning assistance.

(d) Shoulder retractor or harness:

(A) Cannot maintain erect posture without support due to lack of motor control or strength;

(B) Kyphosis;

(C) Presence of strong flex or tone.

(e) Lateral supports:

(A) Lacks trunk control to maintain lateral stability;

(B) Has scoliosis which requires support;

(C) Needs a guide to find midline.

(f) Head rest:

(A) Lacks head control and cannot hold head up without support;

(B) Has strong extensor thrust pattern that requires inhibition.

(g) Independent adjustable knee pads:

(A) Has severe leg length discrepancy;

(B) Has contractures in one leg greater than the other.

(h) Actuator handle extension:

(A) No caregiver; and

(B) Able to transfer independently into standing frame; and

(C) Has limited range of motion in arm and/or shoulder and cannot reach actuator in some positions.

(i) Arm troughs:

(A) Has increased tone which pulls arms backward so hands cannot come to midline;

(B) Tone, strength, or control is so poor arms hang out to side and backward, causing pain and risking injury;

(C) For posture.

(j) Tray: Positioning that cannot be met by other accessories;

(k) Abductors: Reduce tone for alignment to bear weight properly;

(l) Sandals (shoe holders):

(A) Dorsiflexion of the foot or feet;

(B) Planar flexion of the foot or feet;

(C) Eversion of the foot or feet;

(D) Safety.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: 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 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

### 410-122-0375

#### Walkers

(1) Indications and coverage:

(a) A standard walker (E0130, E0135, E0140, E0141, E0143) is covered if both of the following criteria are met:

(A) When prescribed by a prescribing practitioner for a client with a medical condition impairing ambulation and there is a potential for increasing ambulation; and

(B) When there is a need for greater stability and security than provided by a cane or crutches.

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(b) For a gait trainer, use the appropriate walker code. If a gait trainer has a feature described by one of the walker attachment codes (E0154-E0157), that code may be separately billed.

(c) Use E1399 for glide-type brakes replacement;

(d) Follow Medicare's coding guidelines from the latest version of the CIGNA Supplier Manual.

(2) Documentation: An order for the walker which is signed by the prescribing practitioner must be kept on file by the DME supplier. The prescribing practitioner's records must contain information which supports the medical appropriateness of the item ordered, including height and weight.

(3) Table 122-0375. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0380

### Hospital Beds

(1) Fixed Height Hospital Bed:

(a) Indications and Coverage:

(A) A fixed height hospital bed is one with manual head and leg elevation adjustments but no height adjustment;

(B) Covered if indications (i), (ii), (iii), or (iv) are met, and indication (v) is met:

(i) A client who requires positioning of the body in ways not feasible with an ordinary bed due to a medical condition which is expected to last at least one month;

(ii) A client who requires, for alleviation of pain, positioning of the body in ways not feasible with an ordinary bed;

(iii) A client who requires the head of the bed to be elevated more than 30 degrees most of the time due to congestive heart failure, chronic pulmonary disease, or problems with aspiration. Pillows or wedges must have been tried and failed;

(iv) A client who requires traction equipment which can only be attached to a hospital bed;

(v) The client's level of functioning can only be met with a hospital bed.

(b) Documentation:

(A) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be submitted with the request for prior authorization (PA) and kept on file by the DME provider;

(B) A CMN is acceptable documentation for clients with both Medicare and Medical Assistance Program coverage. It is not acceptable documentation for clients with Medical Assistance Program coverage only;

(C) Document the number of hours spent in bed, the type of bed currently used by the client and why it doesn't meet the needs of the client.

(c) Procedure Codes:

(A) E0250, Hospital Bed, fixed height, with any type side rails, with mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months or rent;

(B) E0251, Hospital Bed, fixed height, with any type side rails, without mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

(C) E0290, Hospital Bed, fixed height, without side rails, with mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

(D) E0291, Hospital Bed, fixed height, without side rails, without mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent.

(2) Hospital Beds — Variable Height:

(a) Indications and Coverage:

(A) A variable height hospital bed is one with manual height adjustment and with manual head and leg elevation adjustments;

(B) Covered if indications (i), (ii), (iii), or (iv) are met, and indication (v) and (vi) are met:

(i) A client who requires positioning of the body in ways not feasible with an ordinary bed due to a medical condition which is expected to last at least one month;

(ii) A client who requires, for alleviation of pain, positioning of the body in ways not feasible with an ordinary bed;

(iii) A client who requires the head of the bed to be elevated more than 30 degrees most of the time due to congestive heart failure, chronic pulmonary disease, or problems with aspiration. Pillows or wedges must have been tried and failed;

(iv) A client who requires traction equipment which can only be attached to a hospital bed;

(v) The client requires a bed height different from that provided by a fixed height hospital bed in order to permit transfers to chair, wheelchair or standing position;

(vi) The client's level of functioning can only be met with a hospital bed.

(b) Documentation:

(A) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be submitted with the request for PA and kept on file by the DME provider;

(B) A CMN is acceptable documentation for clients with both Medicare and Medical Assistance Program coverage. It is not acceptable documentation for clients with Medical Assistance Program coverage only;

(C) Document the number of hours spent in bed, the type of bed currently used by the client and why it doesn't meet the needs of the client.

(c) Procedure Codes:

(A) E0255, Hospital bed, variable height (Hi-Lo), with any type side rails, with mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

(B) E0256, Hospital bed, variable height (Hi-Lo), with any type side rails, without mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

(C) E0292, Hospital bed, variable height (Hi-Lo), without side rails, with mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

(D) E0293, Hospital bed, variable height (Hi-Lo), without side rails, without mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent.

(3) Hospital Beds — Semi-Electric:

(a) Indications and Coverage:

(A) A semi-electric bed is one with manual height adjustment and with electric head and leg elevation adjustments;

(B) A semi-electric bed is covered if indications (i), (ii), (iii), or (iv) are met and indications (v), (vi), and (vii) are met:

(i) A client who requires positioning of the body in ways not feasible with an ordinary bed due to a medical condition which is expected to last at least one month;

(ii) A client who requires, for alleviation of pain, positioning of the body in ways not feasible with an ordinary bed;

(iii) A client who requires the head of the bed to be elevated more than 30 degrees most of the time due to congestive heart failure, chronic pulmonary disease, or problems with aspiration. Pillows or wedges must have been tried and failed;

(iv) A client who requires traction equipment which can only be attached to a hospital bed;

(v) The client requires frequent changes in body position and/or has an immediate need for a change in body position;

(vi) The client is capable of operating the controls;

(vii) The client's level of functioning can only be met with a hospital bed.

(b) Documentation:

(A) Documentation of medical appropriateness which has been reviewed, signed and dated by the prescribing practitioner must be submitted with the request for PA and kept on file by the DME provider;

(B) A CMN is acceptable documentation for clients with both Medicare and Medical Assistance Program coverage. It is not acceptable documentation for clients with Medical Assistance Program coverage only;

(C) Document the number of hours spent in bed, the type of bed currently used by the client and why it doesn't meet the needs of the client;

(D) Document the reasons why a variable height bed does not meet the needs of the client.

(c) Procedure Codes:

(A) E0260, Hospital Bed, semi-electric (head and foot adjustment), with any type side rails, with mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

(B) E0261, Hospital Bed, semi-electric (head and foot adjustment), with any type side rails, without mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

# ADMINISTRATIVE RULES

(C) E0294, Hospital Bed, semi-electric (head and foot adjustment) without side rails, with mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

(D) E0295, Hospital Bed, semi-electric (head and foot adjustment) without side rails, without mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent.

(4) Heavy-Duty and Extra Heavy-Duty Bed — Indications and Coverage:

(a) A heavy-duty bed is covered if indications, (A), (B), (C) or (D) and (E), (F), (G), and (H) are met:

(A) A client who requires positioning of the body in ways not feasible with an ordinary bed due to a medical condition which is expected to last at least one month;

(B) A client who requires, for alleviation of pain, positioning of the body in ways not feasible with an ordinary bed;

(C) A client who requires the head of the bed to be elevated more than 30 degrees most of the time due to congestive heart failure, chronic pulmonary disease, or problems with aspiration. Pillows or wedges must have been tried and failed;

(D) A client who requires traction equipment which can only be attached to a hospital bed;

(E) The client requires frequent changes in body position and/or has an immediate need for a change in body position;

(F) The client is capable of operating the controls;

(G) The client weighs more than 350 pounds;

(H) The client's level of functioning can only be met with a hospital bed.

(b) Documentation:

(A) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be submitted with the request for PA and kept on file by the DME provider;

(B) A CMN is acceptable documentation for clients with both Medicare and Medical Assistance Program coverage. It is not acceptable documentation for clients with Medical Assistance Program coverage only;

(C) Document the number of hours spent in bed, the type of bed currently used by the client and why it doesn't meet the needs of the client;

(D) Documentation must include height and weight.

(c) Procedure Codes:

(A) E0301, Hospital bed, heavy duty, extra wide, with weight capacity greater than 350 pounds, but less than or equal to 600 pounds, with any type side rails, without mattress — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

(B) E0302, Hospital bed, extra heavy duty, extra wide, with weight capacity greater than 600 pounds, with any type side rails, without mattress, — PA required beginning the third month — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

(C) E0303, Hospital bed, heavy duty, extra wide, with weight capacity greater than 350 pounds, but less than or equal to 600 pounds, with any type side rails, with mattress — PA required beginning the third month OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent;

(D) E0304, Hospital bed, extra heavy duty, extra wide, with weight capacity greater than 600 pounds, with any type side rails, with mattress — PA required beginning the third — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 32-1992, f. & cert. ef. 10-1-92; 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; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0525

### External Insulin Infusion Pump

(1) Indications and Coverage:

(a) Administration of continuous subcutaneous insulin for the treatment of diabetes mellitus which has been documented by a fasting serum C-peptide level that is less than or equal to 110 percent of the lower limit of normal of the laboratory's measurement method. (As an example, if the normal range for C-peptide in a laboratory is 0.9-4 ng/ml, a C-peptide level of 0.99 or less (i.e.,  $0.9 \times 1.1$ ) would qualify for consideration of coverage.), must meet criteria (A) or (B):

(A) The client has completed a comprehensive diabetes education program, has been on a program of multiple daily injections of insulin (i.e., at least three injections per day), with frequent self-adjustments of insulin dose for at least six months prior to initiation of the insulin pump, and has documented frequency of glucose self-testing an average of at least four times per day during the two months prior to initiation of the insulin pump, and meets criteria (i) while on the multiple injection regimen:

(i) Glycosylated hemoglobin level (HbA1C) greater than 7%;

(ii) Plus one or more of the following:

(I) History of recurring hypoglycemia;

(II) Wide fluctuations in blood glucose before mealtime;

(III) Dawn phenomenon with fasting blood sugars frequently exceeding 200 mg/dL;

(IV) History of severe glycemic excursions.

(B) The client has been on an external insulin infusion pump prior to enrollment in the Medical Assistance Program and has documented frequency of glucose self-testing an average of at least four times per day during the month prior to Medical Assistance Program enrollment.

(C) Continued coverage of an external insulin pump and supplies requires that the client be seen and evaluated by the treating practitioner at least every three months;

(D) In addition, the external insulin infusion pump must be ordered and follow-up care rendered by a practitioner who manages multiple clients on continuous subcutaneous insulin infusion therapy and who works closely with a team including nurses, diabetic educators, and dietitians who are knowledgeable in the use of continuous subcutaneous insulin infusion therapy.

(2) Documentation: Medical justification which supports the above criteria must be submitted with the request for prior authorization (PA) and kept on file by the DME provider.

(3) Procedure Codes:

(a) A4221, Supplies for maintenance of drug infusion catheter, per week. Includes cannulas, needles, dressings and infusion supplies — PA required — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(b) A4232, Syringe with needle for external insulin pump, sterile, 3 cc. — PA required — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(A) Does not include the insulin;

(B) Describes the insulin reservoir for use with E0784.

(c) E0784, External ambulatory infusion pump, insulin. Includes instruction in use of pump — PA required — OMAP will purchase, rent and repair — Item considered purchased after 16 months of rent — Also covered for payment by OMAP when client is a resident of a nursing facility;

(d) K0601, Replacement battery for external infusion pump owned by patient, silver oxide, 1.5 volt, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(e) K0602, Replacement battery for external infusion pump owned by patient, silver oxide, 3 volt, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(f) K0603, Replacement battery for external infusion pump owned by patient, alkaline, 1.5 volt, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(g) K0604, Replacement battery for external infusion pump owned by patient, lithium, 3.6 volt, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility;

(h) K0605, Replacement battery for external infusion pump owned by patient, lithium, 4.5 volt, each — OMAP will purchase — Also covered for payment by OMAP when client is a resident of a nursing facility.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: 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 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0540

### Ostomy Supplies: Colostomy, Ileostomy, Ureterostomy

(1) Indications and Coverage: Ostomy supplies are covered for use for clients with a surgically created opening (stoma) to divert urine, feces, or ilial contents to outside of the body.

(2) Documentation: Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be kept on file by the DME provider. An order for the ostomy supplies which has been signed and dated by the prescribing practitioner must be kept on file by the DME provider.

(3) Procedure Codes: Table 122-0540. [Table not included. See ED. NOTE.]



# ADMINISTRATIVE RULES

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; 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; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; 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 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0560

### Urological Services

(1) Urinary catheters and external urinary collection devices are covered to drain or collect urine for a client who has permanent urinary incontinence or permanent urinary retention.

(2) Permanent urinary retention is defined as retention that is not expected to be medically or surgically corrected in that client within three months.

(3) This does not require a determination that there is no possibility that the client's condition may improve sometime in the future.

(4) If the medical record, including the judgement of the attending prescribing practitioner, indicates the condition is of long and indefinite duration (ordinarily at least three months), the test of permanence is considered met.

(5) Follow Medicare's guidelines for usage exceeding the stated limits per DMERC Region D Supplier Manual.

(6) Documentation:

(a) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be kept on file by the DME provider;

(b) When billing for quantities of supplies greater than those described in the policy (e.g., more than one indwelling catheter per month, more than two bedside drainage bags per month, more than 35 male external catheters per month, etc.) documentation supporting the medical appropriateness for the higher utilization must be on file in the DME provider's records.

(7) Procedure Codes: Table 122- 0560. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; 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; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; 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 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0580

### Bath Supplies

(1) Indications and Limitations of Coverage. A rehab shower/com-mode chair is covered if a client meets the following criteria:

(a) Client is unable to use a standard shower chair/bench due to a musculoskeletal condition and;

(b) Client has positioning, trunk stability or neck support needs that a standard shower chair/bench cannot provide and;

(c) The home (shower) can accommodate a rehab/shower chair and;

(d) Less costly alternatives have been considered and ruled out.

(2) Documentation:

(a) The prescription and medical justification for the equipment must be kept on file by the DME supplier. The prescribing practitioner's records must contain information which supports the medical appropriateness of the item ordered.

(b) Documentation of MSRP must be kept on file by the DME supplier. For a rehab/shower chair, submit documentation to support criteria in 410-122-0580(1)(a-d), including a list of equipment available for client's use.

(3) Procedure Codes: Table 122-0580. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; 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 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0620

### Miscellaneous Supplies

Table 0620. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; 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; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 32-1999, f. & cert. ef. 10-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0625

### Surgical Dressing

Procedure Codes — Table 0625. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0660

### Orthotics and Prosthetics

(1) Indications and Coverage:

(a) All of the orthotic and prosthetic "L" codes and any temporary "S" or "K" codes have been removed from the rules except for rule 410-122-0470 Supports and Stockings, 410-122-0255 External Breast Prosthesis, and 410-122-0680 Facial Prosthesis;

(b) Use the current HCPCS Level II Guide for current codes and descriptions;

(c) For adults, follow Medicare current guidelines for determining coverage;

(d) For children, the prescribing practitioner must determine and document medical appropriateness.

(2) Prior Authorization is required for the following codes:

(a) L1499;

(b) L2999;

(c) L3649;

(d) L3999;

(e) L5999;

(f) L7499;

(g) L8499;

(h) L9900.

(3) Codes Not Covered — Table 122-0660. [Table not included. See ED. NOTE.]

(4) Reimbursement:

(a) The hospital is responsible for reimbursing the provider for orthotics and prosthetics provided on an inpatient basis;

(b) Evaluations, office visits, fittings and materials are included in the service provided;

(c) Evaluations will only be reimbursed as a separate service when the provider travels to a client's residence to evaluate the client's need;

(d) All covered orthotic and prosthetic codes are also covered if client resides in a nursing facility except L1500, L1510, and L1520.

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

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; 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 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; 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 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04

## 410-122-0700

### Negative Pressure Wound Therapy

(1) Prior authorization (PA) will be given for six weeks of negative pressure wound therapy at a time.

(2) Definitions:

(a) Negative pressure wound therapy (NPWT) is the controlled application of subatmospheric pressure to a wound using an electrical pump to intermittently or continuously convey subatmospheric pressure through connecting tubing to a specialized wound dressing which includes a resilient, open-cell foam surface dressing, sealed with an occlusive dressing that is meant to contain the subatmospheric pressure at the wound site

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and thereby promote wound healing. Drainage from the wound is collected in a canister;

(b) A licensed health care professional, for the purposes of this policy, may be a physician, physician's assistant (PA), registered nurse (RN), licensed practical nurse (LPN), or physical therapist (PT). The licensed health care professional should be licensed to assess wounds and/or administer wound care within the state where the client is receiving NPWT;

(c) Lack of improvement of a wound, as used within this policy, is defined as a lack of progress in quantitative measurements of wound characteristics including wound length and width (surface area), or depth measured serially and documented, over a specified time interval. Wound healing is defined as improvement occurring in either surface area or depth of the wound;

(d) The staging of pressure ulcers used in this policy is as follows:

(A) Stage I — Nonblanchable erythema of intact light toned skin or darker or violet hue in darkly pigment skin;

(B) Stage II — Partial thickness skin loss involving epidermis and/or dermis;

(C) Stage III — Full thickness skin loss involving damage or necrosis of subcutaneous tissue that may extend down to, but not through, underlying fascia;

(D) Stage IV — Full thickness skin loss with extensive destruction, tissue necrosis or damage to muscle, bone, or supporting structures.

(3) Indications and Coverage — Equipment:

(a) Initial Coverage — A NPWT pump and supplies are covered for:

(A) Ulcers and wounds in the home or nursing facility — The client has a chronic Stage III or IV pressure ulcer, neuropathic (for example, diabetic) ulcer, venous or arterial insufficiency ulcer, or a chronic (being present for at least 30 days) ulcer of mixed etiology. A complete wound therapy program described by criterion 1 and criteria 2, 3, or 4, as applicable depending on the type of wound, should have been tried or considered and ruled out prior to application of NPWT:

(i) 1 — For all ulcers or wounds, the following components of a wound therapy program must include a minimum of all of the following general measures, which should either be addressed, applied, or considered and ruled out prior to application of NPWT:

(I) a — Documentation in the client's medical record of evaluation, care, and wound measurements by a licensed medical professional; and

(II) b — Application of dressings to maintain a moist wound environment; and

(III) c — Debridement of necrotic tissue if present; and

(IV) d — Evaluation of and provision for adequate nutritional status.

(ii) 2 — For Stage III or IV pressure ulcers:

(I) a — The client has been appropriately turned and positioned; and

(II) b — The client has used a group 2 or 3 support surface for pressure ulcers on the posterior trunk or pelvis, (a group 2 or 3 support surface is not required if the ulcer is not on the trunk or pelvis) and;

(III) c — The client's moisture and incontinence have been appropriately managed.

(iii) 3 — For neuropathic (for example, diabetic) ulcers:

(I) a — The client has been on a comprehensive diabetic management program; and

(II) b — Reduction in pressure on a foot ulcer has been accomplished with appropriate modalities.

(iv) 4 — For venous insufficiency ulcers:

(I) a — Compression bandages and/or garments have been consistently applied; and

(II) b — Leg elevation and ambulation have been encouraged.

(v) 5 — Preoperative myocutaneous flap or graft:

(i) a — Accelerated formation of granulation tissue which cannot be achieved by other available topical wound treatments;

(ii) b — Other conditions of the client that will not allow for healing times achievable with other topical wound treatments.

(B) Exclusions from coverage — An NPWT pump and supplies are not covered when one or more of the following are present:

(i) The presence in the wound of necrotic tissue with eschar, if debridement is not attempted;

(ii) Untreated osteomyelitis within the vicinity of the wound;

(iii) Cancer present in the wound;

(iv) The presence of a fistula to an organ or body cavity within the vicinity of the wound.

(b) Continued Coverage:

(A) For consideration of continued coverage for negative pressure wound therapy (NPWT), a licensed medical professional must, on a regular basis:

(i) Directly assess the wound(s) being treated with the NPWT pump; and

(ii) Supervise or directly perform the NPWT dressing changes.

(iii) On at least a monthly basis, document changes in the ulcer's dimensions and characteristics.

(B) If criteria (3)(b)(A)(i)-(iii) are not met, continued coverage of the NPWT pump and supplies will be denied as not medically appropriate.

(c) When Coverage Ends — For covered wounds and ulcers, and NPWT pump and supplies will be denied as not medically appropriate with any of the following, whichever occurs earliest:

(A) Criteria in section (3)(b)(A)(i)-(iii) of this rule cease to occur; or

(B) In the judgement of the treating practitioner, adequate wound healing has occurred to the degree that NPWT may be discontinued; or

(C) Any measurable degree of wound healing has failed to occur over the prior month. There must be documented in the client's medical records quantitative measurements of wound characteristics including wound length and width (surface area), or depth, serially observed and documented, over a specified time interval. The recorded wound measurements must be consistently and regularly updated and must have demonstrated progressive wound healing from month to month; or

(D) Four months (including the time NPWT was applied in an inpatient setting prior to discharge to the home or nursing facility) have elapsed using an NPWT pump in the treatment of any wound. Coverage beyond four months will be given individual consideration based upon required additional documentation; or

(E) Once equipment or supplies are no longer being used for the client, whether or not by the prescribing practitioner's order.

(4) Documentation:

(a) The following information must be submitted with the initial written request:

(A) A completed OMAP 3123;

(B) An evaluation by the licensed health care professional supervising the care, describing the underlying condition (diagnosis, prognosis, rehabilitation potential and nutritional status) as well as a comprehensive assessment and evaluation of the client after conservative treatment has been tried without success;

(C) Documentation of other pressure reducing products or methods used but not proven adequate;

(D) Serum total lymphocyte count and prealbumin values within the last 30 days;

(E) Dated photographs of wound or ulcer with client's name.

(b) At review, submit:

(A) Dated photographs of pressure sores;

(B) Copies of skin flow sheets;

(C) Copies of any pertinent notes in the progress records;

(D) A completed OMAP 3124.

(5) Procedure Codes: Table 122-0700. [Table not included. See ED.

NOTE.]

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04

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**Adm. Order No.:** OMAP 26-2004

**Filed with Sec. of State:** 4-15-2004

**Certified to be Effective:** 5-1-04

**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

# ADMINISTRATIVE RULES

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. Failure to obtain PA for a service as indicated in rule, is not reimbursable by the Office of Medical Assistance Programs. 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 services not covered by Medicare. 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 durable medical equipment provider.

(3) Prior authorization authorities for PA requests (or for changes to existing PA's) are as follows:

(a) Services for clients identified on the Office of Medical Assistance Programs (OMAP) Medical Care ID as Medically Fragile Children's Unit clients are prior authorized by the Department of Human Service's (DHS) Medically Fragile Children's Unit;

(b) Services for clients identified on the OMAP Medical Care ID as being enrolled in the fee-for-service (FFS) Medical Case Management (MCM) program are prior authorized by the MCM contractor;

(c) Services for all other clients are prior authorized by OMAP. All required documentation must be submitted to 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) An authorization 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; OMAP 20-2004(Temp), f. & cert. ef. 3-15-04 thru 4-30-04; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 26-2004, f. 4-15-04 cert. ef. 5-1-04

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**Department of Human Services,  
Public Health  
Chapter 333**

**Adm. Order No.:** PH 7-2004

**Filed with Sec. of State:** 3-17-2004

**Certified to be Effective:** 3-17-04

**Notice Publication Date:** 1-1-04

**Rules Adopted:** 333-535-0061

**Rules Repealed:** 333-535-0060

**Subject:** Retroactively repeals OAR 333-535-0060 and adopts OAR 333-535-0061. The adopted rule contains updates and revisions to comply with recommended national guidelines. Included are new requirements for a written "Patient and Staff Safety Assessment" which will address security and safety needs and solutions. A new rule section for safety features and security and safety devices is also included. Many revisions from the suspended rule are adopted including specific provisions affecting special psychiatric population groups such as children and adolescents, forensics, and patients with dementia.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

333-535-0061

## Psychiatric Patient Care Units and Rooms

(1) The design of inpatient psychiatric patient care units shall be supportive of the types of psychiatric therapies provided for patients and their psychiatric care needs. Interior finishes, lighting and furnishings shall, to the extent practicable, reflect a residential rather than an institutional setting with an emphasis on natural light and exterior views while not compromising patient privacy and safety design. Inpatient psychiatric patient care units shall include patient rooms meeting the requirements of section (4) of this rule and service areas meeting the requirements of section (5) of this rule.

(2) Patient and Staff Safety Assessment. The hospital psychiatric care staff and the hospital administration, in consultation with the project architects, shall develop a Patient and Staff Safety Assessment which addresses security and safety design features and devices. A copy of this Assessment shall accompany construction documents submitted to the Licensing Plans Review Program. The Patient and Staff Safety Assessment shall include at least the following elements:

(a) A statement explaining the psychiatric population groups served;

(b) A discussion of the capability for staff visual supervision of patient ancillary areas and corridors;

(c) A discussion of the risks to patients, including self injury, and the project solutions employed to minimize such risks;

(d) A discussion of building features and equipment, including items which may be used as weapons, which are intended to minimize risks to patients, staff and visitors;

(e) A statement explaining how potentially infectious patients will be managed; and

(f) A discussion of outdoor areas used by patients.

(3) Except as permitted under OAR 333-515-0060, every general and psychiatric hospital shall have at least one psychiatric holding room which meets the requirements of section (7) of this rule and OAR 309-033-0720(3)(e).

(4) Psychiatric patient care rooms shall comply with the requirements of OAR 333-535-0025, except as follows:

(a) A nurse call system is not required. If included, provisions shall be made for the easy removal or securing of call button outlets;

(b) Patient toilets shall not have bedpan flushing devices;

(c) Handwashing stations are not required in patient rooms;

(d) Visual privacy in multi-bed rooms (e.g., cubicle curtains) is not required;

(e) Each patient room shall be provided a private toilet room and handwashing station. Grab bars are only required in rooms required to be accessible to the disabled; and

(f) Patient rooms shall comply with the requirements of section (6) of this rule.

(5) Psychiatric patient care unit service areas shall comply with the requirements of OAR 333-535-0025, except as follows:

(a) A secured storage area shall be provided for patients' belongings that are determined to be potentially harmful;

(b) A secured storage station will be provided for storing law enforcement weapons prior to officers entering the patient care unit;

(c) The medication station shall include provision against unauthorized access;

(d) Between meal nourishment(s) facilities within the unit shall be one, or a combination of the following:

(A) A nourishment station;

(B) A kitchenette, designed for patient use, with a sink and a keyed switch or other acceptable method for staff control of any heating and cooking devices;

(C) A kitchen service within the unit that includes a handwashing station, storage space, refrigerator and facilities for full meal preparation. A keyed switch or other acceptable method for staff control of any heating and cooking devices is required.

(e) All storage spaces within the psychiatric patient care unit shall be secured from patient access;

(f) A bathtub or shower shall be provided for every six beds not otherwise served by bathing facilities within the patient rooms. Bathing facilities shall be designed and located for patient safety, convenience, privacy and shall comply with section (6) of this rule;

(g) A separate charting area shall be provided with provisions for visual and acoustical privacy. Viewing windows to permit observation of patient areas by the charting nurse or physician may be used if the arrangement is such that patient files cannot be read from outside the charting area. Viewing windows shall meet the requirements of section (6)(g) of this rule;

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(h) At least two separate social spaces, one appropriate for noisy activities and one for quiet activities shall be provided. The combined area shall be at least 40 square feet per patient with each space being at least 120 square feet in size. These spaces may be shared by dining activities;

(i) Space for group therapy shall be provided. This space may be combined with the quiet space required by subsection (5)(h) of this rule when the unit accommodates 12 or fewer patients and when at least 225 square feet of closed private space is available for group therapy activities;

(j) Securable patient laundry facilities with an automatic washer and dryer and secured space for chemicals shall be provided;

(k) Each psychiatric patient care unit shall include, or have close access to, a soiled utility room that meets the requirements of OAR 333-535-0260(5) or a soiled holding room. A soiled holding room shall meet all the requirements of a soiled utility room except that a clinical sink may be omitted; and

(l) The following elements shall also be provided, but may be located either within the psychiatric patient care unit or conveniently accessible to the unit:

(A) Room(s) for examination and treatment of at least 80 square feet in size. Examination and treatment room(s) for medical-surgical patients may be shared by psychiatric unit patients. The shared room(s) may be on a different floor than the psychiatric patient care unit if it is conveniently accessible to the unit;

(B) Separate consultation room(s), lockable from the outside. Each consultation room shall have a minimum floor space of 100 square feet and shall be provided at a room-to-bed ratio of one consultation room for every 12 psychiatric beds. The room(s) shall be designed for acoustical and visual privacy and be constructed to achieve a noise reduction of at least 45 decibels;

(C) Separate space for patient therapy/multipurpose use. The greater of at least 300 square feet or at least 15 square feet per patient shall be provided. The space shall include a handwashing station, work counter(s), storage and space for displays and may serve more than one psychiatric patient care unit. However, when a psychiatric patient care unit contains less than 12 beds, the therapy and other functions may be performed within the noisy activities area required by subsection 5(h) of this rule if at least an additional 10 square feet per patient is provided; and

(D) A conference and treatment planning room, with 45 decibels sound reduction acoustic separation, for use by psychiatric patient care unit staff.

(6) Patient and staff safety features, security and safety devices shall not, to the extent practicable, be presented in a manner to attract or invite tampering by patients. Design, finishes and furnishings shall be designed and installed to minimize the opportunity for patients to cause injury to themselves or others. Special design considerations for prevention of self injury and injury to staff and others shall include:

(a) Visual control of nursing unit corridors, passive activity areas and outdoor areas shall be provided;

(b) Hidden alcoves are prohibited;

(c) Non-patient areas, including staff support rooms, mechanical and electrical spaces shall be secured from patients;

(d) Door closers and door and cabinet hardware, including hinges in patient areas, shall be designed to prevent attachment of other articles and to limit possible patient or staff injury;

(e) Doors to patient toilet and shower rooms shall not swing into the room. These doors shall either not be lockable from within the room or shall be provided with privacy locks which can be opened by staff with a key or tool. Hardware shall be designed to preclude patients from tying the door closed;

(f) Furnishings, movable equipment and accessories shall be addressed by the Patient and Staff Safety Assessment required by section (2) of this rule;

(g) Windows, including interior and exterior glazing, shall be non-operable and shall be of break-resistant material (i.e., will not shatter). Window sills and curtains and blinds shall be constructed to prevent attachment of other articles;

(h) Curtains and blinds shall be constructed to break-away with a vertical load of greater than 40 pounds;

(i) Ceilings in patient bedrooms, toilet and shower rooms shall be of continuous bonded construction. T-bar ceilings with lay-in tiles are not allowed;

(j) The ceiling and air distribution devices, lighting fixtures, sprinkler heads, smoke detectors, and other appurtenances shall be designed and installed to be tamper resistant, non-breakable, prevent the attachment of

other articles and to limit possible patient or staff injury in patient rooms, toilet and shower rooms;

(k) Flooring base in patient rooms, toilet and shower rooms shall be installed to preclude removal by patients;

(l) Shower, bath, toilet and sink plumbing fixture hardware and accessories, including grab bars and toilet paper holders, shall prevent attachment of other articles and removal by patients. Shut-offs under patient sinks shall be covered and secured to prevent patient access;

(m) Grab bars, if provided, shall be contiguous to the wall so that nothing can pass between the edge of the rail and the wall;

(n) Toilet flush valves shall be recessed or of the push button type;

(o) Handwashing station faucet hardware shall be recessed or of the push button type to preclude patient or staff injury;

(p) Shower curtains, if provided, shall have a breakaway maximum of 40 pounds and be supported on curtain tracks attached or flush to the ceiling;

(q) Shower heads shall be sloped or otherwise designed to prevent attachment of other articles;

(r) Fire extinguisher cabinets and fire alarm pull stations shall be located or installed to prevent inappropriate use;

(s) Electrical outlets in patient areas shall be of a ground fault interrupter type ("GFI") or shall be protected by GFI breakers at electrical panels;

(t) Patient mirrors shall be non-breakable and shatterproof;

(u) Medical gas outlets, if provided, shall be located or installed to prevent patient access;

(v) All devices attached to walls, ceilings and floors and all door and window hardware shall be tamper resistant and be securely fastened with tamper proof screws;

(w) All exit door hardware shall have concealed rods, if any are used, and they shall not be removable by patients. Door closure and panic bars, if provided, shall not allow attachment of other articles;

(x) Time delay closers shall not be used on locked doors; and

(y) Outdoor areas shall be secured in accordance with the Patient and Staff Safety Assessment required by section (2) of this rule.

(7) Psychiatric Holding Rooms. Psychiatric holding rooms shall comply with the following requirements:

(a) As required by section (3) of this rule, and except as permitted by OAR 333-515-0060, each general or psychiatric hospital shall have at least one psychiatric holding room. A minimum of one psychiatric holding room is required for every 24 psychiatric beds or fraction thereof. The rooms shall be in close proximity to a nurses' station. Each room shall be for only one patient and shall be at least 80 square feet in size. The design of the room shall prevent patient hiding and minimize the potential for escape and self injury;

(b) Psychiatric holding rooms shall meet the requirements of section (6) of this rule;

(c) Outside room corners, door hardware protrusions and other projections shall be avoided to minimize points for possible patient injury;

(d) No items shall be attached to the walls and there shall be no exposed curtains, drapes, rods or furniture, except a portable bed which can be removed if necessary. Beds which are securely fastened to the floor are allowable but must have no sharp protrusions, such as bed posts or corners;

(e) Wall and other room finish materials shall be securely constructed to resist attempts at intentional damage;

(f) Exposed pipes or electrical wiring is prohibited. Electrical outlets, if provided, shall be permanently capped or covered with a metal shield which opens with a key and shall be circuited and controllable from outside the room. Ceiling lights shall be unbreakable and shall be either recessed or surface mounted;

(g) Room construction shall contain no readily combustible materials (i.e., wood or vinyl surfaces and flooring). If the room interior is padded with combustible materials, such materials shall meet the requirements of the NFPA 101 Code as enforced by the State Fire Marshall having jurisdiction;

(h) Sprinkler heads shall be of a recessed pop-down type and shall have a breakaway strength of under 80 pounds;

(i) A toilet and handwashing station which meets the requirements of section (6) of this rule shall be available for patient use but shall not be located within the room;

(j) The door to the room shall open outward and shall include a viewing window of shatterproof glass or plastic through which the entire room may be viewed from the outside before entering; and

(k) The door to the room shall be lockable from the outside and shall include tamper-proof hardware. The lock must release with initiation of the

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fire alarm, sprinkler flow or power failure as required by the Oregon Structural Speciality Code and NFPA 101 Code as enforced by the appropriate building codes agency and fire marshal.

(8) Child and Adolescent Psychiatric Units. The requirements of sections (1) through (6) of this rule and of section (7) of this rule, if a psychiatric holding room is provided, shall apply to child and adolescent psychiatric units, except as follows:

(a) The environment of the unit shall reflect the age, social and developmental needs of children and adolescents, including space to accommodate family and other care givers;

(b) At least one single occupancy timeout room shall be provided;

(c) An outdoor activity area shall be provided with a minimum of 50 square feet per patient but not less than 400 total square feet; and

(d) Child and adolescent care units shall be physically and visually separate from one another and from adult care units.

(9) Geriatric, Alzheimer and Other Dementia Units. The requirements of sections (1) through (6) and of section (7) of this rule, if a psychiatric holding room is provided, shall apply to geriatric, Alzheimer and other dementia units, except as follows:

(a) Single patient rooms shall be at least 120 square feet in size. Multiple patient rooms shall provide at least 100 square feet per patient.

(b) A nurse call system meeting the requirements of section (6) of this rule shall be provided. Provisions shall be made for the removal or covering of call button outlets;

(c) Handrails shall be provided on both sides of corridors used by patients. These handrails shall be contiguous with the wall so that nothing may pass between the rail and wall;

(d) Doors to patient rooms and patient ancillary use areas shall be a minimum of 3 feet 8 inches in clear width;

(e) Slip resistant flooring surfaces shall be provided in all bathing rooms; and

(f) Secure storage for wheelchairs shall be provided in a location readily accessible to the unit.

(10) Forensic Psychiatric Units. The requirements of sections (1) through (6) of this rule shall apply to forensic psychiatric units, except as follows:

(a) Security vestibules or sally ports are required at the unit entrance;

(b) Additional treatment areas, police and courtroom space, and special security considerations shall be provided in accordance with the Patient and Staff Safety Assessment; and

(c) Children and adolescents shall be separated from one another as defined by the functional program. Children and adolescents shall also be physically and visually separate from adult care units.

Stat. Auth.: ORS 441 & ORS 442

Stats. Implemented: ORS 441 & ORS 442

Hist.: OH 13-2002, f. & cert. ef. 9-27-02; PH 18-2003(Temp), f. & cert. ef. 10-31-03 thru 4-26-04; PH 7-2004, f. & cert. ef. 3-17-04

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**Adm. Order No.:** PH 8-2004(Temp)

**Filed with Sec. of State:** 3-17-2004

**Certified to be Effective:** 3-17-04 thru 7-30-04

**Notice Publication Date:**

**Rules Adopted:** 333-535-0041

**Rules Suspended:** 333-535-0040

**Subject:** Retroactively suspends 333-535-0040 and adopts 333-535-0041. These rule changes were previously submitted to the Secretary of State's office and became effective on February 20, 2003. These rules are identical to the rules previously filed with the Secretary of State's office on February 20, 2003.

OAR 333-535-0041 contains major revisions to construction requirements for hospital critical care units. These include care units for intensive care, coronary care patients, pediatric patients, and newborns. The adopted rule combines most requirements for adult units, allowing for better multi-disciplinary use of the same patient rooms. More detailed requirements are proposed for separate pediatric critical care units and newborn intensive care units than in 333-535-0040, with requirements reflective of recent care trends and recommended industry standards.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 333-535-0041

### Critical Care Units

(1) Critical Care Units, Generally: Critical Care Units require special space and equipment considerations for effective staff functions. In addition,

space must be arranged to include provisions for immediate access for emergency medical equipment from other departments. Critical Care Units shall comply in size, number and type with the requirements of this rule and with the hospital's functional program. This rule is intended for the more common types of critical care services. Where specialized services are required, the Department may allow such additions and modifications as are necessary for efficient, safe and effective patient care. (See also OAR 333-535-0300 for mechanical requirements and OAR 333-535-0310 for electrical requirements.)

(2) Adult Critical Care Units: Each Adult Critical Care Unit shall comply with the following requirements:

(a) The location shall be convenient for access from emergency, respiratory, laboratory, radiology, surgery, and other essential departments and services, and be located so that medical emergency resuscitation teams may respond promptly to emergency calls;

(b) The location shall be arranged to eliminate the need for through traffic;

(c) For new construction, a private room shall be provided for each patient. A minimum of 200 square feet of clear floor area shall be provided exclusive of anterooms, vestibules, toilet rooms, closets, lockers, wardrobes, and alcoves. A combined total of at least seven feet of clear space shall be available at the head and foot of the bed. Minimum head wall width shall be 13 feet;

(d) Renovation projects shall comply with subsection (2)(c) of this rule except when existing structural conditions make full compliance impractical. In such cases, the Department may allow the following deviations: Private patient room size may be reduced to 160 square feet with a minimum headwall width of 11 feet 6 inches. The combined total of clear space available at the head and foot of the bed may be reduced to a minimum of six feet. Multiple bed rooms may be provided with cubicle curtains for patient privacy. The minimum patient cubicle size shall be 130 square feet with a minimum headwall width of 11 feet for each bed. Three of the seven feet of combined total clear space required at the head and foot of the bed may be outside the curtained cubicle area.

(e) In private rooms or curtained cubicles, visual access to the corridor shall be provided. In multiple bed rooms, cubicle curtains or other alternative methods approved by the Department shall be provided for visual privacy from casual observation by other patients and visitors;

(f) Where only one door is provided to a bed space, it shall be at least 44 inches in clear width and arranged to minimize interference with the movement of beds and large equipment. Sliding doors shall not have floor tracks and shall have hardware that minimizes jamming. When a secondary door is desired for staff use, it may be of a smaller width;

(g) For the purpose of allowing day from night orientation, newly constructed patient rooms shall include at least one window meeting the requirements of OAR 333-535-0025(1)(c), arranged to allow direct visual access by the patient to the outside. Patient rooms and cubicles in renovation projects shall also meet this requirement except when the Department determines that existing structural conditions make it impractical to do so. In these instances, patients must have direct visual access to an outside window, but it may be a clerestory type and the distance from the patient bed to the outside window may be up to 50 ft;

(h) A nurse call device shall be provided at each bed for patient use. A staff use emergency call station shall also be provided in each patient room to summon assistance. In multiple bedrooms, at least one such emergency call station shall be provided for each eight patient beds;

(i) Handwashing stations shall be convenient to nurses stations and patient bed areas. One handwashing station shall be provided in each patient room. The handwashing station shall be located near the entrance of the patient room, designed to minimize splashing water onto the floor, and shall be equipped with hands-free operable controls. In multiple bed rooms allowed under paragraph (2)(b)(D) of this rule, if the Department determines that existing structural conditions make it impractical to comply with this requirement, there shall be at least one handwashing station provided for every two beds in multiple bed rooms. The handwashing station shall be located near the entrances to patient cubicles;

(j) A toilet shall be provided within each patient room or in a separate private toilet room entered directly from the patient room. Space shall be provided adjacent to toilets to allow for staff assistance. An exception to this requirement may be granted by the Department when the project is within a Department of Human Services designated Level 1 Trauma Center Hospital and patients typically are unable to utilize toilets. In renovation projects if the Department determines that existing structural conditions make it impractical to comply with this paragraph, a minimum of one enclosed toilet room and handwashing station shall be provided for each

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eight patient beds. In these instances, portable toilets are permitted in place of fixed toilets within each patient room or cubicle. If portable toilets are used, facilities for cleaning and storing them shall be conveniently located within or adjacent to the Critical Care Unit;

(k) The nurses' station or a substitution with space for charting and monitoring shall be located so that nurses will have direct visual observation of each patient. In larger Critical Care Units, more than one nurses' station may be needed to provide for observation of all patients;

(l) Individual patient closets or lockers shall be provided for the secure storage of clothing and personal effects. This storage may be within patient rooms or in a central location convenient to the Critical Care Unit; and

(m) Each Critical Care Unit shall provide space for equipment used for continuous physiological monitoring, including a bedside and remote visual display for each patient.

(3) Airborne Infection Isolation Room: At least one Airborne Infection Isolation Room shall be provided for use by Critical Care Unit patients. The number and location of Airborne Infection Isolation Rooms shall be determined based upon an Infection Control Risk Assessment conducted in accordance with OAR 333-535-0035(1). Each Airborne Infection Isolation Room shall comply with the requirements of OAR 333-535-0035(2) with the following exceptions:

(a) The requirement for the bathtub or shower may be eliminated.

(b) Compact, modular toilet/sink combination units may replace the requirement for a toilet room.

(c) Toilets may be eliminated entirely from patient rooms of Department of Human Services designated Level 1 Trauma Center Hospitals when patients typically are unable to utilize a toilet.

(4) Service Areas: One service area may serve two or more adjacent Critical Care Units. The size and location of each service area will depend upon the number of beds to be served. The following service areas shall be located in, or readily available to, each Critical Care Unit:

(a) Charting facilities. Multi-disciplinary charting facilities provided in accordance with the architectural functional program;

(b) Staff lounges. Staff lounge(s) and toilets located as a part of or adjacent to the Critical Care Unit, so that staff may be recalled quickly to the patient area in case of emergency;

(c) Staff personal effects storage. Space located at or near the nurses' work area for the secure storage of the personal effects of nursing personnel. Larger items such as coats may be stored in staff locker rooms located outside the Critical Care Unit;

(d) Clean supply room. Space which meets the requirements of OAR 333-535-0260(4), for the storage and distribution of all clean medical and surgical supplies kept in the Critical Care Unit;

(e) Soiled utility room. Each patient Critical Care Unit shall include at least one soiled utility room which meets the requirements of OAR 333-535-0260(5);

(f) Medication station. A Medication Station which meets the requirements of OAR 333-535-0025(2)(h). The medication station shall be designed to allow for secure, convenient, and prompt 24-hour distribution of medicine to patients;

(g) Clean linen storage. A separate closet or a designated area for clean linen storage shall be provided. If a closed cart system is used, storage may be in an alcove outside the required corridor width;

(h) Nourishment station. A nourishment station with sink, work counter, refrigerator, storage cabinets, and equipment for hot and cold nourishments between scheduled meals shall be provided. The nourishment station shall include space for trays and dishes used for non-scheduled meal service. Provision and space shall be included for separate temporary storage of unused and soiled dietary trays not picked up at meal time. Nourishment stations shall not share storage, counters, sinks or refrigerator space with medical supplies or pharmaceuticals;

(i) Ice machine. Equipment to provide ice for treatments and nourishment shall be provided. Ice-making equipment may be in the clean work room or at the nourishment station. Ice intended for human consumption shall be from self-dispensing icemakers;

(j) Equipment storage room or alcove. Appropriate room(s) or alcove(s) shall be provided for storage of large items of equipment necessary for patient care and as required by the functional program. Each Critical Care Unit shall provide sufficient storage area(s) located on the patient floor to keep its required corridor width free of all equipment and supplies, but not less than 20 square feet per patient bed shall be provided. Additional space shall be provided for stretcher or bed storage if stored on the floor;

(k) Emergency equipment storage. Each Critical Care Unit shall have space for emergency cardiopulmonary resuscitation carts located out of the traffic pattern but convenient for access;

(l) Visitors' waiting room. A visitors' waiting room shall be provided that is designed to accommodate the long stays and stressful conditions common to such spaces, including provisions for privacy, means to facilitate communications, and access to toilets. The locations and size shall be appropriate for the number of patients and units served, with a capacity of at least one seating space per Critical Care Unit patient bed;

(m) Consultation room. A consultation room or other typically available room shall be provided to allow for private discussions between family members and medical staff. This room may be omitted in renovation projects if all patient rooms are private occupancy; and

(n) Janitors' closet. Janitors' closet with floor receptor or service sink and storage space for cleaning equipment and supplies. It may be located outside the Critical Care Unit if it is conveniently accessible to the Critical Care Unit.

(5)(a) Pediatric Critical Care Unit: If a facility has a distinct Pediatric Critical Care Unit, the functional program must include consideration for staffing, control, and the safe transportation of critically ill pediatric patients with life support and environmental systems from other areas of the facility. The Pediatric Critical Care Unit may be an open ward plan or may have private or semi-private patient rooms. Private rooms at the rate of at least one per 10 beds shall be provided. In addition, at least one private room for each Pediatric Critical Care Unit shall be provided for seclusion and airborne infection isolation. The room(s) provided for seclusion and airborne infection isolation shall comply with the requirements for Airborne Infection Isolation Rooms set forth in OAR 333-535-0035(2). (See also OAR 333-535-0300 for mechanical requirements and OAR 333-535-0310 for electrical requirements.)

(b) In addition to complying with the requirements of sections (1), (2), (3) and (4) of this rule, each Pediatric Critical Care Unit shall also include the following features:

(A) Space in the patient room for family and visitors. Space and furnishings to allow parents to sleep shall also be provided. If the sleeping area is separate from the patient area, a system for communication with Pediatric Critical Care Staff must be provided. Storage for associated bedding shall be provided;

(B) If an examination and treatment room is required by the functional program, it shall be located in or directly accessible from the Pediatric Critical Care Unit. Examination and treatment rooms shall have a floor area of at least 80 square feet and shall include a handwashing station, storage facilities and a surface for charting;

(C) Consultation/demonstration room which is separate from treatment rooms and within or convenient to the Pediatric Critical Care Unit; and

(D) Separate storage cabinets or closets for toys and games.

(6) Newborn Intensive Care Units (NICU@): Each Newborn Critical Care Unit shall include or comply with the following requirements:

(a) The NICU shall have a clearly identified entrance and reception area with a counter for charting and enclosed storage for supplies. The area shall permit visual observation of, and contact with, all traffic entering the NICU. A handwashing station shall be provided for visitors entering the NICU;

(b) The NICU shall be designed as part of an overall safety program to protect the physical security of infants, parents, and staff and to minimize the risk of infant abduction. There shall be controlled physical access to the NICU;

(c) In a multiple-bed room, every bed shall be within 20 feet of a handwashing station. Where an individual room concept is used, a handwashing station shall be provided within each infant care room. All sinks shall be hands-free operable and large enough to limit splashing;

(d) At least one door to each room in the NICU must be large enough to accommodate portable X-ray equipment;

(e) The NICU shall be located in close proximity to Labor and Delivery Departments when that service is also provided at the facility;

(f) Privacy screening shall be provided at all infant viewing windows;

(g) Sound attenuation features shall be provided to limit background noise levels to a maximum 40-45 decibels and transient sounds to a maximum of 70 decibels;

(h) Indirect lighting and high-intensity lighting shall be provided in all nurseries.

Controls shall be provided to enable lighting to be adjusted over individual patient care spaces from one to 60 footcandles at 3 feet above the floor level;

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(i) Each infant care space shall contain a minimum of 150 square feet per bassinet, excluding sinks and aisles. Each bassinet shall have a minimum clearance of 4 feet to walls or any permanent obstruction. When single infant rooms or fixed cubicle partitions are used, there shall be an adjacent aisle of not less than 8 feet in clear unobstructed width to permit passage of equipment and personnel. In multiple bed rooms, there shall be a minimum of 8 feet between infant care beds. Each infant care space shall be designed to allow privacy for the baby and family;

(j) A medication station meeting subsection (4)(f) of this rule;

(k) Ceilings shall be easily cleanable and non-friable and shall have a noise reduction coefficient (ANRC@) of at least 0.55. Ceiling construction must limit the passage of particles from above the ceiling plane into the clinical environment. If a T-bar acoustic tile ceiling system is used, the tiles shall be clipped down, weighted or gasketed to limit passage of particles;

(l) At least one Airborne Infection Isolation Room is required within the NICU. The room shall be enclosed and separated from other areas of the nursery with provisions for direct visual observation of the infant. All Airborne Infection Isolation Rooms shall comply with the requirements of OAR 333-535-0035(2), except that a separate toilet, bathtub, or shower are not required;

(m) Rooms at the rate of at least one per 15 infant isolettes shall be provided within the NICU to allow parents and infants to spend extended private time together. These room(s) shall have direct, private access to sink and toilet facilities, communication linkage with the NICU staff, sleeping facilities for at least one parent, and sufficient space for the infant's bed and equipment;

(n) Dedicated space shall be provided for lactation support and consultation in or immediately adjacent to the NICU. Provision shall be made, either within the room or conveniently located nearby, for sink, counter, refrigeration and freezing of breast milk, storage for pump and attachments, and educational materials;

(o) Charting facilities shall have adequate linear surface space to ensure that staff and physicians may chart and have simultaneous access to information and communication systems;

(p) A clean workroom or clean supply room meeting the requirements of subsection (4)(d) of this rule;

(q) A soiled workroom or soiled holding room meeting the requirements of subsection (4)(e) of this rule;

(r) A lounge, locker room, and staff toilet within or adjacent to the NICU suite for staff use which meets the requirements of subsection (4)(b) of this rule;

(s) Emergency medical equipment storage which meets the requirements of subsection (4)(k) of this rule;

(t) A janitors' closet which meets the requirements of subsection (4)(n) of this rule;

(u) A visitors' waiting room which meets the requirements of subsection (4)(l) of this rule;

(v) A nurses/supervisors office or station meeting the requirements of subsection (2)(k) of this rule;

(w) Multipurpose room(s) for staff, patients, and patients' families for patient conferences, reports, education, training sessions, and consultation. These rooms must be accessible to each NICU. They may be located on other floors if convenient for regular use. One such room may serve several nursing units and/or departments;

(x) Equipment storage or alcove meeting subsection (4)(j) of this rule; and

(y) A nourishments station for refrigerated storage and distribution of breast milk, with sink, refrigerator, work counter and storage for clean containers.

Stat. Auth.: ORS 441 & ORS 442

Stats. Implemented: ORS 441 & ORS 442

Hist.: PH 1-2003, f. & cert. ef. 2-20-03; PH 8-2004(Temp), f. & cert. ef. 3-17-04 thru 7-30-04

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**Rules Renumbered:** 333-024-0520 to 333-025-0145, 333-024-0530 to 333-025-0150

**Rules Ren. & Amended:** 333-024-0500 to 333-025-0135, 333-024-0510 to 333-025-0140, 333-024-0540 to 333-025-0155, 333-024-0550 to 333-025-0160

**Subject:** Revises rules relating to genetic information and privacy. Adds to and modifies existing definitions. Establishes Institutional Review Board registry and guidelines for review of research proposals involving genetic materials and information. Establishes requirements for informed consent related to genetic research. Establishes requirement for notification and opt-out provision for anonymous research using genetic material. Provides guidelines for research subject recontact. Replaces disclosure form. Renumbers and amends existing rules to conform to new legislation and federal privacy law.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 333-025-0100

### Definitions

As used in these rules:

(1) "Anonymous research" means scientific or medical genetic research conducted in such a manner that any DNA sample or genetic information used in the research is unidentified. "Anonymous research" does not include research conducted in such a manner that the identity of such an individual, or the identity of the individual's blood relatives, can be determined by use of a code, encryption key or other means of linking the information to a specific individual.

(2) "Blanket informed consent" means that the individual has consented to the use of that individual's DNA sample or health information for any future research, but has not been provided with a description of or consented to the use of the sample in genetic research or any specific genetic research project.

(3) "Blood relative" means a person who is:

(a) Related by blood to an individual; and

(b) A parent, sibling, son, daughter, grandparent, grandchild, aunt, uncle, first cousin, niece or nephew of the individual.

(4) "Clinical" means relating to or obtained through the actual observation, diagnosis, or treatment of patients and not through research.

(5) "Coded" means identifiable only through the use of a system of encryption that links a DNA sample or genetic information to an individual or the individual's blood relative. A coded DNA sample or genetic information is supplied by a repository to an investigator with a system of encryption.

(6) "Deidentified" means lacking, or having had removed, the identifiers or system of encryption that would make it possible for a person to link a DNA sample or genetic information to an individual or the individual's blood relative, and neither the investigator nor the repository can reconstruct the identity of the individual from whom the sample or information was obtained. Deidentified DNA samples and genetic information must meet the standards provided in 45 CFR 164.502(d) and 164.514(a) to (c).

(7) "Disclose" means to release, publish, or otherwise make known to a third party a DNA sample or genetic information.

(8) "DNA" means deoxyribonucleic acid.

(9) "DNA sample" means any human biological specimen that is obtained or retained for the purpose of extracting and analyzing the individual's DNA to perform a genetic test. "DNA sample" includes DNA extracted from the specimen.

(10) "Federal Common Rule" means the Federal Policy for the Protection of Human Subjects, as adopted by the following federal agencies and as revised through 11/13/2001: 7 CFR Part 1c, Department of Agriculture; 10 CFR Part 745, Department of Energy; 14 CFR Part 1230, National Aeronautics and Space Administration; 15 CFR Part 27, Department of Commerce; 16 CFR Part 1028, Consumer Product Safety Commission; 21 CFR Parts 50 and 56, Food and Drug Administration; 22 CFR Part 225, International Development Cooperation Agency, Agency for International Development; 24 CFR Part 60, Department of Housing and Urban Development; 28 CFR Part 46, Department of Justice; 32 CFR Part 219, Department of Defense; 34 CFR Part 97, Department of Education; 38 CFR Part 16, Department of Veterans Affairs; 40 CFR Part 26, Environmental Protection Agency; 45 CFR Part 690, National Science Foundation; 45 CFR Part 46, Department of Health and Human Services; 49 CFR Part 11, Department of Transportation. In the case of research not

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subject to federal regulation under one of these provisions, "Federal Common Rule" means 45 CFR Part 46.

(11) "Genetic characteristic" includes a gene, chromosome or alteration thereof that may be tested to determine the existence or risk of a disease, disorder, trait, propensity or syndrome or to identify an individual or a blood relative. "Genetic characteristic" does not include family history or a genetically transmitted characteristic whose existence or identity is determined other than through a genetic test.

(12) "Genetic information" means information about an individual or the individual's blood relatives obtained from a genetic test.

(13) "Genetic research" means research using human DNA samples, genetic testing or genetic information.

(14) "Genetic test" means a test for determining the presence or absence of genetic characteristics in a human individual or the individual's blood relatives, including tests of nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes or proteins in order to diagnose or determine a genetic characteristic.

(15) "Identifiable" means capable of being linked to the individual or a blood relative of the individual from whom the DNA sample or genetic information was obtained.

(16) "Identified" means having an identifier that links, or that could readily allow the recipient to link, a DNA sample or genetic information directly to the individual or a blood relative of the individual from whom the sample or information was obtained.

(17) "Identifier" means data elements that directly link a DNA sample or genetic information to the individual or a blood relative of the individual from whom the sample or information was obtained. Identifiers include, but are not limited to, names, telephone numbers, electronic mail addresses, Social Security numbers, driver license numbers and fingerprints.

(18) "Institutional Review Board" or "IRB" means an Institutional Review Board established in accord with and for the purposes expressed in the Federal Common Rule.

(19) "IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted within the constraints set forth by the IRB and by other institutional and Federal and State requirements.

(20) "Obtain genetic information" means performing or getting the results of a genetic test.

(21) "Person" includes but is not limited to any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance agent, insurance-support organization, as defined in ORS 746.600, government agency, employer, research organization or agent of any of them.

(22) "Recontact" means disclosure of genetic research findings to a research subject or the subject's physician through use of personal identifiers.

(23) "Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge.

(24) "Retain a DNA sample" means the act of storing the DNA sample.

(25) "Retain genetic information" means making a record of the genetic information.

(26) "Specific informed consent for genetic research" means the individual or the individual's representative has consented to the use of that individual's DNA sample or genetic information for genetic research or for a specified genetic research project.

(27) "Unidentified" means deidentified or not identifiable.

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

Stat. Auth.: ORS 192.531

Stats. Implemented: ORS 192.531

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0105

### Scope

(1) OAR 333-025-0105 to 0130 apply to all genetic research subject to the law of the State of Oregon.

(2) All genetic research must comply with the applicable standards set forth in the Federal Common Rule. Additional protections for subjects of research are authorized by ORS 192.531 et seq. and these rules.

Stat. Auth.: ORS 192.531 et seq.

Stats. Implemented: ORS 192.531 et seq.

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0110

### Institutional Review Boards (IRBs) and Approval for Research

(1) An IRB must conform to the organizational and operational standards contained in the Federal Common Rule.

(2) All proposed genetic research, including anonymous research, or research otherwise exempt from IRB approval, must first be submitted to an IRB for explicit prior approval or an explicit determination that the research is anonymous or otherwise exempt.

(3) A researcher must disclose to the IRB the intended use of human DNA samples, genetic tests or other genetic information for every proposed research project, including anonymous or otherwise exempt research.

(4) A researcher must follow the informed consent requirements of OAR 333-025-0115 and provide assurances to the IRB that these requirements have been met.

Stat. Auth.: ORS 192.547

Stats. Implemented: ORS 192.533 & ORS 192.547

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0115

### Informed Consent for Non-Exempt Genetic Research

(1) A researcher may use an identified human biological sample or genetic information obtained on or after June 25, 2001, for genetic research only with specific informed consent for genetic research.

(2) A researcher may use an identified human biological sample or genetic information obtained prior to June 25, 2001, for genetic research with blanket informed consent or specific informed consent for genetic research.

(3) A researcher may use coded human biological samples or genetic information obtained on or after June 12, 2003, for genetic research only with specific informed consent for genetic research.

(4) In situations where genetic research is to be conducted on coded human biological samples or genetic information, an Institutional Review Board may waive the requirement for consent for research if the sample or genetic information was obtained prior to June 12, 2003, and the research meets the criteria set forth in ORS 192.547 for coded genetic research.

Stat. Auth.: ORS 192.535 & ORS 192.547

Stats. Implemented: ORS 192.535 & ORS 192.547

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0120

### Anonymous or Exempt Genetic Research

(1) Any person proposing to conduct genetic research that is thought to be anonymous shall obtain from an IRB, prior to conducting such research, a determination that the research is anonymous. The person shall furnish the IRB with assurances that the criteria in (3) below are met.

(2) Any person proposing to conduct research that is thought to be exempt from review shall obtain an IRB determination that the research is exempt from review under 45 CFR 46.101(b) or other applicable exemption from the Federal Common Rule.

(3) A human biological sample or genetic information obtained on or after June 12, 2003, may be used in anonymous genetic research only if prior to the time the research is conducted, the subject:

(a) Has granted informed consent for the specific anonymous research project;

(b) Has granted consent for genetic research generally; or

(c) Was notified that anonymous research may take place in the future, and at the time notification took place the subject did not request that the sample or information be withheld from anonymous research.

(4) For purposes of paragraph (3) of this rule, "notification" means the providing of a written statement in plain language and in the subject's own language to a subject from whom one or more biological samples or genetic information has been obtained, or from whom such samples or information are expected to be obtained, that biological samples or genetic information obtained from the subject may be used for anonymous research. Notification must be provided at least once prior to the time the person conducts research using the subject's samples or information. Notification may be provided more often as necessary to ensure effective notification to the subject or effective implementation of the subject's intent. The statement must include, but need not be limited to:

(a) A general description of the type of biological samples or genetic information that the person providing the notification intends to use in anonymous research;

(b) A general explanation of the meaning of anonymous research; and

(c) An opportunity for the subject to request that the subject's sample or genetic information be withheld from anonymous research.

Stat. Auth.: ORS 192.537 & ORS 192.547



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Stats. Implemented: ORS 192.535, 192.537 & 192.547  
Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef. 3-23-04

Hist.: HD 1-1997, f. & cert. ef. 1-10-97; Renumbered from 333-024-0500 by OHD 14-2002, f. & cert. ef. 9-27-02; Renumbered from 333-024-0500 by PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; Renumbered from 333-024-0500 by PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0125

### IRB Registry

(1) The Department of Human Services/Health Services shall establish and maintain a registry of IRBs that review research conducted in Oregon or that involves research subjects living in Oregon.

(2) By October 1, 2002, each existing IRB must register with the Department of Human Services/Health Services on registration forms provided by the Department.

(3) The Department will update its registry annually. Each IRB will be required to renew its registration each year, or sooner if there exists material changes in the terms of registration.

Stat. Auth.: ORS 192.547

Stats. Implemented: ORS 192.547

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0130

### Recontact

(1) Recontact of a research subject should not occur unless the subject was informed during the initial consent process that recontact may occur under specified circumstances and with this understanding, the research subject consented to participate in the study.

(2) If recontact of subjects is contemplated, the researcher must provide research protocols to the IRB describing the circumstances that might lead to recontact, as well as a plan for managing the process. If a subject declines the possibility of recontact, the researcher may not recontact the subject.

(3) Notwithstanding (1) above, in order to consider recontact in a situation where recontact was not contemplated and therefore not addressed in research protocols a researcher must seek approval from the IRB for recontact and must assure the following conditions exist:

(a) The findings are scientifically valid and confirmed;

(b) The findings have significant implications for the subject's or the public's health; and

(c) A course of action to ameliorate or treat the subject's or the public's health concerns is readily available.

(4) Under conditions described in (3), the researcher shall determine and adhere to the expressed wishes and desires of the research subject in relation to disclosure of genetic information to that individual.

(5) When research results are disclosed to a subject, appropriate medical advice and referral must be provided.

(6) In all cases, a decision to recontact research subjects must have prior approval of the IRB.

Stat. Auth.: ORS 192.547

Stats. Implemented: ORS 192.547

Hist.: OHD 14-2002, f. & cert. ef. 9-27-02; PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0135

### Information Concerning Deceased Individuals

(1)(a) Anyone permitted by Oregon law to dispose of the body of a deceased individual or who is authorized by ORS 146.113-117 to submit the DNA sample of an unidentified deceased individual to a DNA diagnostic laboratory may obtain or retain genetic information only for the purpose of identification of the deceased. After identification, relevant information concerning the death shall be submitted into the permanent medical record of the deceased.

(b) A DNA sample of or genetic information about a deceased individual may be used for medical diagnosis of blood relatives of the individual and for no other purpose except as otherwise authorized by law. A request to use a sample or information for such purpose may be made by (A) a representative designated by the decedent to act on the individual's behalf after death; (B) the closest surviving blood relative of the decedent; or (C) if there is more than one surviving blood relative of the same degree of relationship to the decedent, by the majority of the surviving closest blood relatives of the decedent.

(2) A DNA sample sent to a diagnostic laboratory for testing under (1)(a) or (b) above must be accompanied by an affidavit stating that the specific purpose for obtaining the DNA sample is to identify the deceased individual or is for medical diagnosis of blood relatives of the decedent, and for no other purpose.

Stat. Auth.: ORS 192.535, ORS 192.537 & ORS 192.539

Stats. Implemented: ORS 192.535, ORS 192.537 & ORS 192.539

## 333-025-0140

### Informed Consent Procedures

(1) Unless exempted by ORS 192.535(1)(a)-(f), all persons collecting genetic information must conform to standards of informed consent as follows:

(a) Physicians licensed under ORS chapter 677, and any other licensed health care providers or facilities, shall obtain informed consent according to ORS 677.097.

(b) A person conducting research shall obtain informed consent according to the procedure given in OAR 333-025-0115.

(c) If genetic information is collected in connection with an insurance transaction governed by ORS 746.135, informed consent will be conducted in the manner described by the Department of Consumer and Business Services under authority of ORS 746.135(1).

(2) For persons not described in (1) above, informed consent must be obtained using the form and process contained in Appendix 1 of these rules or a form which is substantively similar.

(3) Elements to be contained in a consent form for obtaining genetic information include:

(a) The name of the individual whose DNA sample is to be tested.

(b) The name of the individual, company, or organization requesting the genetic test for the purpose of obtaining genetic information.

(c) A statement signed by the individual whose DNA sample is to be tested indicating that he/she authorizes the genetic test.

(d) A statement that specifies the purpose of the test and the genetic characteristic for which the DNA sample will be tested.

(4) Process for obtaining informed consent using the form contained in Appendix 1 or a form that is substantively similar:

(a) Explain that the genetic test is voluntary; inform the individual that he/she may choose not to have his/her DNA sample tested; and inform the individual that he/she has the option of withdrawing consent at any time.

(b) Explain the risks and benefits of having the genetic test, including a description of the provisions of Oregon law pertaining to individual rights with regard to genetic information and the confidential nature of the genetic information; a statement of potential consequences with regard to insurability, employability, and social discrimination if the genetic test results or genetic information become known to others; the implications of both positive and negative test results; and the availability of support services, including genetic counseling.

(c) Inform the individual that it may be in his/her best interest to retain his/her DNA sample for future diagnostic testing, but that he/she has the right to have his/her DNA sample promptly destroyed after completion of the specific genetic test which was authorized.

(d) Inform the individual about the implications, including potential insurability, of authorizing disclosure to a third party payer that the genetic test was performed, and that he/she has the option of paying the cost of the genetic test out of pocket rather than filing an insurance claim.

(e) Ask the individual whether he/she has any further questions, and if so, provide the individual with the opportunity to ask questions and receive answers from either a genetic counselor or another person who is sufficiently knowledgeable to give accurate, understandable and complete answers to his/her questions.

(f) Request that the individual read, complete, sign and date the consent form.

(g) Provide the individual with a copy of the completed form for his/her personal records.

[Forms and appendices referenced are available from the agency.]

Stat. Auth.: ORS 192.535

Stats. Implemented: ORS 192.535

Hist.: HD 1-1997, f. & cert. ef. 1-10-97; Renumbered from 333-024-0510 by OHD 14-2002, f. & cert. ef. 9-27-02; Renumbered from 333-024-0510 by PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; Renumbered from 333-024-0510 by PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0145

### Retention for the Purpose of Identification of Deceased Individuals

(1) Any person who is permitted by Oregon law to dispose of the body of a deceased individual, or anyone who is authorized by ORS 146.113-117 may retain the genetic information obtained from an unidentified deceased individual's DNA sample without specific authorization for the purpose of identification of the deceased individual.

(2) Upon identification of the deceased individual, persons so authorized in Section (1) shall convey the deceased individual's genetic information to his/her permanent medical record.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 192.537 & ORS 192.539  
Stats. Implemented: ORS 192.537 & ORS 192.539  
Hist.: HD 1-1997, f. & cert. ef. 1-10-97; Renumbered from 333-024-0520 by OHD 14-2002, f. & cert. ef. 9-27-02; Renumbered from 333-024-0520 by PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; Renumbered from 333-024-0520 by PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0150

### Retention for the Purpose of Testing to Benefit Blood Relatives of Deceased Individuals

Any person may retain the genetic information of a deceased individual indefinitely for the sole purpose of benefiting blood relatives of the deceased individual without specific authorization.

Stat. Auth.: ORS 192.535 & ORS 192.537  
Stats. Implemented: ORS 192.535 & ORS 192.537  
Hist.: HD 1-1997, f. & cert. ef. 1-10-97; Renumbered from 333-024-0530 by OHD 14-2002, f. & cert. ef. 9-27-02; Renumbered from 333-024-0530 by PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; Renumbered from 333-024-0530 by PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0155

### Retention for the Purpose of Newborn Screening Procedures

The Department of Human Services may retain the blood samples of newborns collected for the control of metabolic diseases, as provided in ORS 433.285, for up to one year.

Stat. Auth.: ORS 433.285, 192.535 & 192.537  
Stats. Implemented: ORS 192.535, ORS 192.537  
Hist.: HD 1-1997, f. & cert. ef. 1-10-97; Renumbered from 333-024-0540 by OHD 14-2002, f. & cert. ef. 9-27-02; Renumbered from 333-024-0540 by PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; Renumbered from 333-024-0540 by PH 9-2004, f. & cert. ef. 3-23-04

## 333-025-0160

### Procedure for Authorization of Disclosure by the Tested Individual or the Tested Individual's Representative

Any person, other than those excepted in ORS 192.539, shall be required to obtain specific authorization from the individual on whose sample a genetic test was conducted, or an individual's representative, to disclose genetic information, by completing the consent form specified in 2003 Oregon Laws Chapter 86, Section 5, or a form that is substantively similar and by using the following procedure:

- (1) Request that the tested individual, or his/her representative, read, sign and date the prescribed consent form; and
- (2) Read, sign, and date the prescribed consent form on behalf of the individual or organization requesting the release of genetic information; and
- (3) Provide the tested individual, or his/her representative, with a copy of the completed consent form for his/her personal records.

Stat. Auth.: ORS 192.539  
Stats. Implemented: ORS 192.539  
Hist.: HD 1-1997, f. & cert. ef. 1-10-97; Renumbered from 333-024-0550 by OHD 14-2002, f. & cert. ef. 9-27-02; Renumbered from 333-024-0550 by PH 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; Renumbered from 333-024-0550 by PH 9-2004, f. & cert. ef. 3-23-04

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**Notice Publication Date:** 2-1-04

**Rules Amended:** 333-055-0015, 333-055-0030, 333-055-0035

**Subject:** Amends rules relating to programs to treat allergic response or hypoglycemia. These rules modify the content of an emergency supply of epinephrine available by prescription to certified individuals who have completed emergency epinephrine training. Language is also updated to reflect change in agency name.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 333-055-0015

### Educational Training

(1) Individuals to be trained to administer epinephrine or glucagon shall be trained under the supervision of a physician licensed under ORS Chapter 677, or a nurse practitioner licensed under ORS Chapter 678 to practice in this state. The training may be conducted by a health care professional licensed under ORS Chapter 678 as delegated by a supervising professional.

(2) The training shall be conducted following a Department of Human Services, Health Services protocol (or equivalent). Health Services protocols may be obtained from the Oregon Department of Human Services, Health Services, 800 NE Oregon Street, Suite 290, Portland, Oregon 97232, Phone: (503)731-4008.

Stat. Auth.: ORS 433.810  
Stats. Implemented: ORS 433.800-433.830  
Hist.: HD 10-1982, f. & ef. 5-25-82; HD 23-1990(Temp), f. & cert. ef. 8-15-90; OHD 7-1998, f. & cert. ef. 7-28-98; PH 10-2004, f. & cert. ef. 3-23-04

## 333-055-0030

### Certificates of Completion of Training

(1) Persons who successfully complete educational training under OAR 333-055-0000 to 333-055-0035 shall be given a Health Services certificate, or equivalent fully completed and personally signed by the licensed health care professional, or designee, responsible for the training program. Blank certificates may be obtained from the Oregon Department of Human Services, Health Services, 800 NE Oregon Street, Suite 290, Portland, Oregon 97232, Phone: (503) 731-4008.

(2) The certificate for epinephrine may be used as a prescription to obtain an emergency supply of epinephrine including the equivalent of one child dose and one adult dose in prefilled syringes. Whenever such a prescription for an emergency supply of epinephrine is presented, the pharmacist shall write upon the back of the certificate in non-erasable ink the date that the prescription was filled, returning the certificate to the holder. The prescription may be filled up to 4 times. The pharmacist who dispenses an emergency supply of epinephrine under this rule shall also reduce the prescription to writing for his files, as in the case of an oral prescription for a non-controlled substance, and file the same in the pharmacy.

(3) A person who has successfully completed educational training in the administration of glucagon may receive, from the parent or guardian of a student, doses of glucagon prescribed by a health care professional with appropriate prescriptive privileges licensed under ORS Chapters 677 or 678, and the necessary paraphernalia for administration.

(4) Certificates for epinephrine or glucagon shall expire three years after the date of issuance. Individuals certified to administer epinephrine or glucagon shall present for retraining from a licensed health care professional (as outlined above in 333-055-0015) and must successfully complete retraining to obtain a new certificate.

(5) Individuals certified to administer epinephrine or glucagon may be asked to provide copies of a current certificate to their employers, or to organizations or entities to which they volunteer.

[ED. NOTE: Figures referenced are available from the agency.]  
Stat. Auth.: ORS 433.810  
Stats. Implemented: ORS 433.800 & ORS 433.830  
Hist.: HD 10-1982, f. & ef. 5-25-82; HD 23-1990(Temp), f. & cert. ef. 8-15-90; OHD 7-1998, f. & cert. ef. 7-28-98; PH 10-2004, f. & cert. ef. 3-23-04

## 333-055-0035

### Circumstances in Which Trained Persons May Administer Epinephrine or Glucagon

(1) A person who holds a current certificate pursuant to OAR 333-055-0030 may administer, in an emergency situation when a licensed health care professional is not immediately available, epinephrine to any person suffering a severe allergic response to an insect sting or other allergen. The decision to give epinephrine should be based upon recognition of the signs of a systemic allergic reaction and need not be postponed for purposes of identifying the specific antigen which caused the reaction.

(2) A person who holds a current certificate pursuant to OAR 333-055-0030 may administer, in an emergency situation involving an individual who is experiencing hypoglycemia and when a licensed health care professional is not immediately available, physician-prescribed glucagon to a person for whom glucagon is prescribed, when other treatment has failed or cannot be initiated. The decision to give glucagon should be based upon recognition of the signs of severe hypoglycemia and the inability to correct it with oral intake of food or drink.

Stat. Auth.: ORS 433.810  
Stats. Implemented: ORS 433.800-433.830  
Hist.: HD 10-1982, f. & ef. 5-25-82; OHD 7-1998, f. & cert. ef. 7-28-98; PH 10-2004, f. & cert. ef. 3-23-040

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**Adm. Order No.:** PH 11-2004

**Filed with Sec. of State:** 3-25-2004

**Certified to be Effective:** 3-29-04

**Notice Publication Date:** 3-1-04

**Rules Adopted:** 333-005-0000, 333-005-0010, 333-005-0020, 333-005-0030, 333-005-0040, 333-005-0050, 333-005-0060

**Subject:** Adopt rules to implement HB2151, Physician Visa Waiver Program, and collect application fees from employers that utilize the 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

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areas, do not have access to a primary care doctor. The Physician Visa Waiver Program helps to address the physician shortage.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 333-005-0000

### Purpose of the Physician Visa Waiver Program

The purpose of the Physician Visa Waiver program is to make recommendations to the United States Department of State for waivers of the foreign country residency requirement on behalf of physicians holding visas who seek employment in federally designated area having a shortage of physicians. These rules are promulgated pursuant to 2003 Oregon Laws, Chapter 608 in order to enable Oregon to make requests for waiver of the foreign country residency requirement as authorized under 8 U.S.C. secs. 1182(e) and 1184(l).

Stat. Auth.: ORS 409.745

Stats. Implemented: ORS 409.745

Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04

## 333-005-0010

### Definitions

For the purposes of this Division 333-005, the following definitions apply:

(1) "Application" means the Physician Visa Waiver Program application form and accompanying documentation;

(2) "Bureau of Citizenship and Immigration Services" means the agency that replaced the Immigration and Naturalization Service, effective March 1, 2003;

(3) "Department" means the Oregon Department of Human Services;

(4) "Department of State" means the federal agency that reviews J-1 applications;

(5) "Health Care Facility" means the clinic or hospital that employs the J-1 physician;

(6) "Health Services and Resources Administration" (HRSA) means the branch of the Department of Health and Human Services that designates federal shortage areas;

(7) "Health Care Shortage Area" means a geographic area or site approved by HRSA. Categories include Health Professional Shortage area (HPSA), Medically Underserved Area (MUA), and Medically Underserved Population (MUP);

(8) "J-1 Application" refers to the application form and supporting material submitted jointly by the health care facility and the J-1 physician to the Department;

(9) "J-1 Physician" means the doctor who is requesting a waiver of the two-year foreign country residency requirement in order to practice in a federally designated shortage area;

(10) "Low Income" means a patient whose income does not exceed 200% of the current Federal Poverty Guidelines;

(11) "Mental Health Facility" means an agency that provides mental health services in an outpatient, residential, or hospital setting;

(12) "Primary Care Physician" means a physician licensed in Oregon to practice family medicine, general internal medicine, obstetrics and gynecology, pediatrics, or psychiatry.

## 333-005-0020

### Health Care Facility Participation Requirements

(1) In order to qualify for the program the health care facility must:

(a) Identify the nature of the business entity seeking to employ the physician (domestic or foreign professional corporation, domestic or foreign private corporation, LLC, partnership, etc.), and provide a certificate of existence or proof of authorization to do business in Oregon;

(b) Have provided care for a minimum of six months in Oregon, or supply evidence of stability such as HRSA funding, prior to submitting an application;

(c) Currently serve Medicare, Medicaid, low-income, and uninsured patients, as well as the population of the local HRSA designation. A minimum of 20% of the total current patient visits must be Medicaid and/or other low-income patients, excluding Medicare;

(d) Post a sliding fee schedule in the primary language(s) of the population being served;

(e) Document attempts to actively recruit an American doctor for at least six months prior to submission of the application;

(f) Execute an employment contract with the physician that includes the following provisions:

(A) Duration of at least three years;

(B) Wages and working conditions comparable to those for a graduate from an American medical school;

(C) A signed U.S. Department of Labor Prevailing Wage Form (ETA-9035);

(D) May not include a non-compete clause or restrictive covenant that prevents or discourages the physician from continuing to practice in any designated area after the term of the contract expires;

(E) Specifies the geographic shortage area within Oregon in which the physician will practice;

(F) The physician will treat all patients regardless of their ability to pay;

(G) The physician will provide patient care on a full-time basis, i.e., a minimum of 40 hours per week;

(2) If a health care facility is located in a Medically Underserved Area (MUA) or Medically Underserved Population (MUP) that is not a Health Professional Shortage Area (HPSA), then the facility should provide documentation substantiating the area's need for a physician.

(3) The health care facility shall submit to the Department a fee of \$2,000 and two original copies of the application packet for each waiver requested.

Stat. Auth.: ORS 409.745

Stats. Implemented: ORS 409.745

Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04

## 333-005-0030

### Physician Participation Requirements

In order to qualify for consideration by this program the physician must:

(1) Obtain a Department of State case number prior to submitting an application to the Department;

(2) Submit a completed application that:

(a) Documents having, or having applied for, an active Oregon medical license;

(b) Documents board certification or board eligibility;

(c) Includes either a "No Objection" letter from the home country, or a statement that the physician is not contractually obligated to return to the home country.

(d) Includes a signed and dated statement certifying that the physician does not have any other pending J-1 waiver requests;

(e) Provides at least one recommendation from the physician's primary care residency program or fellowship/subspecialty training;

(f) Includes evidence of graduation from the residency program or subspecialty training program. Under some circumstances, a letter from the program director projecting graduation by the end of the academic year may be acceptable;

(g) Documents an agreement to begin employment with the health care facility within 90 days from the latest of the granting of the waiver, receiving an Oregon medical license, or graduation from the residency or fellowship program.

(h) Includes a copy of the medical degree or diploma;

(i) Includes legible copies of all IAP-66 Forms;

(j) Documents satisfactory completion of all examinations that the Bureau of Citizenship and Immigration requires;

(k) Includes a curriculum vita that documents the physician's date of birth, city and country of birth.

Stat. Auth.: ORS 409.745

Stats. Implemented: ORS 409.745

Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04

## 333-005-0040

### Application Review Process

(1) The Department will review completed health care facility applications that meet all requirements of 333-005-0020. Potential physician participants must meet all 333-005-0030 requirements.

(2) The following factors will be considered in determining whether to recommend a request for waiver of the foreign country residency requirement:

(a) The type of medicine to be practiced. Eighty percent of the slots allotted for each federal fiscal year must be primary care physicians as defined in OAR 333-005-0010. Applications from community health centers and mental health facilities will receive priority.

(b) Geographic distribution of physicians. To the extent possible, the Department will attempt equitable distribution of waiver requests for eligible areas of the state. The number of physicians already working under

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waivers or recommended for waivers in a particular geographic area will be taking into consideration.

(c) Facility patient profile. The health care facility's percentage of patient visits which are covered by the state Medicaid program or are low income, uninsured.

(3) Incomplete applications will be returned, including application fees. The Department will process completed resubmitted applications (including fees) as of the new date of receipt.

(4) The Department will review each completed application and notify the applicant of the results within 15 business days.

(5) The Department will forward recommended requests for waiver to the Department of State. Their review normally takes four to six weeks. The Department of State will forward waiver requests recommended for approval to the Bureau of Citizenship and Immigration Services for final approval.

(6) The Department reserves the right to re-allocate positions based on a review of current access needs in the state. The Department additionally reserves the right to recommend or decline to recommend a waiver request.

Stat. Auth.: ORS 409.745  
Stats. Implemented: ORS 409.745  
Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04

## 333-005-0060

### Transfer of J-1 Waiver Physician Obligation

(1) A physician who is granted a visa waiver and who encounters a practice failure due to extenuating circumstances may, with Department approval, continue the service obligation at another approved health care facility. A written transfer request must be submitted to the Department documenting the need for the transfer.

(2) The request must include the reason for transfer, proposed new employer, health care facility director's name, practice name, address, telephone number and proposed date of transfer.

(3) The original employer must provide a letter releasing the physician from the employment contract and providing an explanation for the termination.

(4) The new employer must:

(a) Provide a letter of intent to employ the physician;

(b) Provide a copy of the new employment contract;

(c) Meet health care facility participation requirements as set forth in these rules;

(d) Work with the physician to jointly submit semi-annual Verification of Employment forms as required by the Department.

Stat. Auth.: ORS 409.745  
Stats. Implemented: ORS 409.745  
Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04

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**Adm. Order No.:** PH 12-2004(Temp)

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04 thru 8-2-04

**Notice Publication Date:**

**Rules Amended:** 333-008-0030

**Subject:** 333-008-0030(9)(b) is amended to read:

Following an investigation by the Department, the Department has been unable to verify that the individual signing the application as the attending physician meets the definition under 333-008-0010(1). The applicant will be allowed [30] 90 days to submit written documentation and/or a new attending physician's declaration from a physician meeting the requirements of these rules. After that time, if no adequate response has been received, the application will be denied and returned.

Effective March 4, 2004, the Oregon Board of Medical Examiners issued an "Order of Emergency Suspension" for the license of a physician who has served as an "attending physician" (OAR 333-008-0010(1)) for a majority of persons applying for a registry identification card under the Department's Oregon Medical Marijuana Program (OMMP). Because of the Emergency Suspension, the OMMP now has approximately 500+ pending applications that have documentation from this former "attending physician." Under the Board's Emergency Suspension, this physician no longer meets the definition of an "attending physician" under OAR 333-008-0010(1) and he cannot now attest that he has been an "attending physician"

for any patient under the Oregon Medical Marijuana Act under OAR 333-008-0020(5)(b), OAR 333-008-0030(1), and ORS 475.309(5). According to the Emergency Suspension, this physician was, and continues to be, prohibited from practicing medicine, he cannot sign any paperwork related to the OMMP, and his surrogate cannot sign paperwork for him. The OMMP is proposing to grant 90 days, rather than 30 days, to these 500+ applicants to locate a new "attending physician" and to have all the required examinations and documentation completed and submitted to the Department for a completed application as defined under OAR 333-008-0020.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 333-008-0030

### Registration Approval and Denial

(1) The Department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days of receiving the fully completed application, including payment of the designated fee.

(2) Once the Department has verified the information in a completed application, the Department shall issue a serially numbered registry identification card within five days. The registry identification card shall state:

(a) The cardholder's name, address and date of birth;

(b) The date of issuance and expiration date of the registry identification card;

(c) The name and address of the person's designated primary caregiver, if any; and

(d) Such other optional information as the Department may specify.

(3) When the person to whom the Department has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the Department shall issue an identification card to the designated primary caregiver. The designated primary caregiver's registry identification card shall contain the information provided in subsection (2)(a), (b), and (d) of this section. The designated primary caregiver's registry identification card shall also contain the patient's name and address.

(4) In accordance with provisions of these rules, the Department has the authority to deny a registration application and to preclude a person from obtaining or using a registry identification card for a period of up to six months.

(5) The Department may deny an application only for the following reasons:

(a) The applicant did not provide the information required as provided in ORS 475.309; or

(b) The Department determines that the information provided was falsified.

(6) When the Department determines that an applicant does not qualify for a registry identification card, the Department shall send the applicant a denial letter within 30 days of receipt of the application or renewal application. The time periods set forth in subsection (9)(a) and (b) of this rule, that provide an applicant an opportunity to supplement an application that does not meet all of the requirements of ORS 475.309, do not count towards the 30-day time limitation for processing an application. The denial letter will be sent by certified, first-class mail to the address listed on the application form. The letter will state the reason for denial and the date at which another application may be submitted.

(7) Denial of a registry identification card shall be considered a final Department action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of eighteen years of age whose application has been denied, the person's parent or legal guardian shall have standing to contest the Department's action.

(8) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the Department or a court of competent jurisdiction.

(9) The Department will deny and return to the applicant a copy of the application including the application fee if either of the conditions below applies to the application:

(a) The applicant did not provide all required information, and following a written request by the Department for the missing information, did not adequately respond within 14 days; or

(b) Following an investigation by the Department, the Department has been unable to verify that the individual signing the application as the attending physician meets the definition under OAR 333-008-0010(1). The applicant will be allowed 90 days to submit written documentation and/or a new attending physician's declaration from a physician meeting the

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requirements of these rules. After that time, if no adequate response has been received, the application will be denied and returned.

(c) Applicants whose application is denied under (a) or (b) above may re-apply for a registry identification card at any time.

Stat. Auth.: ORS 475.309 & 475.316

Stats. Implemented: ORS 475.300 — 475.346

Hist.: OHD 3-1999, f. & cert. ef. 4-29-99; OHD 18-2001, f. & cert. ef. 8-9-01; OHD 19-2001(Temp), f. & cert. ef. 8-10-01 thru 1-31-02; OHD 21-2001(Temp), f. & cert. ef. 10-12-01 thru 1-31-02; Administrative correction 3-14-02; OHD 6-2002, f. & cert. ef. 3-25-02; PH 12-2004(Temp), f. & cert. ef. 4-1-04 thru 8-2-04

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**Adm. Order No.:** PH 13-2004

**Filed with Sec. of State:** 4-9-2004

**Certified to be Effective:** 4-9-04

**Notice Publication Date:** 12-1-03

**Rules Adopted:** 333-012-0053, 333-012-0061, 333-012-0063, 333-012-0067

**Rules Amended:** 333-012-0050, 333-012-0055, 333-012-0057, 333-012-0060, 333-012-0065, 333-012-0070

**Subject:** Adopts and amends rules to implement HB3156 which made substantial changes to the restaurant licensing and inspection programs and created the Foodborne Illness Prevention Program. To implement the statutory changes, the administrative rules that establish standards under which Local Health Departments implement the food, pool and tourist facility programs are amended.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 333-012-0050

### Purpose and Definitions

(1) The purpose of these rules is to establish standards under which Local Public Health Authorities will provide environmental health services to establishments and facilities licensed under ORS 446, 448 and 624.

(2) Definitions:

(a) "Administrative Costs" means those costs that are over the direct costs of providing delegated program services. These include actual departmental, agency or central government charges such as, but not limited to, accounting, purchasing, human resources, data management, legal council and central mail functions;

(b) "Administrator" means the Assistant Director for Health Services of the Department of Human Services or an authorized representative;

(c) "Complete Inspection" means the evaluation of a licensed establishment or facility conducted at the election of the Local Public Health Authority for compliance with all applicable regulations;

(d) "Consultation Services Remittance" means the biennial assessment of the Department for consultation services and maintenance of the Foodborne Illness Prevention, Public Swimming Pool and Tourist Facility Programs;

(e) "Department" means the Oregon Department of Human Services;

(f) "Direct Costs" mean those costs for salaries and benefits of field and support staff and their associated costs including, but not limited to, rent, vehicles and travel, equipment, data management, training, phone, office supplies and the pro-rated portion of direct costs relating to supervision;

(g) "Fiscal Audit" means a comprehensive audit using standard audit procedures of the financial records of the Local Public Health Authority related to licenses and fees;

(h) "Local Public Health Authority" means county governments or health districts established under ORS 431.414 that are responsible for management of local public health services;

(i) "Recheck Inspection" means an inspection to determine whether specified corrections have been made or alternative procedures maintained for violations identified in previous inspections. In food service establishments, a recheck inspection also means 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.

Stat. Auth.: ORS 446, 448 & 624

Stats. Implemented: ORS 446.425, 448.100 & 624.510

Hist.: HD 105, f. & ef. 2-5-76; HD 1-1979, f. & ef. 1-18-79; HD 9-1994, f. & cert. ef. 4-1-94; HD 16-1995, f. 12-28-95, cert. ef. 1-1-96; HD 4-1996, f. & cert. ef. 9-17-96; PH 13-2004, f. & cert. ef. 4-9-04

## 333-012-0053

### Licensing and Fees

(1) License applications and licenses issued must be on forms provided or approved by the Department.

(2) The Local Public Health Authority must establish a single license fee per establishment or facility type. There may not be added fees based on local determination of unique features of an establishment or facility.

(3) Licensing categories must be based upon those specified in ORS 446.310, 448.035 and 624.020. The Local Public Health Authority may not create additional licensing categories.

(4)(a) Annual work hours available for a dedicated full time equivalent (FTE) for field staff in the food service program based on a 40-hour week is 1640 hours, of which 25% is allocated for office and administrative duties and consultation, and 75% is for field inspection activities;

(b) Standards for complete inspection functions, on average, including travel time, relative to facility size are as follows:

(A) 0-15 seats, one and one half hours;

(B) 16-50 seats, one and three quarter hours;

(C) 51-150 seats, two hours;

(D) Over 150 seats, two and one half hours.

(c) An average recheck inspection rate of 40% with an average critical item recheck inspection taking 45 minutes including travel.

(5) The following standards are established to reflect the levels of effort and resources needed to carry out the delegated functions and provisions of ORS 624:

(a) Workload indicators established in section (4) of this rule must be used to determine staffing levels budgeted for field inspection activities;

(b) Administrative costs must be limited to 15% of direct costs;

(c) A ratio of up to .35 FTE for clerical support and up to .25 FTE for supervision to field staff FTE respectively, must be observed;

(d) Charges for services and supplies may not exceed a ratio of .25 of personnel salary for direct program costs;

(e) In lieu of the administrative standards outlined in this rule, the Local Public Health Authority may determine staffing standards and actual costs of providing program services. The Local Public Health Authority must document and report to the Department actual time spent and expenses incurred and may be subject to a fiscal audit as specified in OAR 333-012-0070(3).

(6) The Local Public Health Authority may adopt a fee schedule for facilities that require more than two recheck inspections per year.

(7) The Local Public Health Authority may set a fee for costs associated with plan review conducted under guidelines established by the Department.

(8) The Local Public Health Authority may set a reinstatement fee for late license reinstatement.

(9) The Local Public Health Authority may recover the cost of the extra inspections required under OAR 333-157-0027, Increased Inspection Schedule, by charging a fee of up to one-half of the annual licensing fee otherwise assessable to the restaurant for each additional inspection.

(10) A license may be issued only after the Local Public Health Authority has received the fee and determined that the facility meets the requirements of the statutes and rules.

(11) The Local Public Health Authority may pro-rate fees for partial year operation as follows: From January 1 through September 30, a full license fee is required. From October 1 through December 31, half the annual fee must be assessed.

(12) If license fees assessed by the Local Public Health Authority are more than 20% above or below the fees established in ORS 624.020, the Local Public Health Authority must document and report to the Department actual time spent and expenses incurred on program services and may be subject to a fiscal audit as specified in OAR 333-012-0070(3).

(13) All license fees collected by the Local Public Health Authority pursuant to ORS 446.425, 448.100 and 624.510 must be paid into the county treasury and placed in a special revenue fund or the general fund of the county treasury and placed to the credit of the Local Public Health Authority. Such monies must be used only for program services pursuant to ORS 446.425, 448.100 and 624.510. The Local Public Health Authority must assure on an annual basis that all fees collected are used solely for the purposes of administering the programs as described in this section.

(14) If the Local Public Health Authority requests a fiscal audit required in OAR 333-012-0070(3) be conducted by a private auditing agency, the Local Public Health Authority must pay the costs and a copy of audit report must be provided to the Department.

Stat. Auth.: ORS 446.425, 448.100 & 624.510

Stats. Implemented: ORS 446.425, 448.100 & 624.510

Hist.: PH 13-2004, f. & cert. ef. 4-9-04

# ADMINISTRATIVE RULES

## 333-012-0055

### Food Service Facilities, Mobile Units and Vending Machines

(1) All licensed establishments and facilities, except Bed and Breakfast Facilities, Travelers' Accommodations, Hostels and Temporary Restaurants, must receive a minimum of one complete inspection for every six months of operation or fraction thereof. For Vending Machines, the Local Public Health Authority shall evaluate at least 10% of each licensee's machines during each inspection:

- (a) Bed and Breakfast Facilities must be inspected once per year;
- (b) Travelers' Accommodations and Hostels must be inspected on a schedule in accordance with local public health priorities and with consideration of the following criteria:

- (A) Complaints received from a guest at a particular facility;
- (B) A history of rule violations;
- (C) A request for inspection or consultation from a licensee;
- (D) Reports of illness or accidents associated with the facility;
- (E) Change of owner or operator;

(F) The facility's method of sewage disposal, source of water and availability of local fire protection services;

- (G) Length of time since the last inspection of the facility;
- (H) A minimum of one inspection every two years is recommended.

(c) (A) Temporary Restaurants must receive a minimum of one inspection during operation for each license issued;

(B) Benevolent Temporary Restaurants must receive an inspection or a consultation in lieu of an inspection.

(2) The Local Public Health Authority may substitute an alternative inspection procedure or intervention once per year in place of an inspection using alternative criteria approved by the Department.

(3) The Local Public Health Authority must implement an increased inspection schedule for Restaurants as described in OAR 333-157-0027. Up to two of the quarterly inspections may be based upon a menu review consultation, an announced inspection, a risk control plan or other method approved by the Department.

(4) A pre-operational or construction inspection must be conducted after plan review and prior to operation of a new, remodeled, converted, renovated or altered establishment or facility. The pre-operational inspection is in addition to the requirement for a complete inspection in section (1) of this rule.

(5) A complete inspection to assign a public notice of sanitation must be conducted within 45 days after opening for a Restaurant or Bed and Breakfast facility. This inspection counts toward one of the inspections required in section (1) of this rule.

(6) Inspection reports must be filled out completely and must include at least the following information:

(a) Specific problem and correction statements for all violations, including Oregon Administrative Rule references;

(b) Except in the food service programs, time limits must be specified for all corrections stated;

(c) Food Service — Inspections must be documented as specified in OAR 333 Division 157 Inspection and Licensing Procedures. In addition, the Local Public Health Authority must indicate on the inspection report how a critical violation has been corrected during complete and recheck inspections;

(d) Public Swimming Pools — Document pH, free residual chlorine, total chlorine, total alkalinity, total hardness, cyanuric acid (if used), water clarity (recorded as acceptable or unacceptable), water temperature, pressure and/or vacuum gauge readings and flow rate as measured by flow meter.

(7) The Local Public Health Authority must conduct recheck inspections of establishments and facilities to determine if timely corrective action has been taken on noted critical violations or public health hazards.

(8) The Local Public Health Authority must, at a minimum, furnish each Environmental Health Specialist with the following equipment or materials to conduct inspections:

(a) Temperature measuring devices, flashlight, inspection forms and/or computer inspection equipment, identification and business cards, rules, stickers and forms;

(b) Food Service — Sanitizing swabs, test strips for chlorine and quaternary ammonium;

(c) Public Swimming Pools — Current state-approved pool test kit and a 25-foot tape measure or equivalent device with the ability to accurately measure distance and depth;

(d) The Local Public Health Authority must provide food and waterborne illness investigation materials, specified in guidelines provided by the Department, and a light meter for staff to share. The Food Program

Policy Manual must be maintained and updated as well as other information required by the Department.

(9) The Local Public Health Authority must, upon request, provide technical information and consultation to the public and those holding permits and licenses.

Stat. Auth.: ORS 446.425, 448.100 & 624.510

Stats. Implemented: ORS 446.425, 448.100 & 624.510

Hist.: HD 105, f. & ef. 2-5-76; HD 1-1979, f. & ef. 1-18-79; HD 9-1994, f. & cert. ef. 4-1-94; HD 14-1995, f. 12-28-95, cert. ef. 1-1-96; PH 13-2004, f. & cert. ef. 4-9-04

## 333-012-0057

### Consultation Services Remittance

(1) Food Service — On behalf of the Department, the Local Public Health Authority must collect fees from food service establishments and remit to the Department the monies necessary to maintain the Foodborne Illness Prevention Program. The Local Public Health Authority must keep the remainder to cover administration and enforcement costs.

(a) The Department must consult with representatives of local health officials in determining the amount to be remitted by each Local Public Health Authority to support the state Foodborne Illness Prevention Program;

(b) The consultation must occur no later than April of each legislative year in order to determine the amount required to be remitted to the Department in the following biennium;

(c) The consultation must consider program expenditures, the program workplan and other activities, and current food service establishment inventories to determine the amount of the remittance;

(d) For the purposes of this rule, food service establishments are considered to be Full and Limited Service Restaurants, Bed and Breakfast Facilities, Mobile Food Units, Commissaries and Warehouses;

(e) The remittance amount must be determined by first projecting statewide food service license revenue for the biennium using state marker fees. Then, the biennial budget of the Foodborne Illness Prevention Program is divided by the revenue projection to yield a percentage factor. Each Local Public Health Authority's revenue projection for food service facilities, using state marker fees, is then multiplied by that factor to yield the remittance amount;

(f) The Foodborne Illness Prevention Program budget must be developed after consultation with groups representing local health officials pursuant to ORS 624.510. The cost to the Local Public Health Authority of the Foodborne Illness Prevention Program will be represented in the annual Intergovernmental Agreement.

(g) The Local Public Health Authority must provide to the Department a quarterly remittance based on the total biennial assessment. Fifty percent of the assessment is payable each year unless otherwise negotiated with the Department. The annual amount remitted by the Local Public Health Authority in the first year of the biennium may not be less than 35% of the total biennial amount. Each Local Public Health Authority must provide a statement identifying the proposed timetable and schedule for remittance;

(h) In April of even-numbered years, the Department must recalculate the assigned assessment for the second year of the biennium, based on updated facility counts and program expenditures and provide the Local Public Health Authority with a revised assessment for the second year of the biennium;

(i) All assessments may not be represented as a surcharge or added charge.

(2) Public Swimming Pools — The Department must consult with representatives of local health officials and industry in determining the amount to be remitted by each Local Public Health Authority that has accepted delegation for the Public Swimming, Spa and Wading Pool Programs for the purposes of supporting the statewide consultation and program services costs:

(a) The consultation must occur no later than April of each legislative year in order to determine the amount required to be remitted to the Department in the following biennium;

(b) The consultation must consider program expenditures and current Public Swimming Pool, Public Spa Pool and Public Wading Pool facility inventories while determining the amount of the remittance;

(c) The county shall remit, on a quarterly basis, a portion of the fee for each license issued in that quarter;

(d) All assessments may not be represented as a surcharge or added charge.

(3) Tourist Facilities — Each quarter, the Local Public Health Authority must remit 15% of the state licensing fee or 15% of the Local Public Health Authority license fee, whichever is less, to the Department

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for consultation services and maintenance of the statewide program for facilities licensed under ORS 446.425. All assessments may not be represented as a surcharge or added charge.

Stat. Auth.: ORS 446.425, 448.100 & 624.510

Stats. Implemented: ORS 446.425, 448.100 & 624.510

Hist.: HD 12-1995, f. 12-28-95, cert. ef. 1-1-96; PH 13-2004, f. & cert. ef. 4-9-04

## 333-012-0060

### Staffing and Training

(1) The Local Public Health Authority must provide the staff, facilities, materials and equipment necessary to comply with these rules.

(2) Inspections must be conducted by staff that are registered as required by ORS Chapter 700.

(3) Each Local Public Health Authority must require at least one Environmental Health Specialist engaged in the food, tourist facility and public swimming pool programs to attend annual Department sponsored or approved training in all three program areas.

(4) Within one year of hiring, the Local Public Health Authority must send all Environmental Health Specialists to an orientation provided by the Department. This requirement does not apply to staff that have previously attended the training while employed in another jurisdiction.

(5)(a) The Local Public Health Authority must maintain at least one Environmental Health Specialist on staff or through contract that has a current certification from the Department as a Food Service Standardization Officer. New employees must be certified within 18 months of employment or within 18 months after becoming registered as an Environmental Health Specialist as required in section (2) of this rule;

(b) Notwithstanding the time limits specified in subsection (a) of this section, the Local Public Health Authority may develop a training plan approved by the Department that allows for a longer time limit to comply with the certification requirement in subsection (a) of this section.

(6) The Local Public Health Authority must maintain at least one Environmental Health Specialist on staff or through contract that has successfully completed a NSPF Certified Pool Operator course or equivalent approved by the Department within 24 months of employment. The Department may waive this requirement upon request.

Stat. Auth.: ORS 446.425, 448.100 & 624.510

Stats. Implemented: ORS 446.425, 448.100 & 624.510

Hist.: HD 105, f. & ef. 2-5-76; HD 1-1979, f. & ef. 1-18-79; HD 15-1980(Temp), f. & ef. 12-29-80; HD 5-1985, f. & ef. 4-25-85; HD 9-1994, f. & cert. ef. 4-1-94; PH 13-2004, f. & cert. ef. 4-9-04

## 333-012-0061

### Food Handler Training

The Local Public Health Authority must establish an approved food handler training program using minimum criteria developed by the Department. The Local Public Health Authority must document the training methods used for food handler training.

Stat. Auth.: ORS 446.425, 448.100 & 624.510

Stats. Implemented: ORS 446.425, 448.100 & 624.510

Hist.: PH 13-2004, f. & cert. ef. 4-9-04

## 333-012-0063

### Record Keeping and Reporting

(1) Records as outlined in ORS 183.415(7) and (8) must be kept by the Local Public Health Authority of all administrative matters delegated under ORS 446.425, 448.100 or 624.510, including a record of the hearing, the time, date, place and copies of the complaint, all intended actions, orders, and final disposition of the proceedings and retained for at least three years.

(2) The Local Public Health Authority must, at a minimum, maintain records according to the Archive Division rules of the following: Inspection reports; complaints and their disposition; communicable disease or suspected food-borne illness investigations; public swimming pool accidents; license applications and licenses issued; food service inspection scores; changes in public notice placards; food handler training materials; plan review records; records of all license denials, revocations, suspensions or other temporary closures; and Failed to Comply notices posted or any other enforcement actions taken.

(3) The Local Public Health Authority must provide to the Department program information such as inspections conducted, workload indicators, fee schedules and violation summaries on request. The Local Public Health Authority must also respond to surveys conducted by the Department. Program information and surveys must be submitted on forms or in a format as required by the Department.

Stat. Auth.: ORS 446.425, 448.100 & 624.510

Stats. Implemented: ORS 446.425, 448.100 & 624.510

Hist.: PH 13-2004, f. & cert. ef. 4-9-04

## 333-012-0065

### Epidemiology and Accident Investigation and Reporting

(1) The Local Public Health Authority must investigate all suspected illnesses connected with food service facilities, public swimming pools and tourist facilities. The reports of all investigations of confirmed illnesses must be submitted to the Department as required by OAR 333-018. The Local Public Health Authority must also notify the Department of investigations expected to result in confirmed foodborne illness.

(2) The Local Public Health Authority must investigate all reportable accidents. Results of investigations, including copies of accident reports, must be provided in writing to the Department.

Stat. Auth.: ORS 446.425, 448.100 & 624.510

Stats. Implemented: ORS 446, ORS 448 & ORS 624.510

Hist.: HD 105, f. & ef. 2-5-76; HD 1-1979, f. & ef. 1-18-79; HD 9-1994, f. & cert. ef. 4-1-94; PH 13-2004, f. & cert. ef. 4-9-04

## 333-012-0067

### Enforcement Procedures

(1) The Local Public Health Authority must adopt and comply with rules for conducting administrative hearings for permit and license denial, suspension or revocation in accordance with the requirements of ORS Chapter 183.

(2) The Local Public Health Authority must utilize all administrative and legal means necessary to enforce the applicable statutes and rules and implement policies relating to the programs and to eliminate conditions endangering public health or safety. Failure to do so is considered unacceptable surveillance and enforcement.

Stat. Auth.: ORS 446.425, 448.100 & 624.510

Stats. Implemented: ORS 446.425, 448.100 & 624.510

Hist.: PH 13-2004, f. & cert. ef. 4-9-04

## 333-012-0070

### Minimum Standards, Program Review and Penalties

(1)(a) The Local Public Health Authority may request approval to implement alternative inspection or enforcement procedures. The Local Public Health Authority must submit a plan that includes expected performance measures and outcomes and the procedure must be included in the annual Intergovernmental Agreement.

(b) The Local Public Health Authority may adopt ordinances on applicable matters provided they are not less stringent than the Oregon Administrative Rules adopted pursuant to ORS Chapters 183, 446, 448 and 624. Any ordinance proposed for adoption on matters applicable to food service operators more stringent than those set forth in ORS 624 and rules adopted thereunder must be approved by the Department and the cost of implementing any ordinance so adopted may not be charged to license fees adopted pursuant to ORS 624.510(2). Notwithstanding the provisions of this subsection, when an emergency exists and delay will result in an immediate danger to public health, Local Public Health Authorities may adopt ordinances without prior Department approval. This subsection does not affect ordinances that are required to be adopted as specified in these rules.

(2) The Local Public Health Authority must be subject to a performance review of both office and field activities to determine compliance with these rules. A review of each Local Public Health Authority will be conducted at least once every three years. The Department will submit the results of the review to the Local Public Health Authority.

(3) The Local Public Health Authority will be subject to a triennial fiscal audit conducted by the Department. The Local Public Health Authority may also be subject to additional fiscal audits if deemed necessary by the Department.

(4) The Local Public Health Authority will be surveyed at least annually to determine accomplishments and needs. This knowledge will guide the Department in providing assistance, guidance, training, consultation and support as needed.

(5) If a review reveals that the Local Public Health Authority is not complying with the provisions of these rules or the Intergovernmental Agreement, the Local Public Health Authority will be notified. The Local Public Health Authority must correct the deficiencies within the time frames required and report the corrections to the Department.

(a) If the Department determines that the deficiencies result in a serious human health hazard, compliance will be required immediately. If the Department determines that the deficiencies do not result in a serious human health hazard, a longer period of time may be allowed for compliance. However, the maximum time allowed for compliance, after notice is issued by the Department, is as follows:

(A) Up to 90 days to correct administrative deficiencies such as, but not limited to, accounting reports and records;

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(B) Up to 180 days to correct program deficiencies such as, but not limited to, inadequate frequency of inspections, scoring, staffing and lack of enforcement action.

(b) Notwithstanding subsection (a) of this section, the Department may allow a longer time frame for compliance if deemed necessary;

(c) If the Department determines that the Local Public Health Authority did not use the proper cost elements in determining the fee or that the amount of the fee is not justified, the Department may order the Local Public Health Authority to adjust any fee, as soon as is possible, to a level supported by the Department's analysis of the fee.

(6) When a Local Public Health Authority has been notified of an emergency health hazard and is either unwilling or unable to administer or enforce delegated standards, the Department may, pursuant to ORS 431.170, immediately take responsibility of the functions and collect the monies necessary to protect public health. When the health hazard has been resolved or is no longer an emergency, the Department may return authority to the Local Public Health Authority and may initiate a review to determine if delegation is to be continued.

(7) The Department may deny or revoke the delegation of a program if the Local Public Health Authority:

(a) Does not have sufficient qualified personnel to conduct the program;

(b) Has failed to perform its delegated duties satisfactorily;

(c) Has engaged in deceit or fraud in the conduct of the program or maintenance of its associated records.

(8) Suspension or rescission of a delegation must be in accordance with ORS Chapter 183 relating to contested cases.

(9) The Department will immediately respond to a request by the Local Public Health Authority for personnel or equipment during an emergency. If the Department is unable to assist as requested, the Department will immediately notify the Local Public Health Authority and provide any possible assistance.

Stat. Auth.: ORS 446.425, 448.100 & 624.510

Stats. Implemented: ORS 446.425, 448.100 & 624.510

Hist.: HD 105, f. & ef. 2-5-76; HD 1-1979, f. & ef. 1-18-79; HD 9-1994, f. & cert. ef. 4-1-94; PH 13-2004, f. & cert. ef. 4-9-04

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**Adm. Order No.:** PH 14-2004

**Filed with Sec. of State:** 4-9-2004

**Certified to be Effective:** 4-9-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 333-040-0135

**Rules Repealed:** 333-040-0135(T)

**Subject:** 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.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

**333-040-0135**

## Qualifications and Training of Sampling Personnel

Persons collecting site samples shall have the following minimum qualifications:

(1) Have completed hazardous materials training, as set forth in OAR 333-040-0110(5); and

(2) Be a certified Industrial Hygienist (CIH); or

(3) Have a Bachelor of Science Degree in Health and Safety, Industrial Hygiene, Environmental Sciences, or Basic Sciences, and six months experience working with or for a professional environmental or industrial hygiene firm, Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA), Department of Environmental Quality (DEQ), or for an environmental laboratory certified under a state, federal, or professional program; or

(4) Have an Associate Degree in Hazardous Materials Management or Environmental Evaluations/Chemistry, and one year experience working under the direct supervision of personnel identified in section (2) or (3) of this rule. Persons who have been collecting samples at drug lab sites consistently since prior to January 1, 2000, are exempt from the requirements in sections (2), (3), and (4) of this rule.

Stat. Auth.: ORS 453.864

Stats. Implemented: ORS 453.855 - ORS 453.912 & OL 1999, Ch. 861

Hist.: OHD 2-1998, f. & cert. ef. 2-13-98; OHD 1-2000, f. & cert. ef. 1-24-00; PH 15-2003(Temp), f. & cert. ef. 10-27-03 thru 4-16-04; PH 14-2004, f. & cert. ef. 4-9-04

**Adm. Order No.:** PH 15-2004

**Filed with Sec. of State:** 4-9-2004

**Certified to be Effective:** 4-9-04

**Notice Publication Date:** 3-1-04

**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 Repealed:** 333-157-0050, 333-157-0060, 333-157-0090, 333-029-0105(T), 333-029-0110(T), 333-030-0095(T), 333-150-0000(T), 333-157-0045(T), 333-162-0300(T), 333-162-0930(T), 333-162-1005(T), 333-170-0010(T), 333-170-0020(T), 333-170-0030(T), 333-170-0040(T), 333-170-0050(T), 333-170-0060(T), 333-170-0070(T), 333-170-0080(T), 333-170-0090(T), 333-170-0100(T), 333-170-0120(T), 333-170-0130(T)

**Subject:** Retroactively adopts rules that were 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 repeals rules that are not 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. Prohibits the use of latex gloves in food service establishments and mobile food units. These rule 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 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; PH 15-2004, f. & cert. ef. 4-9-04

**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 (140o) F;

(b) A refrigerator capable of maintaining a temperature of forty-five degrees (45o) F, or less,



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(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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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 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

# ADMINISTRATIVE RULES

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 following 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.<sup>5</sup>

(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

# ADMINISTRATIVE RULES

- (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 requirement 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.

(jjj) 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);

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(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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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.

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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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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 handwashing 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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; PH 15-2004, f. & cert. ef. 4-9-04

## 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

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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; PH 15-2004, f. & cert. ef. 4-9-04

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**Notice Publication Date:**

**Rules Adopted:** 333-061-0058, 333-061-0064, 333-061-0228, 333-061-0272

**Rules Amended:** 333-061-0020, 333-061-0025, 333-061-0034, 333-061-0057, 333-061-0060, 333-061-0061, 333-061-0065, 333-061-0085, 333-061-0087, 333-061-0090, 333-061-0205, 333-061-0210, 333-061-0215, 333-061-0220, 333-061-0225, 333-061-0230, 333-061-0235, 333-061-0245, 333-061-0250, 333-061-0260, 333-061-0265, 333-061-0270, 333-061-0290

**Rules Suspended:** 333-061-0240, 333-061-0255

**Subject:** Retroactively amends 333-061-0020, 0025, 0034, 0057, 0060, 0061, 0065, 0085, 0087, 0090, 0245, 0290 with minor housekeeping changes and clarifications. These rules are identical to the rules previously filed with the Secretary of State's office on October 25, 2002.

Retroactively adopts 333-061-0058 to include wellfield determination. This rule is identical to the rule previously filed with the Secretary of State's office on October 25, 2002.

Retroactively adopts 333-061-0064, requirements for the development of written emergency response and water system operations plans, filed with the Secretary of State's office on October 25, 2002 and include the housekeeping changes and clarifications filed with the Secretary of State's office on August 15, 2003. This rule is identical to the rule previously filed with the Secretary of State's office on August 15, 2003.

Retroactively amends 333-061-0205, 0210, 0215, 0220, 0230, 0235, 0265, 0270, and adopts 333-061-0272 applying to community and non-transient non-community public water systems and their operators with minor housekeeping changes. These rules are identical to the rules previously filed with the Secretary of State's office on May 2, 2002.

Retroactively amend 333-061-0225 and adopt 333-061-0228 to comply with statutory changes which eliminated the exemption for operators of drinking water systems with less than 150 service connections, using groundwater sources, and for systems directly supervised by registered professional engineers. These rules are identical to the rules previously filed with the Secretary of State's office on May 2, 2002.

Retroactively suspends 333-061-0240 and 333-061-0255. This rule action is identical to the action filed with the Secretary of State's office on May 2, 2002.

Retroactively amend 333-061-0250 to provide further clarification to treatment definitions to concur with terminology that is commonly used in the industry. These rules are identical to the rules previously filed with the Secretary of State's office on March 28, 2003.

Retroactively amend 333-061-0260 to allow water distribution operators applying for level 3 and level 4 certification to substitute required post high school education with additional years of experience. Minor housekeeping changes for consistency are included. These rules are identical to the rules previously filed with the Secretary of State's office on March 28, 2003.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 333-061-0020

### Definitions

As used in these rules, unless the context indicates otherwise:

(1) "Act" means the Oregon Drinking Water Quality Act of 1981 (ORS 448.115-448.990 as amended).

(2) "Action Level" means the concentration of lead or copper in water which determines, in some cases, the treatment requirements that a water system is required to complete.

(3) "Administrator" means the Director of the Department of Human Services or his/her designee.

(4) "Air Gap Separation" means the physical vertical separation between the free flowing discharge end of a potable water supply pipe line and the open or non-pressure receiving vessel.

(5) "Approval" or "Approved" means approved in writing.

(6) "Aquifer" means a water saturated and permeable geological formation, group of formations, or part of a formation that is capable of transmitting water in sufficient quantity to supply wells or springs.

(7) "Aquifer Parameter" means a characteristic of an aquifer, such as thickness, porosity or hydraulic conductivity.

(8) "Aquifer Test" means pumping a well in a manner that will provide information regarding the hydraulic characteristics of the aquifer.

(9) "Atmospheric Vacuum Breaker (AVB)" means a device consisting of an air inlet valve, a check seat and an air inlet port(s).

(10) "Auxiliary Water Supply" means any supply of water used to augment the supply obtained from the public water system which serves the premises in question.

(11) "Average Groundwater Velocity" means the average velocity at which groundwater moves through the aquifer as a function of hydraulic gradient, hydraulic conductivity and porosity.

(12) "AWWA" means the American Water Works Association.

(13) "Backflow" means the flow in the direction opposite to the normal flow caused by backsiphonage or back pressure. Backsiphonage is caused by negative or reduced pressure in the supply piping and back pressure occurs when the potable supply piping is connected to a system or fixture which exceeds the operating pressure of the supply piping.

(14) "Backflow Preventer" means an airgap, AVB, PVBA, SVBA, DCVA or RPBA.

(15) "Backflow Prevention Assembly" means a backflow prevention device such as a pressure vacuum breaker, spill resistant pressure vacuum breaker, a double check valve or a reduced pressure principle device, and the attached shut off valves on the inlet and outlet ends of the device assembled as a complete unit.

(16) "Best Available Technology" or "BAT" means the best technology, treatment techniques, or other means which the EPA finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

(17) "Bottled Water" means potable water from a source approved by the Department for domestic use which is placed in small, easily transportable containers.

(18) "Calculated Fixed Radius" means a technique to delineate a wellhead protection area, based on the determination of the volume of the aquifer needed to supply groundwater to a well over a given length of time.

(19) "CFR" means the **Code of Federal Regulations**. Specifically, it refers to those sections of the code which deal with the **National Primary and Secondary Drinking Water Regulations**.

(20) "Check Valve" means a valve which allows flow in only one direction.

(21) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into floc.

(22) "Coliform-Positive" means the presence of coliform bacteria in a water sample.

(23) "Community Water System" means a public water system which has 15 or more service connections used by year-round residents, or which regularly serves 25 or more year-round residents.

(24) "Compliance Cycle" means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001.

(25) "Compliance Period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; and the third from January 1, 1999 to December 31, 2001.

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(26) "Comprehensive performance evaluation (CPE)" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: Assessment of plant performance; evaluations of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

(27) "Conceptual Model" means a three-dimensional representation of the groundwater system, including the location and extent of the hydrogeologic units, areas of recharge and discharge, hydrogeologic boundaries and hydraulic gradient.

(28) "Confined Well" means a well completed in a confined aquifer. More specifically, it is a well which produces water from a formation that is overlain by an impermeable material of extensive area. This well shall be constructed according to OAR Chapter 690 "Well Construction and Maintenance" standards, June 1989.

(29) "Confluent Growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

(30) "Constructed Conveyance" means any human-made conduit such as ditches, culverts, waterways, flumes, mine drains, canals or any human-altered natural water bodies or waterways as determined by the Department.

(31) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(32) "Contingency Plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a loss of capacity to supply water to the distribution system or in case of a fire, explosion or release of hazardous waste which could threaten human health or the environment.

(33) "Corrosion Inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

(34) "Cross Connection" means any link or channel between the piping which carries drinking water and the piping or fixtures which carry other water or other substances.

(35) "CT" means the product of the residual disinfectant concentration "C" (measured in mg/l) and disinfectant contact time(s), "T" (measured in minutes).

(36) "Delineation" means the determination of the extent, orientation and boundaries of a wellhead protection area using factors such as geology, aquifer characteristics, well pumping rates and time of travel.

(37) "Demonstration Study" means a series of tests performed to prove an overall effective removal and/or inactivation rate of a pathogenic organism through a treatment or disinfection process.

(38) "Discharge" means the volume rate of loss of groundwater from the aquifer through wells, springs or to surface water.

(39) "Disinfectant Contact Time" means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfection residual measurement to a point before or at the point where residual disinfectant concentration is measured.

(40) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(41) "Disinfection profile" means a summary of daily *Giardia lamblia* inactivation through the treatment plant

(42) "Distribution System" means the network of pipes and other facilities which are used to distribute water from the source, treatment, transmission, or storage facilities to the water user.

(43) "Department" means the Oregon Department of Human Services.

(44) "Domestic or other non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(45) "Dose Equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(46) "Double Check Valve Assembly (DCVA)" means an assembly of two independently acting check valves with shut-off valves on each side of

the check valves and test cocks for checking the water tightness of each check valve.

(47) "Drawdown" means the difference, measured vertically, between the static water level in the well and the water level during pumping.

(48) "Drinking Water Protection" means implementing strategies within a drinking water protection area to minimize the potential impact of contaminant sources on the quality of water being used as a drinking water source by a Public Water System.

(49) "Drinking Water Protection Area (DWPA)" means the source area supplying drinking water to a Public Water System. For a surface water-supplied drinking water source the DWPA is all or a specifically determined part of a lake's, reservoir's or stream's watershed that has been certified by the Department of Environmental Quality. For a groundwater-supplied drinking water source the DWPA is the area on the surface that directly overlies that part of the aquifer that supplies groundwater to a well, well field or spring that has been certified by the Department.

(50) "Drinking Water Protection Plan" means a plan, certified by the Department of Environmental Quality according to OAR 340-040-0160 to 340-040-0180, which identifies the actions to be taken at the local level to protect a specifically defined and certified surface water and/or groundwater drinking water protection area. The plan is developed by the local Responsible Management Authority and/or team and includes a written description of each element, public participation efforts, and an implementation schedule.

(51) "Emergency Response Plan" means a written document establishing contacts, operating procedures, and actions taken for a public water system to minimize the impact or potential impact of a natural disaster, accident, or intentional act which disrupts or damages, or potentially disrupts or potentially damages the public water system or drinking water supply, and returns the public water system to normal operating condition.

(52) "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(53) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(54) "Effective Corrosion Inhibitor Residual", means a concentration sufficient to form a passivating film on the interior walls of a pipe.

(55) "Effective Porosity" means the ratio of the volume of interconnected voids (openings) in a geological formation to the overall volume of the material.

(56) "Element" means one of seven objectives considered by the U.S. EPA as the minimum required components in any state wellhead protection program: specification of duties, delineation of the wellhead protection area, inventory of potential contaminant sources, specification of management approaches, development of contingency plans, addressing new (future) wells, and ensuring public participation.

(57) "Emergency" means a condition resulting from an unusual calamity such as a flood, storm, earthquake, drought, civil disorder, volcanic eruption, an accidental spill of hazardous material, or other occurrence which disrupts water service at a public water system or endangers the quality of water produced by a public water system.

(58) "EPA" means the United States Environmental Protection Agency.

(59) "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from start-up to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

(60) "Filtration" means a process for removing particulate matter from water through porous media.

(a) "Conventional Filtration Treatment" means a series of processes including coagulation (requiring the use of a primary coagulant and rapid mix), flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(b) "Direct Filtration Treatment" means a series of processes including coagulation (requiring the use of a primary coagulant and rapid mix) and filtration but excluding sedimentation resulting in substantial particulate removal.

(c) "Slow Sand Filtration" means a treatment process involving passage of raw water through a bed of sand at low velocity (generally less than 235 gallons per square foot per day) resulting in substantial particulate removal by physical and biological mechanisms.

(d) "Diatomaceous Earth Filtration" means a process resulting in substantial particulate removal in which:

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(A) A precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and

(B) While the water is filtered by passing through the cake on the septum, additional filter media, known as body feed, is continuously added to the feed water, in order to maintain the permeability of the filter cake.

(61) "First Customer" means the initial service connection or tap on a public water supply after any treatment processes.

(62) "First Draw Sample" means a one-liter sample of tap water that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

(63) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(64) "Future Groundwater Sources" means wells and/or springs that may be required by the public water system in the future to meet the needs of the system.

(65) "GAC 10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days.

(66) "Gross Alpha Particle Activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(67) "Gross Beta Particle Activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(68) "Groundwater under the direct influence of surface water (GWUDI)" means any water beneath the surface of the ground with significant occurrence of insects or other macro-organisms, algae or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(69) "Haloacetic acids (five) (HAA5)" mean the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid and dibromoacetic acid), rounded to two significant figures after addition.

(70) "Hauled Water" means water for human consumption transported from a Public Water System in a manner approved by the Department.

(71) "Human Consumption" means water used for drinking, personal hygiene bathing, showering, cooking, dishwashing and maintaining oral hygiene.

(72) "Hydraulic Conductivity" means the capacity of the medium, e.g., soil, aquifer, or any hydrogeological unit of interest, to transmit water.

(73) "Hydraulic Connection" refers to a well, spring or other groundwater collection system in which it has been determined that part of the water supplied by the collection system is derived, either naturally or induced, from a surface water source.

(74) "Hydraulic Gradient" means the slope of the water table or potentiometric surface, calculated by dividing the change in hydraulic head between two points by the horizontal distance between the points in the direction of groundwater flow.

(75) "Hydraulic Head" means the energy possessed by the water mass at a given point, related to the height above the datum plane that water resides in a well drilled to that point. In a groundwater system, the hydraulic head is composed of elevation head and pressure head.

(76) "Hydrogeologic Boundary" means physical features that bound and control direction of groundwater flow in a groundwater system. Boundaries may be in the form of a constant head, e.g. streams, or represent barriers to flow, e.g. groundwater divides and impermeable geologic barriers.

(77) "Hydrogeologic Mapping" means characterizing hydrogeologic features (e.g. hydrogeologic units, hydrogeologic boundaries, etc.) within an area and determining their location, areal extent and relationship to one another.

(78) "Hydrogeologic Unit" means a geologic formation, group of formations, or part of a formation that has consistent and definable hydraulic properties.

(79) "Impermeable Material" means a material that limits the passage of water.

(80) "Impounding Reservoir" means an uncovered body of water formed behind a dam across a river or stream, and in which water is stored.

(81) "Infiltration Gallery" means a system of perforated pipes laid along the banks or under the bed of a stream or lake installed for the purpose of collecting water from the formation beneath the stream or lake.

(82) "Initial Compliance Period" means the 1993-95 three-year compliance period for systems with 150 or more service connections and the

1996-98 three-year compliance period for systems having fewer than 150 service connections for the contaminants prescribed in OAR 333-061-0036(2)(a)(A)(v), 333-061-0036(3)(a)(J) and (3)(c)(N).

(83) "Interfering Wells" means wells, that because of their proximity and pumping characteristics, and as a result of the aquifer's hydraulic properties, produce drawdown cones that overlap during simultaneous pumping. The result is a lowering of the pumping level in each well below what it would be if that well were pumping by itself.

(84) "Inventory of Potential Contaminant Sources" means the reconnaissance level location of land use activities within the Drinking Water Protection Area that as a category have been associated with groundwater or surface water contamination in Oregon and elsewhere in the United States.

(85) "Lead Free" when used with respect to solders and flux shall mean solders and flux containing not more than 0.2 percent lead, and when used with respect to pipes and fittings shall mean pipes and fittings containing not more than 8.0 percent lead. When used with respect to plumbing fittings and fixtures intended for dispensing water for human consumption shall mean in compliance with standards established in accordance with 42 U.S.C. 300g-6(e) and ANSI/NSF standard 61, section 9.

(86) "Lead Service Line" means a service line made of lead which connects the water main to the building inlet and any pigtail, gooseneck or other fitting which is connected to such lead line.

(87) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(88) "Major Additions or Modifications" means changes of considerable extent or complexity including, but not limited to, projects involving water sources, treatment facilities, facilities for continuous disinfection, finished water storage, pumping facilities, transmission mains, and distribution mains, except main replacements of the same length and diameter.

(89) "Man-made Beta Particle and Photon Emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and **Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69**, except the daughter products of Thorium-232, Uranium-235 and Uranium-238.

(90) "Master Plan" means an overall plan which shows the projected development of a distribution system and alternatives for source development.

(91) "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water delivered to the users of a public water system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(92) "Maximum Residual Disinfectant Level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

(93) "New Groundwater Sources" means additional or modified wells and/or springs owned by the Public Water System.

(94) "Non-Transient Non-Community Water System (NTNC)" means a public water system that is not a Community water system and that regularly serves at least 25 of the same persons over 6 months per year.

(95) "Open Interval" means in a cased well, the sum of the length(s) of the screened or perforated zone(s) and in an uncased (open-hole) well, the sum of the thickness(es) of the water-bearing zones or, if undeterminable, 10 percent of the length of the open hole.

(96) "Optimal Corrosion Control Treatment", means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

(97) "Pathogenic" means a specific agent (bacterium, virus or parasite) causing or capable of causing disease.

(98) "Peak Daily Demand" means the maximum rate of water use, expressed in gallons per day, over the 24-hour period of heaviest consumption.

(99) "Permit" means official permission granted by the Department for a public water system which exceeds maximum contaminant levels to delay, because of economic or other compelling factors, the installation of water treatment facilities which are necessary to produce water which does not exceed maximum contaminant levels.

(100) "Person" means any individual, corporation, association, firm, partnership, municipal, state or federal agency, or joint stock company and includes any receiver, special master, trustee, assignee, or other similar representative thereof.



## ADMINISTRATIVE RULES

(101) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(102) "Pilot Study" means the construction and operation of a scaled down treatment system during a given period of time to determine the feasibility a full scale treatment facility.

(103) "Plug Flow" means movement of water in a pipe such that particles pass through the pipe and are discharged in the same sequence in which they entered.

(104) "Point of Disinfectant Application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(105) "Point-of-Entry Treatment Device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(106) "Point-of-Use Treatment Device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

(107) "Porous Media Assumption" means the assumption that groundwater moves in the aquifer as if the aquifer were granular in character, i.e. moves directly down-gradient, and the velocity of the groundwater can be described by Darcy's Law.

(108) "Potable Water." See Safe Drinking Water.

(109) "Potential Contaminant Source Inventory" means the determination of the location within the wellhead protection area of activities known to use or produce materials that can contaminate groundwater.

(110) "Potentiometric Surface" means a surface that denotes the variation of hydraulic head in the given aquifer across an area.

(111) "Pressure Vacuum Breaker Assembly (PVBA)" means an assembly consisting of an independently operating, internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve.

(112) "Provisional Delineation" means approximating the wellhead protection area for a well by using the wellhead protection area from another well in the same hydrogeologic setting or by using generalized values for the aquifer characteristics to generate an approximate wellhead protection area for the well. Used only for the purpose of evaluating potential siting of new or future groundwater sources. Not an acceptable way to formally delineate a wellhead protection area.

(113) "Public Health Hazard" means a condition, device or practice which is conducive to the introduction of waterborne disease organisms, or harmful chemical, physical, or radioactive substances into a public water system, and which presents an unreasonable risk to health.

(114) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such system has more than 3 service connections or supplies water to a public or commercial establishment which operates a total of at least 60 days per year, and which is used by 10 or more individuals per day. Public Water System also means a system for the provision to the public of water through constructed conveyances other than pipes to at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days of the year. A public water system is either a "Community water system", a "Transient Non-Community water system", a "Non-Transient Non-Community water system" or a "State Regulated water system."

(115) "Purchasing Water System" means a public water system which obtains its water in whole or in part from another public water system.

(116) "Recharge" means the process by which water is added to a zone of saturation, usually by downward infiltration from the surface.

(117) "Recharge Area" means a land area in which water percolates to the zone of saturation through infiltration from the surface.

(118) "Recovery" means the rise in water level in a well from the pumping level towards the original static water level after pumping has been discontinued.

(119) "Reduced Pressure Backflow Assembly (RPBA)" means a device for preventing backflow which has two check valves, a differential relief valve located between two check valves, two shut-off valves, one on the upstream side and the other on the downstream side of the check valves, and four test cocks for checking the watertightness of the check valves and the operation of the relief valve.

(120) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.

(121) "Repeat Compliance Period" means any subsequent compliance period after the initial compliance period.

(122) "Residual disinfectant concentration" means the concentration of disinfectant measured in mg/l in a representative sample of water.

(123) "Responsible Management Authority" means the Public Water System whose water supply is being protected and any government entity having management, rule or ordinance-making authority to implement wellhead protection management strategies within the wellhead protection area. The Responsible Management Authority is responsible for implementation of the Wellhead Protection Plan and includes cities, counties, special districts, Indian tribes, state/federal entities as well as public water systems.

(124) "Safe Drinking Water" means water which has sufficiently low concentrations of microbiological, inorganic chemical, organic chemical, radiological or physical substances so that individuals drinking such water at normal levels of consumption, will not be exposed to disease organisms or other substances which may produce harmful physiological effects.

(125) "Sanitary Survey" means an on-site review of the water source, watershed, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the capability of the water system to produce and distribute safe drinking water.

(126) "Secondary Contaminant" means those contaminants which, at the levels generally found in drinking water, do not present an unreasonable risk to health, but do:

- (a) Have adverse effects on the taste, odor and color of water; and/or
- (b) Produce undesirable staining of plumbing fixtures; and/or
- (c) Interfere with treatment processes applied by water suppliers.

(127) "Secondary Maximum Contaminant Level (SMCL)" means the level of a secondary contaminant which when exceeded may adversely affect the aesthetic quality of the drinking water which thereby may deter public acceptance of drinking water provided by public water systems or may interfere with water treatment methods.

(128) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(129) "Sensitivity" means the intrinsic characteristics of a drinking water source such as depth to the aquifer for groundwater or highly erodible soils in a watershed that increase the potential for contamination to take place if a contaminant source is present.

(130) "Service Connection" means the piping connection by means of which water is conveyed from a distribution main of a public water system to a user's premises. For a Community water system, the portion of the service connection which conveys water from the distribution main to the user's property line, or to the service meter where provided, is under the jurisdiction of the water supplier.

(131) "Single Connection System" means a public water system serving only one installation, such as a restaurant, campground or place of employment.

(132) "Single Family Structure," means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

(133) "Source Water Assessment" means the information compiled by the Department and the DEQ, consisting of the delineation, inventory and susceptibility analyses of the drinking water source, which enable public water systems to develop and implement drinking water protection plans.

(134) "Specific Ultraviolet Absorption (SUVA) at 254 nanometers" means an indicator of the humic content of water as a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nanometers (UV254) by its concentration of dissolved organic carbon (DOC) (in milligrams per liter).

(135) "Spill Resistant Pressure Vacuum Breaker Assembly (SVBA)" is one type of Pressure Vacuum Breaker Assembly.

(136) "Spring" means a naturally occurring discharge of flowing water at the ground surface, or into surface water. Springs can be derived from groundwater or they can be surface water influenced.

(137) "State Regulated Water System" means a public water system which serves 4 to 14 service connections or serves 10 to 24 people. Monitoring requirements for these systems are the same as those for Transient Non-Community water systems.

(138) "Static Water Level" means the vertical distance from ground surface to the water level in the well when the well is at rest, i.e., the well has not been pumped recently and the water level is stable. The natural level of water in the well.

(139) "Surface Water" means all water which is open to the atmosphere and subject to surface runoff.

(140) "Susceptibility" means the potential, as a result of the combination of land use activities and source water sensitivity, that contamination of the drinking water source may occur.

# ADMINISTRATIVE RULES

(141) "Team" means the local Wellhead Protection team, which includes representatives from the Responsible Management Authorities and various interests and stakeholders potentially affected by the Wellhead Protection Plan.

(142) "These Rules" means the Oregon Administrative Rules encompassed by OAR 333-061-0005 through 333-061-0098.

(143) "Time-of-Travel (TOT)" means the amount of time it takes groundwater to flow to a given well. The criterion that effectively determines the radius in the calculated fixed radius method and the up-gradient distance to be used for the analytical and numerical models during delineation of the wellhead protection area.

(144) "Too Numerous To Count (TNTC)" means that the total number of bacterial colonies exceeds 200 on a 47 mm diameter membrane filter used for coliform bacteria detection.

(145) "Total Organic Carbon (TOC)" means total organic carbon in milligrams per liter measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

(146) "Transient Non-Community Water System" means a public water system which serves a transient population of 25 or more persons.

(147) "Turbidity" means a measure of the cloudiness of water caused by suspended particles. The units of measure for turbidity are nephelometric turbidity units (NTU).

(148) "Unconfined Well" means a well completed in an unconfined aquifer. More specifically, a well which produces water from a formation that is not overlying by impermeable material. This well shall be constructed according to OAR Chapter 690 "Well Construction and Maintenance" standards, June 1989.

(149) "Vadose Zone" means the zone between the ground surface and the water table where the available open spaces between soil and sediment particles, in rock fractures, etc., are most filled with air.

(150) "Variance" means official permission granted by the Department for public water systems to exceed maximum contaminant levels because the quality of the raw water is such that the best available treatment techniques are not capable of treating the water so that it complies with maximum contaminant levels, and there is no unreasonable risk to health.

(151) "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

(152) "Waiver" means official permission from the Department for a public water system to deviate from the construction standards set forth in these rules.

(153) "Water-bearing Zone" means that part or parts of the aquifer encountered during drilling that yield(s) water to a well.

(154) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the Department.

(155) "Water Supplier" means a person, group of persons, municipality, district, corporation or other entity which owns or operates a public water system.

(156) "Water Source" means any lake, stream, spring, groundwater supply, impoundment or other source of water from which water is obtained for a public water system. In some cases, a public water system can be the source of supply for one or more other public water systems.

(157) "Water System" means a system for the provision of piped water for human consumption.

(158) "Water System Operations Manual" means a written document describing the actions and procedures necessary to operate and maintain the entire water system.

(159) "Water Table" means the upper surface of an unconfined aquifer, the surface of which is at atmospheric pressure and fluctuates seasonally. It is defined by the levels at which water stands in wells that penetrate the aquifer.

(160) "Well" means an artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn or injected, provided that this definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas.

(161) "Wellfield" means two or more drinking water wells, belonging to the same water system, that are within 2,500 feet, or as determined by the Department, and produce from the same and no other aquifer.

(162) "Wellhead Protection" means drinking water protection applied to a groundwater-supplied Public Water System.

(163) "Wellhead Protection Area (WHPA)" means a drinking water protection area for a groundwater-supplied drinking water source.

(164) "Wellhead Protection Plan" means a drinking water protection plan for a groundwater-supplied Public Water System.

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

Stat. Auth.: ORS 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273, 448.279

Hist.: HD 106, f. & ef. 2-6-76; HD 4-1980, f. & ef. 3-21-80; HD 10-1981, f. & ef. 6-30-81; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-42-205; HD 2-1983, f. & ef. 2-23-83; HD 21-1983, f. 10-20-83, ef. 11-1-83; HD 11-1985, f. & ef. 7-2-85; HD 30-1985, f. & ef. 12-4-85; HD 3-1987, f. & ef. 2-17-87; HD 3-1988(Temp), f. & cert. ef. 2-12-88; HD 17-1988, f. & cert. ef. 7-27-88; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0025

### Responsibilities of Water Suppliers

Water suppliers are responsible for taking all reasonable precautions to assure that the water delivered to water users does not exceed maximum contaminant levels, to assure that water system facilities are free of public health hazards, and to assure that water system operation and maintenance are performed as required by these rules. This includes, but is not limited to, the following:

(1) Routinely collect and submit water samples for laboratory analyses at the frequencies prescribed by OAR 333-061-0036;

(2) Take immediate corrective action when the results of analyses or measurements indicate that maximum contaminant levels have been exceeded and report the results of these analyses as prescribed by OAR 333-061-0040;

(3) Continue to report as prescribed by OAR 333-061-0040, the results of analyses or measurements which indicate that maximum contaminant levels have not been exceeded;

(4) Notify all customers of the system, as well as the general public in the service area, when the maximum contaminant levels have been exceeded;

(5) Notify all customers served by the system when the reporting requirements are not being met, or when public health hazards are found to exist in the system, or when the operation of the system is subject to a permit or a variance;

(6) Maintain monitoring and operating records and make these records available for review when the system is inspected;

(7) Maintain a pressure of at least 20 pounds per square inch (psi) at all service connections at all times;

(8) Follow-up on complaints relating to water quality from users and maintain records and reports on actions undertaken;

(9) Conduct an active program for systematically identifying and controlling cross connections;

(10) Submit, to the Department, plans prepared by a professional engineer registered in Oregon for review and approval before undertaking the construction of new water systems or major modifications to existing water systems, unless exempted from this requirement;

(11) Assure that the water system is in compliance with OAR 333-061-0205 relating to certification of water system operators.

(12) Assure that Transient Non-Community water systems utilizing surface water sources or sources under the influence of surface water are in compliance with OAR 333-061-0065(2)(c) relating to required special training.

Stat. Auth.: ORS 431 & 448.131

Stats. Implemented:

Hist.: HD 4-1982, f. & ef. 2-26-82; HD 2-1983, f. & ef. 2-23-83; HD 9-1989, f. & cert. ef. 11-13-89; HD 7-1992, f. & cert. ef. 6-9-92; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0034

### Treatment Requirements and Performance Standards for Corrosion Control

(1) General requirements:

(a) All Community and Non-Transient Non-Community water systems required to provide corrosion control shall install and operate optimal corrosion control treatment.

(b) Any water system that complies with the applicable corrosion control treatment requirements specified by the Department under sections (2) and (3) of this rule shall be deemed in compliance with the treatment requirement contained in subsection (1)(a) of this rule.

## ADMINISTRATIVE RULES

(c) Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the Department under section (4) of this rule.

(d) Any system exceeding the lead action level shall implement the public education requirements contained in section (5) of this rule.

(e) Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results shall be completed in accordance with OAR 333-061-0036(1)(a) and 333-061-0036(2)(e).

(f) Systems shall report to the Department all required treatment provision information and maintain appropriate records as prescribed in OAR 333-061-0034 and 0040.

(g) Failure to comply with the applicable requirements prescribed in these rules, shall constitute a violation of the national primary drinking water regulations for lead and/or copper.

(2) Systems shall complete the corrosion control treatment requirements as prescribed in section (3) of this rule as follows:

(a) Large systems (serving >50,000 persons) shall complete the following corrosion control treatment steps, unless it is deemed to have optimized corrosion control as prescribed in paragraphs (d)(B) or (d)(C) of this section:

(A) Systems shall conduct initial tap and water quality parameter monitoring for two consecutive six-month periods as prescribed in OAR 333-061-0036(2)(e)(D)(i) and (F) beginning January 1, 1992;

(B) Systems shall complete corrosion control studies prescribed in subsection (3)(c) of this rule by July 1, 1994;

(C) The Department shall designate optimal corrosion control treatment as prescribed in subsection (3)(i) of this rule by January 1, 1995;

(D) Systems shall install optimal corrosion control treatment as prescribed in subsection (3)(k) of this rule by January 1, 1997;

(E) Systems shall complete follow-up sampling as prescribed in OAR 333-061-0036(2)(e)(D)(ii) and (F)(iv) by January 1, 1998;

(F) The Department shall review installation of treatment and designate optimal water quality control parameters as prescribed in subsection (3)(l) of this rule by July 1, 1998.

(G) Systems shall operate in compliance with the Department-specified optimal water quality control parameters as prescribed in subsection (3)(m) of this rule and continue to conduct tap sampling.

(b) Medium systems (serving 3,301 to 50,000 persons) shall complete the following corrosion control treatment steps, unless it is deemed to have optimized corrosion control under paragraph (d)(A), (d)(B), or (d)(C) of this section:

(A) Systems shall conduct initial tap sampling beginning July 1, 1992 until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under OAR 333-061-0036(e)(D)(iv). A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment within six months after it exceeds one of the action levels.

(B) Within 12 months after a system exceeds the lead or copper action level, the Department may require the system to perform corrosion control studies. If the Department does not require the system to perform such studies, the Department shall specify optimal corrosion control treatment within the following time frames:

(i) For medium systems, within 18 months after such system exceeds the lead or copper action level;

(ii) For small systems, within 24 months after such system exceeds the lead or copper action level.

(C) If the Department requires a system to perform corrosion control studies under paragraph (2)(b)(B) of this rule, the system shall complete the studies within 18 months after the Department requires that such studies be conducted.

(D) If the system has performed corrosion control studies under paragraph (2)(b)(B) of this rule, the Department shall designate optimal corrosion control treatment within 6 months after completion of paragraph (2)(b)(C) of this rule.

(E) Systems shall install optimal corrosion control treatment within 24 months after the Department designates such treatment.

(F) Systems shall complete follow-up sampling within 36 months after the Department designates optimal corrosion control treatment.

(G) The Department shall review the system's installation of treatment and designate optimal water quality control parameters within 6 months after completion of follow-up sampling.

(H) Systems shall operate in compliance with the Department-designated optimal water quality control parameters and continue to conduct tap sampling.

(c) Small systems (serving 3,300 or less persons) shall complete the corrosion control treatment steps prescribed in subsection (2)(b) of this rule, unless it is deemed to have optimized corrosion control under paragraphs (d)(A), (d)(B), or (d)(C) of this section. Small systems shall conduct initial tap sampling beginning July 1, 1993.

(d) A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the following criteria. Any system deemed to have optimized corrosion control under this rule, and which has treatment in place, shall continue to operate and maintain optimal corrosion control treatment and meet any requirements that the Department determines appropriate to ensure optimal corrosion control treatment is maintained:

(A) A small or medium-size water system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with OAR 333-061-0036(2)(e)(A) through (E).

(B) Any water system that demonstrates to the satisfaction of the Department that it has conducted activities equivalent to the corrosion control steps applicable to such system under this section. If the Department makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with subsection (3)(l) of this rule. Water systems deemed to have optimized corrosion control under this paragraph shall operate in compliance with the Department-designated optimal water quality control parameters in accordance with subsection (3)(m) of this rule and continue to conduct lead and copper tap and water quality parameter sampling in accordance with OAR 333-061-0036(2)(e)(D)(iii) and 333-061-0036(2)(e)(F)(v), respectively. A system shall provide the Department with the following information in order to support a determination under this paragraph:

(i) The results of all test samples collected for each of the water quality parameters in subsection (3)(d) of this rule;

(ii) A report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in subsection (3)(c) of this rule, the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

(iii) A report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(iv) The results of tap water samples collected in accordance with OAR 333-061-0036(2)(e)(A) through (E) at least once every six months for one year after corrosion control has been installed.

(C) Any water system is deemed to have optimized corrosion control if it submits results of tap water monitoring and source water monitoring conducted in accordance with OAR 333-061-0036(2)(e)(A) through (E), (G) and (H) that demonstrates for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under OAR 333-061-0030(1)(c)(A) and the highest source water lead concentration, is less than 0.005 mg/l:

(i) Those systems whose highest source water lead level is below the MDL may also be deemed to have optimized corrosion control if the 90th percentile tap water lead level is less than or equal to the PQL for lead for two consecutive 6-month monitoring periods;

(ii) Any water system deemed to have optimized corrosion control shall continue monitoring for lead and copper at the tap no less frequently than once every three years using the reduced number of sampling sites and collecting the samples at the specified times and locations. Any such system that has not conducted a round of monitoring since September 30, 1997, shall complete a round of monitoring no later than September 30, 2,000;

(iii) Any water system deemed to have optimized corrosion control shall notify the Department in writing of any change in treatment or the addition of a new source. The Department may require any such system to conduct additional monitoring or to take other action the Department deems appropriate to ensure that such systems maintain minimal levels of corrosion in the distribution system;

(iv) As of July 2001, a system is not deemed to have optimized corrosion control unless it meets the copper action level.

(v) Any system triggered into corrosion control because it is no longer deemed to have optimized corrosion control shall implement corrosion control treatment in accordance with the deadlines prescribed in subsections (2)(b) and (c) of this rule. Any such large system shall adhere to the schedule specified for medium size systems, with the time periods for completing each step being triggered by the date the system is no longer deemed to have optimized corrosion control.

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(e) Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to OAR 333-061-0036(2)(e)(A) through (E) and submits the results to the Department. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system (or the Department, as the case may be) shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The Department may require a system to repeat treatment steps previously completed by the system where the Department determines that this is necessary to implement properly the treatment requirements of this section. The Department shall notify the system in writing of such a determination and explain the basis for its decision. The requirement for any small- or medium- size system to implement corrosion control treatment steps in accordance with subsection (2)(b) of this rule (including systems deemed to have optimized corrosion control under paragraph (2)(d)(A) of this rule) is triggered whenever any small- or medium- size system exceeds the lead or copper action level.

(3) Each system shall complete the corrosion control treatment requirements described below which are applicable to such system under section (2) of this rule:

(a) Based upon the results of lead and copper tap monitoring and water quality parameter monitoring, small and medium-size water systems exceeding the lead or copper action level shall recommend installation of one or more of the corrosion control treatments listed in subsection (3)(c) of this rule which the system believes constitutes optimal corrosion control for that system. The Department may require the system to conduct additional water quality parameter monitoring in accordance with OAR 333-061-0036(2)(e)(F)(iii) to assist the Department in reviewing the system's recommendation.

(b) The Department may require any small or medium-size system that exceeds the lead or copper action level to perform corrosion control studies under subsection (3)(c) of this rule to identify optimal corrosion control treatment for the system.

(c) Any public water system performing corrosion control studies shall evaluate the effectiveness of each of the treatments which follow, and, if appropriate, combinations of the treatments which follow to identify the optimal corrosion control treatment for that system. The water system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry and distribution system configuration:

(A) Alkalinity and pH adjustment;

(B) Calcium hardness adjustment; and

(C) The addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(d) The water system shall measure the following water quality parameters in any tests conducted under this subsection before and after evaluating the corrosion control treatments listed in subsection (3)(c) of this rule:

(A) Lead;

(B) Copper;

(C) pH;

(D) Alkalinity;

(E) Calcium;

(F) Conductivity;

(G) Orthophosphate (when an inhibitor containing a phosphate compound is used);

(H) Silicate (when an inhibitor containing a silicate compound is used);

(I) Water temperature.

(e) Any additional chemical treatment approaches considered by the water system shall be evaluated by the water system by conducting appropriate studies and analyses approved by the Department that are equivalent in scope to the studies and analyses required in this section.

(f) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:

(A) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; and/or

(B) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(g) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(h) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the Department in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in subsections (3)(c) through (g) of this rule.

(i) Based upon consideration of available information including, where applicable, studies performed under subsection (3)(c) through (g) of this rule and a system's recommended treatment alternative, the Department shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in subsection (3)(c) of this rule. When designating optimal treatment the Department shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(j) The Department shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the Department requests additional information to aid its review, the water system shall provide the information.

(k) Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated by the Department under subsection (3)(i) of this rule.

(l) The Department shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine whether the system has properly installed and operated the optimal corrosion control treatment designated by the Department in subsection (3)(i) of this rule. Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the Department shall designate values for the applicable water quality control parameters as listed below and shall be those that the Department determines to reflect optimal corrosion control treatment for the system. The Department may designate values for additional water quality control parameters determined by the Department to reflect optimal corrosion control for the system. The Department shall notify the system in writing of these determinations and explain the basis for its decisions.

(A) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(B) A minimum pH value, measured in all tap samples. Such value shall be  $\geq 7.0$ , unless the Department determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control;

(C) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the Department determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

(D) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples;

(E) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

(m) All systems that have installed treatment optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the Department under subsection (3)(l) of this rule for all samples collected under OAR 333-061-0036(2)(e)(F)(v)-(vii). Compliance shall be determined every six months, as specified under OAR 333-061-0036(2)(e)(F)(v). A water system is out of compliance for a six-month period if it has excursions for any Department-designated water quality parameter on more than nine days during the period. An excursion occurs whenever the daily value for one or more of the water quality parameters measured at a sampling location is below the minimum value or outside the range designated by the Department. Daily values are calculated as follows:

(A) On days when more than one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the

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average of all results collected during the day regardless of whether they are collected through continuous monitoring, grab sampling or a combination of both;

(B) On days when only one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the result of that measurement.

(C) On days when no measurement is collected for the water quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sample site;

(n) Upon its own initiative or in response to a request by a water system or other interested party, the Department may modify its determination of the optimal corrosion control treatment under subsection (3)(i) of this rule or optimal water quality control parameters under subsection (3)(l) of this rule. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The Department may modify its determination where it concludes that such change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the Department's decision, and provide an implementation schedule for completing the treatment modifications.

(4) Source water treatment requirements:

(a) Systems shall complete the applicable source water monitoring and treatment requirements prescribed in subsection (4)(b) of this rule and OAR 333-061-0036(2)(e)(A) through (E) and (G) through (K) by the following deadlines:

(A) A system exceeding the lead or copper action level shall complete lead and copper source water monitoring as prescribed in OAR 333-061-0036(2)(e)(H) and make a treatment recommendation to the Department as prescribed in paragraph (4)(b)(A) of this rule within 6 months after exceeding the lead or copper action level.

(B) The Department shall make a determination regarding source water treatment as prescribed in paragraph (4)(b)(B) of this rule within 6 months after submission of monitoring results required under paragraph (4)(a)(A) of this rule.

(C) If the Department requires installation of source water treatment, the system shall install the treatment as prescribed in paragraph (4)(b)(C) of this rule within 24 months after completion of requirements prescribed in paragraph (4)(a)(B) of this rule.

(D) The system shall complete follow-up tap water monitoring as prescribed in OAR 333-061-0036(2)(e)(D)(ii) and source water monitoring as prescribed in OAR 333-061-0036(2)(e)(I) within 36 months after completion of requirements prescribed in paragraph (4)(a)(B) of this rule.

(E) The Department shall review the system's installation and operation of source water treatment and specify maximum permissible source water levels as prescribed in paragraph (4)(b)(D) of this rule within 6 months after completion of requirements prescribed in paragraph (4)(a)(D) of this rule.

(F) The system shall operate in compliance with the Department-specified maximum permissible lead and copper source water levels as prescribed in paragraph (4)(b)(D) of this rule and continue source water monitoring as prescribed in OAR 333-061-0036(2)(e)(J).

(b) Source water treatment description:

(A) Any system which exceeds the lead or copper action level shall recommend in writing to the Department the installation and operation of one of the source water treatments listed in paragraph (4)(b)(B) of this rule. A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(B) The Department shall complete an evaluation of the results of all source water samples submitted by the water system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the Department determines that treatment is needed, the Department shall either require installation and operation of the source water treatment recommended by the system (if any) or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the Department requests additional information to aid in its review, the water system shall provide the information by the date specified by the Department in its request. The Department shall notify the system in writing of its determination and set forth the basis for its decision.

(C) Each system shall properly install and operate the source water treatment designated by the Department under paragraph (4)(b)(B) of this rule.

(D) The Department shall review the source water samples taken by the water system both before and after the system installs source water treatment, and determine whether the system has properly installed and operated the source water treatment designated by the Department. Based upon its review, the Department shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment properly operated and maintained. The Department shall notify the system in writing and explain the basis for its decision.

(E) Each water system shall maintain lead and copper levels below the maximum permissible concentrations designated by the Department at each sampling point monitored in accordance with OAR 333-061-0036(2)(e)(G) through (K). The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the Department.

(F) Upon its own initiative or in response to a request by a water system or other interested party, the Department may modify its determination of the source water treatment under paragraph (4)(b)(B) of this rule, or maximum permissible lead and copper concentrations for finished water entering the distribution system under paragraph (4)(b)(D) of this rule. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The Department may modify its determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the Department's decision, and provide an implementation schedule for completing the treatment modifications.

(5) A water system that exceeds the lead action level based on tap water samples collected in accordance with OAR 333-061-0036(2)(e)(A) through (E) shall deliver the public education materials contained in subsections (5)(a) or (b) and (c) of this rule in accordance with the requirements in subsection (5)(d) of this rule.

(a) Content of written materials. Community water system(s) shall include the following text in all of the printed materials it distributes through its lead public education program. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by laypersons:

(A) INTRODUCTION: The United States Environmental Protection Agency (EPA) and (insert name of water supplier) are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your system). This program includes corrosion control treatment, source water treatment, and public education. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at (insert water system's phone number). This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

(B) HEALTH EFFECTS OF LEAD: Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery, porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination - like dirt and dust - that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(C) LEAD IN DRINKING WATER:

(i) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(ii) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, and brass and chrome plated brass faucets. In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(iii) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

(D) STEPS YOU CAN TAKE IN THE HOME TO REDUCE EXPOSURE TO LEAD IN DRINKING WATER:

(i) Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead levels in some homes or buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call (insert phone number of water

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system).

(ii) If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

(I) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15-30 seconds. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than (insert a cost estimate based on flushing two times a day for 30 days) per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. These plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

(II) Try not to cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

(III) Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from 3 to 5 minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

(IV) If your copper pipes are joined with lead solder that has been installed illegally since it was banned June 30, 1985, notify the plumber who did the work and request that he or she replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify the Department of Human Services about the violation.

(V) Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be increased. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

(iii) The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

(I) Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters may reduce lead levels at the tap, however all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

(II) Purchase bottled water for drinking and cooking.

(iv) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(I) (insert the name of city or county department of public utilities) at (insert phone number) can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality;

(II) (insert the name of city or county department that issues building permits) at (insert phone number) can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and

(III) The Department of Human Services, Drinking Water Program at (503)-731-4317 or the (insert the name of the city or county health department) at (insert phone number) can provide you with information about the health effects of lead and how you can have your child's blood tested.

(v) The following is a list of some State approved laboratories in your area that you can call to have your water tested for lead. (Insert names and phone numbers of at least two laboratories).

(b) Content of written materials. Non-transient non-community water systems shall either include the text specified in paragraphs (5)(a)(A) through (D) of this rule or shall include the following text in all of the printed materials it distributes through its lead public education program. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by laypersons:

(A) INTRODUCTION: The United States Environmental Protection Agency (EPA) and (insert name of water supplier) are concerned about lead in your drinking water. Some drinking water samples taken from this facility have lead levels above the EPA action level of 15 parts per billion (ppb) or 0.015 milligrams of lead per liter of water (mg/l). Under Federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your system). This program includes corrosion control treatment, source water treatment, and public education. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at (insert water system's phone number). This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

(B) HEALTH EFFECTS OF LEAD: Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery, porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination - like dirt and dust - that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(C) LEAD IN DRINKING WATER:

(i) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(ii) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, and brass and chrome plated brass faucets. In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(iii) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon if the water has not been used all day, can contain fairly high levels of lead.

(D) STEPS YOU CAN TAKE IN THE HOME TO REDUCE EXPOSURE TO LEAD IN DRINKING WATER:

(i) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in plumbing the more lead it may contain. Flushing the tap means running the cold water faucet for about 15-30 seconds. Although toilet flushing or showering flushes water through a portion of the plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your health. It usually uses less than one gallon of water.

(ii) Do not cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and then heat it.

(iii) The steps described above will reduce the lead concentrations in your drinking water. However, if you are still concerned you may wish to use bottled water for drinking and cooking.:

(iv) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(I) (insert the name or title of facility official, if appropriate) at (insert phone number) can provide you with information about your facility's water supply, and  
(II) The Department of Human Services, Drinking Water Program at (503)-731-4317 or the (insert the name of the county health department) at (insert phone number) can provide you with information about the health effects of lead.

(c) Content of broadcast materials. A water system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for broadcast:

(A) Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for (insert free or \$ per sample). You can contact the (insert the name of the city or water system) for information on testing and on simple ways to reduce your exposure to lead in drinking water.

(B) To have your water tested for lead, or to get more information about this public health concern, please call (insert the phone number of the city or water system).

(d) Delivery of a public education program:

(A) In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

(B) A Community water system that exceeds the lead action level on the basis of tap water samples collected in accordance with OAR 333-061-0036(2)(e)(A) through (E), and that is not already repeating public education tasks pursuant to paragraphs (C), (G) and (H) of this subsection shall, within 60 days:

(i) Insert notices in each customer's water utility bill containing the information in subsection (5)(a) of this rule, along with the following "alert" on the water bill itself in large print:

"SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION."

Community water systems having a billing cycle that does not include a billing within 60 days of exceeding the action level, or that cannot insert information in the water utility bill without making major changes to its billing system, may use a separate mailing to deliver the information in subsection (5)(a) of this rule as long as the information is delivered to each customer within 60 days of exceeding the action level. Such water systems shall also include the "alert" language specified in this paragraph.

(ii) Submit the information in subsection (5)(a) of this rule to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(iii) Deliver pamphlets and/or brochures that contain the public education materials in paragraphs (5)(a)(B) and (D) of this rule to facilities and organizations, including the following:

(I) Public schools and/or local school boards;

(II) City or county health department;

(III) Women, Infants, and Children and/or Head Start Program(s) whenever available;

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- (IV) Public and private hospitals and/or clinics;
- (V) Pediatricians;
- (VI) Family planning clinics; and
- (VII) Local welfare agencies.

(iv) Submit the public service announcement in subsection (5)(c) of this rule to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

(C) A Community water system shall repeat the tasks contained in paragraphs (5)(d)(B)(i), (ii) and (iii) of this rule every 12 months, and the tasks contained in paragraph (5)(d)(B)(iv) of this rule every 6 months for as long as the system exceeds the lead action level.

(D) Within 60 days after it exceeds the lead action level (unless it already is repeating public education tasks pursuant to paragraph (E) of this subsection), a Non-Transient Non-Community water system shall deliver the public education materials contained in subsections (5)(a) or (b) of this rule as follows:

(i) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(ii) Distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the Non-Transient Non-Community water system. Electronic transmission may be used in lieu of or combined with printed materials as long as it achieves at least the same coverage.

(E) A Non-Transient Non-Community water system shall repeat the tasks contained in paragraph (5)(d)(D) of this rule at least once during each calendar year in which the system exceeds the lead action level.

(F) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to OAR 333-061-0036(2)(e)(A) through (E). Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(G) A community water system may use the text specified in subsection (5)(b) of this rule in place of the text specified in subsection (5)(a) of this rule and perform the tasks listed in paragraphs (D) and (E) of this subsection instead of the tasks specified in paragraph (B) and (C) of this subsection if:

(i) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(ii) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(H) Community water systems may omit certain public education tasks as follows:

(i) Systems serving  $\leq 3300$  people may omit the electronic media public service announcement requirement prescribed in paragraph (B)(iv) of this subsection;

(ii) Systems serving  $\leq 500$  people may limit their public education program by foregoing the newspaper notification requirement specified in paragraph (B)(ii) of this subsection and limit the distribution of the public education materials required under paragraph (B)(iii) of this subsection to facilities and organizations served by the system and that are most likely to be visited regularly by pregnant women and children, unless it is notified by the Department in writing that it must make a broader distribution. This option may be used as long as the systems distribute notices containing the written content information contained in subsection (5)(a) of this rule to every household served by the system.

(iii) With written approval from the Department, systems serving 501-3300 persons may limit their public education program by forgoing the newspaper notification requirement specified in paragraph (B)(ii) of this subsection and may limit the distribution of the public education materials required under paragraph (B)(iii) of this subsection to facilities and organizations served by the system and that are most likely to be visited regularly by pregnant women and children as long as the system distributes notices containing the written content information contained in subsection (5)(a) of this rule to every household served by the system;

(iv) All Community systems serving  $\leq 3300$  people that deliver public education in accordance with paragraphs (H)(i) and (ii) of this subsection shall repeat the required public education tasks at least once during each calendar year in which the system exceeds the lead action level.

(e) Supplemental monitoring and notification of results. A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with OAR 333-061-0036(2)(e)(A) through (E) shall offer to sample the tap water of any customer who requests it. The system

is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150 & 448.273

Hist.: HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 7-2000, f. 7-1-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0057

### Voluntary Wellhead Protection Program

(1) In accordance with OAR 340-040-0140 through 0200, a public water system or other responsible management authority that wishes to have a state certified wellhead protection program shall comply with the requirements prescribed in this rule.

(2) Delineation of the wellhead protection area (WHPA):

(a) Elineations will be accomplished for all Community, Non-transient Non Community and Transient Non Community water systems as part of the Safe Drinking Water Act's Source Water Assessment Program. Water systems may choose to complete or upgrade the delineations themselves. If so, they must comply with subsection (2)(b) of this rule;

(b) Delineation requirements for all groundwater sources are as follows:

(A) Delineations will be accomplished using a minimum TOT criterion of 10 years unless a hydrogeologic boundary is encountered at a shorter time of travel or as specified in paragraph (2)(c)(B) of this rule;

(B) Delineations will be accomplished by a registered geologist, engineering geologist or other licensed professional with demonstrated experience and competence in hydrogeology in accordance with ORS 672.505 through 672.705;

(C) Except as noted in paragraph (2)(c)(B) of this rule, a conceptual ground water model shall be developed for all public water systems participating in the voluntary wellhead protection program. The model shall be based on available information including, but not limited to, well reports, published reports and available unpublished reports and theses, etc. Sources of this information include the Water Resources Department, U. S. Geological Survey, Department of Geology and Mineral Industries, Department of Environmental Quality, university libraries and the Department. The model shall include, but not be limited to, the identification and characterization of hydrogeologic units, determination of hydrogeologic boundaries, if any, areas of discharge and recharge and distribution of hydraulic head for the aquifer(s) of concern. The model shall also evaluate whether or not the porous media assumption is valid;

(D) The delineated WHPA and supporting documentation shall be submitted to the Department for review and certification;

(E) Within 60 days of the receipt of the delineated wellhead protection area and supporting documentation, the Department shall send a written acknowledgment of that receipt and an estimated date for review and certification of the delineation;

(F) The delineation techniques stipulated in this rule represent the minimum acceptable effort required for a state certified program. The use of a more sophisticated technique is acceptable.

(c) Springs. For water systems served by springs, hydrogeologic mapping shall be used to delineate the recharge area to the spring(s).

(d) Wells.

(A) All delineations for groundwater derived from wells shall use an adjusted pump rate ( $Q_a$ ) that allows for potential growth using one of the methods described below, whichever yields the smallest value for  $Q_a$ :

(i) 125 percent of average pump rate as determined from the three months representing the highest usage; or

(ii) 125 percent of average pump rate as determined using a comparable community; or

(iii) 90 percent of the safe yield of the well.

(v) The water system's population times 200 gallons per day.

(B) For water systems serving a population  $\geq 500$  and using a single well, the minimum acceptable delineation method is a calculated fixed radius. Parameters considered in this technique include  $Q_a$ , effective porosity, open (screened or perforated) interval or thickness of the water-bearing zone(s), whichever is less, and a TOT of 15 years.

(C) For water systems serving a population of 501 to 3,300 or systems serving  $\geq 500$  with multiple wells, the WHPA(s) shall be delineated using a combination of an analytical technique and hydrogeologic mapping.

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(D) For water systems serving a population >3,300, the conceptual model shall be refined using site-specific collected data. Data collected shall include, but not be limited to, measured static water levels for the purpose of generating a map of the appropriate potentiometric-or water table surface, and at a minimum a 24-hour constant-rate aquifer test. The well to be tested should remain idle for a period of 24 hours prior to the test. Water levels in the well should be monitored at appropriate intervals during the pre-pumping, pumping and recovery phases. Additional technical information is given in the **Oregon Wellhead Protection Guidance Manual** and the **1996 Oregon Source Water Assessment Guidance**.

(E) For water systems serving a population of 3,301 to 50,000, the WHPA(s) shall be delineated as provided in paragraph (2)(c)(C) of this rule, with the exception of using the site specific data collected in accordance with paragraph (2)(c)(D) of this rule.

(F) For water systems serving a population >50,000 and using wells, the WHPA(s) shall be delineated using numerical models or comparable analytical methods. The model must be calibrated using field observations and measurements of appropriate hydrogeologic parameters.

(e) Susceptibility Analysis. To guide the development of management strategies, the aquifer's susceptibility within the WHPA may be determined using the methods described in the Use and Susceptibility Waiver Guidance Document, the 1996 Oregon Source Water Assessment Guidance or another pre-approved process. Additional technical information is available in the Oregon Wellhead Protection Guidance Manual.

(f) Delineation Update. The water system's WHPA delineation shall be re-examined every 5 years for potential revisions (OAR 340-040-0190). Factors that may require revision of a WHPA boundary include, but are not limited to the following:

- (A) A significant change in the pumping rate;
- (B) A significant change in recharge to the aquifer;

(C) Wells outside the control of the water system placed in a manner that could significantly modify the shape and/or orientation of the original WHPA.

(3) New and Future Groundwater Sources:

(a) New sources. With regard to the voluntary wellhead protection program, a new source is defined as an additional or modified well(s) and/or spring(s) that will be used by the water system.

(A) For new wells or springs outside an existing WHPA or deriving water from a different aquifer than that supplying other already delineated WHPAs, the following steps shall be completed:

(i) If more than one potential site is available, the water system or other responsible management authority shall conduct a provisional delineation and a preliminary potential contaminant source inventory for each site being considered in order to evaluate the long-term viability of each of the sites available; and

(ii) Delineate the chosen site as prescribed in section (2) of this rule. Further technical information is provided in the Oregon Wellhead Protection Guidance Manual.

(B) For new wells or springs inside an existing WHPA or potentially influencing an existing WHPA, the following steps shall be completed:

(i) Evaluate sites and delineate WHPA(s) as prescribed in paragraphs (3)(a)(i) and (ii) of this rule; and

(ii) Modify the existing wellhead protection plan to encompass modifications resulting from the new delineation.

(C) New wells or springs as defined in subsection (3)(a) of this rule shall comply with all appropriate construction standards as prescribed in OAR 333-061-0050 and shall comply with plan submission requirements as prescribed in OAR 333-061-0060.

(b) Future sources. A public water system or other responsible management authority that has recognized the need for future groundwater supplies beyond their current capacity may choose to identify the area where this future supply will be obtained in accordance with paragraph (3)(a)(A)(i) of this rule.

(4) Contingency Planning:

(a) Public water systems shall develop or revise contingency plans for response to potential loss or reduction of their drinking water source(s). Key elements of the plan shall include, but not be limited to, the following:

- (A) Inventory/prioritize all threats to the drinking water supply;
- (B) Prioritize water usage;
- (C) Anticipate responses to potential incidents;
- (D) Identify key personnel and development of notification roster;

(E) Identify short-term and long-term replacement potable water supplies;

(F) Identify short-term and long-term conservation measures;

(G) Provide for plan testing, review and update;

(H) Provide for new and on-going training of appropriate individuals;

(I) Provide for education of the public; and

(J) Identify logistical and financial resources.

(b) Public water systems shall coordinate their contingency plan with the emergency response plans of the appropriate county and/or city and with the contingency plans developed by industries using hazardous materials within the wellhead protection area.

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150 & 448.273

Hist.: HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0058

### Wellfield Determination

(1) Water systems possessing two or more wells that enter the distribution separately supplying their drinking water may be eligible to have those wells considered as a wellfield source for monitoring purposes provided the requirements of this rule are met. Information pertinent to determining whether the wellfield designation is appropriate can be found in the water system's Source Water Assessment Report.

(2) To be classified as a wellfield, the wells must meet the following criteria:

(a) The wells must be within 2,500 feet of one another or as determined in a state approved hydrogeological study to minimize inter-well interference drawdowns. For wells located in a low-impact land use area, this criterion may be waived at the discretion of the Department.

(b) The wells must produce from the same and no other aquifer. This criterion is determined using source water assessment results, based on well reports, maps and other hydrogeological information.

(3) To be considered for wellfield designation, the water supplier is asked to submit the following to the Department:

(a) A schematic drawing showing all sources, entry points and relevant sample taps;

(b) A map and description of the land use activities within the respective wellhead protection areas (using the inventory section of the Source Water Assessment Report); and

(c) A description of the pumping patterns.

(4) If a water system's wells are considered to comprise a wellfield, the susceptibility analysis conducted during the source water assessment is utilized to determine the sampling point(s). Table 32 summarizes the alternatives: [Table not included. See ED, NOTE.]

(5) To determine the most susceptible well, the area within the 2-year time-of-travel is considered. The Department will consider the potential contaminant source inventory determined during the source water assessment, the aquifer sensitivity, pumping patterns and other pertinent hydrogeological information.

(6) The Department may still designate more than one well within the wellfield as a sampling point if well construction and/or land use practices warrant. For a large area containing numerous wells, sub-wellfields may be identified, each with its own sample site designation.

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

Statutory Authority: ORS 431 & 448

Stats. Implemented:

Hist.: OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0060

### Plan Submission and Review Requirements

(1) Plan Submission:

(a) Construction and installation plans shall be submitted to and approved by the Department before construction begins on new systems or major additions or modifications, as determined by the Department, are made to existing systems. Plans shall be drawn to scale;

(b) Preliminary plans, pilot studies, master plans and construction plans shall be prepared by a Professional Engineer registered in Oregon, and submitted to the Department unless exempted by the Department (See OAR 333-061-0060(4));

(c) Plans shall set forth the following:

(A) Sufficient detail, including specifications, to completely and clearly illustrate what is to be constructed and how those facilities will meet the construction standards set forth in these regulations. Elevation or section views shall be provided where required for clarity;



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(B) Supporting information attesting to the quality of the proposed source of water;

(C) Vicinity map of the proposed project relative to the existing system or established landmarks of the area;

(D) Name of the owner of the water system facilities during construction and the name of the owner and operator of the facilities after completion of the project;

(E) Procedures for cleaning and disinfecting those facilities which will be in contact with the potable water.

(d) Prior to drilling a well, a site plan shall be submitted which shows the site location, topography, drainage, surface water sources, specifications for well drilling, location of the well relative to sanitary hazards, dimensions of the area reserved to be kept free of potential sources of contamination, evidence of ownership or control of the reserve area and the anticipated depth of the aquifer from which the water is to be derived. The Department will review well reports from the area and in consultation with the local watermaster and the well constructor as appropriate will recommend the depth of placement of the casing seal. After the well is drilled, the following documents shall be submitted to the Department for review and approval: Well driller's report, report of the pump test which indicates that the well has been pumped for a sufficient length of time to establish the reliable yield of the well on a sustained basis, including data on the static water level, the pumping rate(s), the changes in drawdown over the duration of the test, the rate of recovery after the pump was turned off, reports on physical, chemical and microbiological quality of the well water, performance data on the well pump, a plan of the structure for protecting above-ground controls and appurtenances, and a plan showing how the well will be connected to the water system. (See OAR 333-061-0050(2).)

(e) Any system that treats surface water or groundwater under the influence of surface water that desires to make a significant change to the disinfection treatment process must consult with the Department prior to making such a change. The water system must develop a disinfection profile and calculate a disinfection benchmark according to the USEPA Disinfection Profiling and Benchmarking Guidance Manual. Significant changes to the disinfection treatment process include:

- (A) Changes to the point of application;
- (B) Changes to the disinfectants used in the treatment process;
- (C) Changes to the disinfection process;
- (D) Any other modification identified by the Department.

A water system that uses either chloramines or ozone for primary disinfection must also calculate the disinfection benchmark for viruses using a method approved by the Department.

(2) Plan review:

(a) Upon receipt of plans, the Department shall review the plans and either approve them or advise that correction or clarification is required. When the correction or clarification is received, and the item(s) in question are resolved, the Department shall then approve the plans;

(b) Upon completion of a project, a professional engineer registered in Oregon shall submit to the Department a statement certifying that the project has been constructed in compliance with the approved plans and specifications. When substantial deviations from the approved plans are made, as-built plans showing compliance with these rules shall be submitted to the Department;

(c) Plans shall not be required for emergency repair of existing facilities. In lieu of plans, written notice shall be submitted to the Department immediately after the emergency work is completed stating the nature of the emergency, the extent of the work and whether or not any threats to the water quality exists or existed during the emergency.

(3) Plan review fees: Plans submitted to the Department shall be accompanied by a fee as indicated in Table 33. Those plans not accompanied by a fee will not be reviewed. [Table not included. See ED. NOTE.]

(4) Plan review exemptions:

(a) Water suppliers may be exempted from submitting plans of main extensions, providing they:

- (A) Have provided the Department with a current master plan; and
- (B) Certify that the work will be carried out in conformance with the construction standards of these rules; and

(C) Submit to the Department an annual summary of the projects completed; and

(D) Certify that they have staff qualified to effectively supervise the projects.

(b) Those water suppliers certifying that they have staff qualified to effectively plan, design and supervise their projects, may request the Department for further exemption from this rule. Such requests must be accompanied by a listing of staff proposed to accomplish the work and a

current master plan. To maintain the exemption, the foregoing must be annually updated;

(c) At the discretion of the Department, Community, Transient and Non-Transient Non-Community and State Regulated water systems may be exempted from submitting engineered plans. They shall, however, submit adequate plans indicating that the project meets the minimum construction standards of these rules.

(5) Master plans:

(a) Community water systems with 300 or more service connections shall maintain a current master plan. Master plans shall be prepared by a professional engineer registered in Oregon and submitted to the Department for review and approval.

(b) Each master plan shall evaluate the needs of the water system for at least a twenty year period and shall include but is not limited to the following elements:

(A) A summary of the overall plan that includes the water quality and service goals, identified present and future water system deficiencies, the engineer's recommended alternative for achieving the goals and correcting the deficiencies, and the recommended implementation schedule and financing program for constructing improvements.

(B) A description of the existing water system which includes the service area, source(s) of supply, status of water rights, current status of drinking water quality and compliance with regulatory standards, maps or schematics of the water system showing size and location of facilities, estimates of water use, and operation and maintenance requirements.

(C) A description of water quality and level of service goals for the water system, considering, as appropriate, existing and future regulatory requirements, nonregulatory water quality needs of water users, flow and pressure requirements, and capacity needs related to water use and fire flow needs.

(D) An estimate of the projected growth of the water system during the master plan period and the impacts on the service area boundaries, water supply source(s) and availability, and customer water use.

(E) An engineering evaluation of the ability of the existing water system facilities to meet the water quality and level of service goals, identification of any existing water system deficiencies, and deficiencies likely to develop within the master plan period. The evaluation shall include the water supply source, water treatment, storage, distribution facilities, and operation and maintenance requirements. The evaluation shall also include a description of the water rights with a determination of additional water availability, and the impacts of present and probable future drinking water quality regulations.

(F) Identification of alternative engineering solutions, environmental impacts, and associated capital and operation and maintenance costs, to correct water system deficiencies and achieve system expansion to meet anticipated growth, including identification of available options for cooperative or coordinated water system improvements with other local water suppliers.

(G) A description of alternatives to finance water system improvements including local financing (such as user rates and system development charges) and financing assistance programs.

(H) A recommended water system improvement program including the recommended engineering alternative and associated costs, maps or schematics showing size and location of proposed facilities, the recommended financing alternative, and a recommended schedule for water system design and construction.

(I) If required as a condition of a water use permit issued by the Water Resources Department, the Master Plan shall address the requirements of OAR 690-086-0120 (Water Management and Conservation Plans).

(c) The implementation of any portion of a water system master plan must be consistent with OAR 333-061 (Public Drinking Water Systems, DHS), OAR 660-011 (Public Facilities Planning, DLCD) and OAR 690-086 (Water Management and Conservation Plans, WRD).

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273, 448.279

Hist.: HD 106, f. & ef. 2-6-76; HD 4-1980, f. & ef. 3-21-80; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0220; HD 2-1983, f. & ef. 2-23-83; HD 13-1985, f. & ef. 8-1-85; HD 9-1989, f. & cert. ef. 11-13-89; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

# ADMINISTRATIVE RULES

## 333-061-0061

### Capacity Requirements for Public Water Systems

(1) Water system capacity is defined as the technical, managerial, and financial capability of the water system necessary to plan for, achieve, and maintain compliance with applicable drinking water standards.

(2) Capacity requirements for new public water systems.

(a) Any new community, non-transient non-community, or transient non-community public water system commencing operations on or after October 1, 1999, must meet the applicable requirements in this rule prior to serving drinking water to the public. The owner of such water system shall submit evidence of meeting all applicable requirements to the Department for review and shall commence operation only after Department approval. This rule does not apply to water systems that were built and operating prior to October 1, 1999.

(b) Requirements for Technical Capacity:

(A) The water system must comply with the local land use requirements of OAR 333-061-0062, including submission to the Department of evidence of approval by the local land use authority.

(B) The water system must comply with plan submission and review requirements of OAR 333-061-0060, and plans submitted must comply with construction standards in OAR 333-061-0050.

(C) The owner of a new water system must demonstrate a valid water right permit as required and prescribed by the Oregon Water Resources Department (ORS Chapter 537).

(D) The water system must submit initial water quality test results demonstrating compliance with applicable Maximum Contaminant Levels (OAR 333-061-0030), and applicable treatment requirements and performance standards (OAR 333-061-0032 and 0034).

(E) Community water systems shall have water use meters installed at all service connections.

(F) Community water systems with 300 or more service connections shall have a master plan meeting the requirements of OAR 333-061-0060.

(c) Requirements for Managerial Capacity:

(A) Community and non-transient non-community water systems must employ or contract for the services of a certified operator as required by OAR 333-061-0225.

(B) Community water systems within areas of Oregon where State or Federally listed sensitive, threatened or endangered fish species are located, shall consult with the Oregon Water Resources Department. If required by the Oregon Water Resources Department, community water systems shall have water management and conservation plans meeting the requirements of Oregon Water Resources Department OAR 690-86-0010 through 0920.

(d) Requirements for Financial Capacity. The water system must establish a water rate structure and billing procedure, or alternate financial plan, to assure that funds are collected and available to meet the anticipated operation, maintenance, and replacement costs of the water system.

(3) Capacity requirements for public water systems applying for a loan from the Drinking Water State Revolving Loan Fund.

(a) All public water systems qualifying for a Drinking Water State Revolving Fund loan must receive a capacity assessment for technical and managerial capacity from the Department, and financial capacity from the Oregon Economic & Community Development Department through the loan application process, prior to contract execution.

(b) All deficiencies identified in the capacity assessment must be corrected such that:

(A) Those deficiencies identified in the capacity assessment as major deficiencies must be corrected prior to contract execution. Major deficiencies include but are not limited to the following:

(i) Under technical capacity, major infrastructure deficiencies identified in the sanitary survey and not corrected as a part of this project or identified as a deficiency under paragraph (E) of this subsection; or

(ii) Under managerial capacity, no certified operator and no contract or agreement for operator services from another water system or management agency; or

(iii) Under financial capacity, inappropriate financial statements, lack of a capital financing program, or an inadequate rate structure to cover necessary system operation, debt service, or capital replacement.

(B) Those deficiencies identified in the capacity assessment as loan conditions must be corrected as a part of the contract prior to contract completion or on a schedule set and/or approved and tracked by the Department or its designee. Loan condition deficiencies are deficiencies which may take considerable staff or contractor time and possibly some funding to correct. Loan condition deficiencies include but are not limited to the following:

(i) Under technical capacity, inadequate or no water rights, incomplete installation of water use meters, incomplete or no engineering drawings of the water system, out-of-date or no master plan, or incomplete or no plan review on prior construction projects; or

(ii) Under managerial capacity, having an operator at a lower level than required in responsible charge of the water system, no written emergency response plan, no written water conservation program if required by the Water Resources Department under OAR 690-086-0010 through 690-086-0920, no written water system operations manual, or no cross connection program.

(C) Those deficiencies identified in the capacity assessment as short term deficiencies must be corrected prior to contract completion and will be tracked by the Department. Short term deficiencies are deficiencies which can be quickly corrected with additional staff attention. Short term deficiencies include but are not limited to the following:

(i) Under technical capacity, water quality monitoring is incomplete, no coliform sample plan or site map, or no written water quality monitoring plan; or

(ii) Under managerial capacity, no annual cross connection summary report if required, or no consumer confidence report if required.

(D) Those deficiencies identified in the capacity assessment as corrected with the project will be considered by the Department as corrected with contract completion.

(E) All other deficiencies identified in the capacity assessment must be identified and established as a future construction project in the water system master plan, feasibility study, or other such document in order to be considered by the Department as corrected in the future.

(c) Funding to correct a deficiency identified as a loan condition under paragraph (b)(B) of this section may be included as part of the project contract under the Drinking Water State Revolving Fund, if that part of the project to correct the deficiency qualifies under the terms of the Drinking Water State Revolving Fund.

(4) Capacity requirements for other public water systems.

(a) All community, non-transient non-community, and transient non-community public water systems will receive capacity assessments conducted by or with the assistance of the Department.

(A) The capacity assessment consists of a written report identifying deficiencies in technical, managerial, and financial capacity, and a letter listing recommendations to correct the deficiencies. The findings of the capacity assessment and recommendations for correction will be presented to the management of the water system at a regular or special meeting.

(B) The frequency of capacity assessments for a public water system, as described in this subsection, is dependent on the risk to human health as determined by the Department.

(C) The recommendations for correction of deficiencies identified in capacity assessments are, or, become requirements for any public water system, as described in this subsection, with multiple violations of the drinking water standards, in significant non-compliance with the drinking water standards, or an Administrative Order issued by the Department.

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.268, 448.273

Hist.: OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0064

### Emergency Response Plan and Water System Operations Manual Requirements

(1) All public water systems shall maintain a current emergency operations plan.

(a) The emergency response plan shall be completed according to the following schedule and shall be reviewed and updated at least every five (5) years.

(A) Completed by September 30, 2003 for public water systems serving 100,000 population or more.

(B) Completed by June 30, 2004 for public water systems serving a population of 50,000 or more but less than 100,000.

(C) Completed by December 31, 2004 for public water systems serving a population greater than 3,300 but less than 50,000.

(D) Completed by June 30, 2005 for public water systems serving a population of 3,300 or less.

(E) If a public water system applying for funds from the Safe Drinking Water Revolving Loan Fund Program is required to develop an emergency response plan as a part of a capacity assessment, then the emergency response plan is required to be completed before final payout of the loan.

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(b) As evidence of completion, public water systems shall submit a statement to the Department certifying that the emergency response plan has been completed according to the requirements in this rule and that staff have been instructed in the use of the emergency response plan. The emergency response plan shall be made available for review by the Department and/or the County Health Department.

(c) Community water systems > 3,300 population, shall develop emergency response plans that incorporate the results of security vulnerability assessments.

(d) Community water systems shall coordinate with the lead County Emergency Coordinator when preparing or revising an emergency response plan.

(e) The emergency response plan shall include but is not limited to the following elements:

(A) Communications and authority

(i) Develop an emergency contacts list, and review and update this list at least annually.

(ii) Decision-making authorities and responsibilities of water system personnel shall be determined and detailed in the emergency response plan.

(iii) Procedure for notification of agencies, the water users, and the local media.

(B) Water system security

(i) Public water systems shall develop a security program. The security program shall include, but is not limited to, the following components: security management, physical activity, physical security, chemical storage and use, personnel, computer system, and program evaluation.

(ii) Public water systems shall conduct a security assessment and correct security deficiencies of the water system.

(C) Water system hazard review

(i) Public water systems shall conduct an inspection of the water system annually to identify the hazards that could affect the water system.

(ii) Public water systems shall correct construction deficiencies to eliminate hazards or potential hazards, correct major sanitary survey deficiencies as determined by the Department, and perform regular maintenance.

(D) Emergency equipment and water supplies

(i) Public water systems shall make provisions for an auxiliary power supply if not a gravity system, and redundant equipment for critical components. Community water systems shall identify equipment that can be utilized in the event of an intentional attack which can render harmless or significantly lessen the impact of the attack on the public health and safety and supply of public drinking water.

(ii) Public water systems shall develop a plan for emergency water to include the rationing of drinking water, identifying and utilizing alternative drinking water sources and supplies, and alternative distribution of drinking water.

(E) Emergency response procedures

(i) Public water systems shall develop procedures for responding to emergencies most likely to strike the water system. Community water systems shall develop plans and procedures that can be implemented in the event of a terrorist or other intentional attack on the water system.

(ii) The emergency response plan shall describe procedures to isolate all parts of the water system. Community water systems shall develop actions and procedures which can render harmless or significantly lessen the impact of terrorist attacks or other intentional actions on public health and safety and supply of public drinking water.

(iii) The emergency response plan shall describe the emergency disinfection procedure, process for issuing a boil water advisory, and process for handling a waterborne disease outbreak.

(f) Water system staff shall be instructed and trained in the use of the emergency response plan.

(2) All public water systems shall maintain a current water system operations manual.

(a) The water system operations manual shall be completed according to the requirements of the capacity assessment or sanitary survey and shall be reviewed and updated at least every five (5) years. If a public water system applying for funds from the Safe Drinking Water Revolving Loan Fund Program is required to develop a water system operations manual as a part of a capacity assessment, then the water system operations manual is required to be completed before final payout of the loan.

(b) As evidence of completion, public water systems shall submit a statement to the Department certifying that the water system operations manual has been completed according to the requirements in this rule, and that staff have been instructed in the use of the water system operations manual.

(c) The water system operations manual shall include, but is not limited to, the following elements if they are applicable:

(A) Source operation and maintenance;

(B) Water treatment operation and maintenance;

(C) Reservoir operation and maintenance;

(D) Distribution system operation and maintenance; and

(E) Written protocols for on-site operators describing the operational decisions the operator is allowed to make under OAR 333-061-0225.

(d) Water system staff shall be instructed and trained in the use of the water system operations manual.

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 448.160

Hist.: OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0065

### Operation and Maintenance

(1) Public water systems shall be operated and maintained in a manner that assures continuous production and delivery of potable water by:

(a) Operating all phases and components of the system effectively in the manner for which they were designed;

(b) Assuring that all leaks are promptly repaired and, broken or malfunctioning equipment is promptly repaired or replaced;

(c) Making readily available and in good condition the proper equipment, tools and parts to make repairs to the system. When possible, notice shall be given to the water users of impending repairs that will effect the quality of the water or the continuity of the water service. All repairs must meet the construction standards of these rules and comply with disinfection requirements of OAR 333-061-0050 prior to reestablishing use of the repaired portion of the system;

(d) Implementing actions to assure safe drinking water during emergencies. Water systems wishing to have a state certified wellhead protection program shall comply with the contingency planning requirements as prescribed in OAR 333-061-0057(4).

(2) Personnel:

(a) Personnel responsible for maintenance and operation of public water systems shall be competent, knowledgeable of all the functions of that particular facility and shall have the training and experience necessary to assure continuous delivery of water which does not exceed the maximum contaminant levels;

(b) Certification in the Oregon Water System Operator's Certification Program is required for personnel in responsible charge of operations for all Community and Non-Transient Non-Community water systems. See Certification Rules OAR 333-061-0205 through 333-061-0295.

(c) Personnel in responsible charge of Transient Non-Community water systems that use surface water sources or ground sources under the direct influence of surface water are required to attend the Department's Small Water System Training Course or equivalent training.

(3) The identity of ownership of a water system shall be filed with the Department. Notification of changes in ownership shall be filed immediately with the Department upon completion of the transaction.

(4) Documents and records:

(a) The following documents and records shall be retained by the water supplier at the Community water system facility and shall be available when the system is inspected or upon request by the Department:

(A) Complete and current as-built plans and specifications of the entire system and such other documents as are necessary for the maintenance and operation of the system;

(B) Current operating manuals covering the general operation of each phase of the water system;

(C) A current master plan and/or revisions thereof;

(D) Data showing production capabilities of each water source and system component;

(E) Current records of the number, type and location of service connections;

(F) Current records of raw water quality, both chemical and microbiological;

(G) Current records of all chemicals and dosage rates used in the treatment of water;

(H) Reports on maintenance work performed on water treatment and delivery facilities;

(I) Records relating to the sampling and analysis undertaken to assure compliance with the maximum contaminant levels;

(J) Record of residual disinfectant measurements, where applicable;

(K) Records of cross connection control and backflow prevention device testing, where applicable;

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(L) Records of customer complaints pertaining to water quality and follow-up action undertaken;

(M) Fluoridation records, where applicable;

(N) Other records as may be required by these rules.

(5) Chlorination and use of other chemicals:

(a) Chlorinators and other equipment used to apply chemicals at a public water system shall be operated and maintained in accordance with the manufacturers' specifications and recommendations for efficient operation and safety.

(b) When chlorine is used as the disinfectant, the procedures shall be as follows:

(A) Chlorine shall be applied in proportion to the flow;

(B) For reasons other than the treatment of surface water sources or groundwater sources under the direct influence of surface water, the rate of application shall be sufficient to result in a free chlorine residual of at least 0.2 mg/l after a 30-minute contact time and throughout the distribution system;

(c) When ammonia is added to the water with the chlorine to form a chloramine as the disinfectant, for reasons other than the treatment of surface water sources or groundwater sources under the direct influences of surface water, the rate of application shall result in a combined chlorine residual of at least 2.0 mg/l after a 3-hour contact time;

(d) When corrosion control chemicals are applied to achieve compliance with the lead and copper rule, the point of application shall be after all other treatment processes unless determined otherwise by the Department.

(6) When an emergency arises within a water system which affects the quality of water produced by the system, the water supplier shall notify the Department immediately.

Stat. Auth.: ORS 431 & 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273, 448.279

Hist.: HD 106, f. & ef. 2-6-76; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0235; HD 2-1983, f. & ef. 2-23-83; HD 20-1983, f. 10-20-83, ef. 11-1-83; HD 1-1988, f. & cert. ef. 1-6-88; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0085

### Supplemental Fluoridation

(1) When fluoride compounds are added at public water systems for the prevention of dental caries, it shall be done in accordance with the following:

(a) The chemical feed apparatus shall be of a type specifically designed for metering fluoride compounds in proportion to the flow of water being treated. The apparatus shall possess an accuracy tolerance of no more than plus or minus five percent and shall be designed and installed in a manner such that the injection of fluoride compounds is terminated when the water being treated ceases to flow;

(b) The specifications for the fluoride compounds shall conform with the most current AWWA standards as follows:

(A) Sodium fluoride — AWWA B701.

(B) Sodium fluorosilicate — AWWA B702.

(C) Fluorosilicic acid — AWWA B703.

(c) Respirators, replacement units and other safety equipment shall be stored in approved, dust-proof containers or cabinets when not in use.

(2) Prior to the application of fluoride compounds at public water systems, the water supplier shall submit to the Department and receive approval for:

(a) Plans and specifications for the equipment with information on the testing instruments and protective devices for the operating personnel;

(b) Specifications of the fluoride compound to be used;

(c) Qualifications and training record of the person in responsible charge of the fluoridation operation;

(d) Current chemical analysis of the unfluoridated water.

(3) During operation of the fluoridation equipment, the operator shall:

(a) Not exceed 2.0 mg/l of fluoride in the finished water;

(b) Maintain all equipment in good working order;

(c) Make determinations of the fluoride content by approved methods on:

(A) The unfluoridated water as required by the Department;

(B) The fluoridated water daily.

(d) Record daily the amount of fluoride added to the water, the quantity of water treated and the fluoride levels of the treated water. These records shall be submitted to the Department monthly;

(e) Submit a split sample of the fluoridated water to the Department for analysis as the Department may require;

(f) Maintain and use safety equipment as required in this section.

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150 & 448.273

Hist.: HD 106, f. & ef. 2-6-76; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0225; HD 2-1983, f. & ef. 2-23-83; HD 11-1985, f. & ef. 7-2-85; HD 9-1989, f. & cert. ef. 11-13-89; HD 14-1997, f. & cert. ef. 10-31-97; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0087

### Product Acceptability Criteria

(1) Any pipe, solder, or flux which is used in the installation or repair of:

(a) Any public water system, or

(b) Any plumbing in a residential or nonresidential facility providing water for human consumption shall be lead free. This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Labeling of Solders. No solder containing more than 0.20 percent lead shall be sold in Oregon after July 1, 1985, unless said solder contains a warning label, prominently displayed, which states, "Contains Lead. Oregon Law prohibits the use of this solder in making up joints and fittings in any private or public potable water supply system or any individual water user's line". Solder to be used in making up joints and fittings in any private or public potable water supply system or any individual water user's line shall meet **ASTM Specification B32-76**.

(3) Plumbing piping shall not be used for electrical grounding in any new construction.

(4) Use of lead pipe prohibited. No lead pipe shall be used in any potable water system. Persons who own or operate a public water system shall submit a compliance schedule, acceptable to the Department, for the identification and removal of all lead service pipes or they shall certify to the Department that no lead service piping exists in the system. The compliance schedule or the certification shall be submitted for approval by July 1, 1985.

(5) Materials and products which come into contact with drinking water supplied by public water systems or which come into contact with drinking water treatment chemicals used by public water systems shall meet the requirements of **National Sanitation Foundation Standard 61 Drinking Water System Components — Health Effects (Revised October 1988)** or equivalent. These materials and products include but are not limited to process media, protective materials, joining and sealing materials, pipes and related products, and mechanical devices used in treatment, transmission, and distribution systems.

(6) Products added to public water systems for treatment, purposes including but not limited to disinfection, oxidation, filtration, scale control, corrosion control, pH adjustment, softening, precipitation, sequestering, fluoridation, coagulation, flocculation, and water well treatment shall meet the requirements of **National Sanitation Foundation Standard 60 — Drinking Water Treatment Chemicals — Health Effects (Revised October 1988)** or equivalent.

(7) Point-of-use reverse osmosis drinking water treatment systems and materials and components used in these systems designed to be used for the reduction of specific contaminants from public water supplies shall meet the requirements of **National Sanitation Foundation Standard 58 — Reverse Osmosis Drinking Water Treatment Systems** — or equivalent.

(8) Point-of-use and point-of-entry drinking water treatment units, other than reverse osmosis units, designed to be used for the reduction of specific contaminants from public water supplies shall meet the requirements of **National Sanitation Foundation Standards 53 — Drinking Water Treatment Units — Health Effects** — or equivalent.

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

Stat. Auth.: ORS 448

Stats. Implemented:

Hist.: HD 18-1984, f. & ef. 9-4-84; HD 3-1988(Temp), f. & cert. ef. 2-12-88; HD 17-1988, f. & cert. ef. 7-27-88; HD 9-1989, f. & cert. ef. 11-13-89; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0090

### Penalties

(1) Violation of these rules shall be punishable as set forth in ORS 448.990 which stipulates that violation of any section of these rules is a Class A misdemeanor.

(2) Pursuant to ORS 448.280, 448.285 and 448.290, any person who violates these rules shall be subject to a civil penalty. Each and every violation is a separate and distinct offense, and each day's violation is a separate and distinct violation.

(3) Under ORS 448.290, only the Administrator can impose penalties and the penalties shall not become effective until after the person is given an opportunity for a hearing.

# ADMINISTRATIVE RULES

(4) The civil penalty for the following violations shall not exceed \$1,000 per day for each violation:

- (a) Failure to obtain approval of plans prior to the construction of water system facilities;
  - (b) Failure to construct water system facilities in compliance with approved plans;
  - (c) Failure to take immediate action to correct maximum contaminant level violations;
  - (d) Failure to comply with sampling and analytical requirements;
  - (e) Failure to comply with reporting and public notification requirements;
  - (f) Failure to meet the conditions of a compliance schedule developed under a variance or permit;
  - (g) Failure to comply with cross connection control requirements;
  - (h) Failure to comply with the operation and maintenance requirements;
  - (i) Failure to comply with an order issued by the Administrator.
- (5) Civil penalties shall be based on the population served by public water systems and shall be in accordance with Table 34 below: [Table not included. See ED, NOTE.]

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 448.280

Hist.: HD 106, f. & ef. 2-6-76; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0245; HD 2-1983, f. & ef. 2-23-83; HD 3-1987, f. & ef. 2-17-87; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0205

### Purpose

(1) The purpose of operator certification is to protect public health. The Department accomplishes this purpose by reviewing the experience, education and credentials of persons responsible for the production, treatment and distribution of public drinking water and determining their compliance with an established standard of proficiency.

(2) The objectives of the program are:

- (a) To promote the safe and proper operation of water supply systems for protection of the public health.
- (b) To establish criteria to classify water systems and the skill, knowledge and experience required of an operator and certify persons qualified to supervise their water system.
- (c) To advise and assist applicants for certification, set forth conditions of reciprocity, and provide for examinations of applicants.
- (d) To award certificates and maintain a register of current certificate holders by class and grade.
- (e) To establish and maintain communications between the Department and the operators to insure a flow of information necessary to each party in order to carry out their respective responsibilities.
- (f) To improve the caliber of water system operation and thereby protect public health and the State's water resources and maximize the returns from the public's investment in these systems.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0210

### Scope

These rules shall apply to community and non-transient non-community public water systems and their operators.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0215

### Definitions

- (1) "Available" means on-site or able to be contacted as needed, to initiate the appropriate action in a timely manner, based on system size, complexity and source water quality.
- (2) "Certificate" means a certificate of competency issued by the Department stating that the operator meets the requirements for a specific operator classification and grade.
- (3) "Continuing Education Unit (CEU)" — A nationally recognized unit of measurement for assigning credits for education or training that provides the participant with advanced or post high school learning. One CEU is awarded for every ten classroom hours of lecture or the equivalent of participation in an organized education experience, conducted under responsi-

ble sponsorship, capable direction and qualified instruction as determined by the Department or its designee.

(4) "Conventional Filtration Treatment Plant" means a water system using conventional or direct filtration to treat surface water or groundwater under the direct influence of surface water.

(5) "Department" means the Department of Human Services.

(6) "Direct Responsible Charge (DRC)" means an individual designated by the owner to make decisions regarding the daily operational activities of a public water system, water treatment facility and/or distribution system, that will directly impact the quality and/or quantity of drinking water.

(7) "Filtration Endorsement" means a special provision added to a Water Treatment Operator's certification which includes experience in and knowledge of the operational decision making of a Conventional Filtration Treatment Plant.

(8) "Grandparenting" means the exemption, as provided in these rules, for the existing small groundwater system operator(s) in responsible charge, as of the effective date of this rule, from meeting the initial education and/or examination requirements for the class of certification the system has been assigned.

(9) "On Call" means available to respond immediately by radio or telephone.

(10) "Operator" means an individual with responsibilities that directly impact the quality of drinking water including individuals making process control or system integrity decisions about water quality or quantity that affect public health.

(11) "Post High School Education" means, that education acquired through programs such as short schools, bona fide correspondence courses, trade schools, colleges, or universities, formalized workshops or seminars that are acceptable to the Department and for which college or continuing education credit is issued by the training sponsor. One year of post high school education is equal to 30 college semester hours, 45 college quarter hours or 45 CEUs.

(12) "Small Groundwater System" means a community or non-transient non-community water system serving less than 150 connections and using groundwater as its only source.

(13) "Water System" means potable water treatment plants and water distribution systems:

- (a) That have 15 or more service connections used by year-round residents or that regularly serve 25 or more year-round residents; or
- (b) That regularly serve at least 25 of the same persons for more than six months per year;
- (c) That are defined as a community or non-transient noncommunity water systems in OAR 333-061-0020.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 16-2001(Temp), f. 7-31-01, cert. ef. 8-1-01 thru 1-28-02; Administrative correction 3-14-02; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0220

### Application for Certification — Grades 1-4

(1) Each applicant for certification must meet the minimum requirements of experience and training as listed under 333-061-0260 "Operator Grade Requirements" in order to be eligible for admission to the written examination.

(2) Applicants denied admission to the certification examination or denied certification by reciprocity have the right to appeal such a decision to the Department.

(3) Application forms for Operator certification may be obtained upon request from the Department.

(4) Transcripts or proof of satisfactory completion of all education and documentation of experience claimed must be submitted with the application.

(5) Maintaining CEU records shall be the responsibility of the operator.

(6) Experience and education qualifications are based on years of experience and education, or their equivalent.

(a) A year of experience is 12 months of satisfactory full time experience with 100% of time spent on activities directly relating to the certificate type for which application is made.

(b) The Department may give credit to meet experience requirements in OAR 333-061-0260 for related experience in any of the following areas up to 50% of the time with the total in related experience credit not to exceed 6 months:

# ADMINISTRATIVE RULES

(A) Wastewater Collection Operator;  
(B) Wastewater Treatment Plant Operator;  
(C) Wastewater Treatment Plant Laboratory;  
(D) Water Treatment Plant Experience when applying for a Water Distribution Certificate;

(E) Water Distribution System experience when applying for a Water Treatment Certificate;

(F) Cross Connection Control Experience when applying for a Water Distribution Certificate;

(c) Education (post-high school): Each year of college education completed, (one year of college education is 30 semester hours or 45 quarter hours, or their equivalent) in the fields of engineering, chemistry, water/wastewater technology, or allied sciences.

(A) Courses must be directly related to the field of water treatment/water distribution and either acceptable as college transfer or valid Continuing Education Units (CEUs).

(B) The Department, or its designee, shall determine the relevance of the subject matter to the public health objectives of certification when determining the number of CEUs allowed for specialized operator training using the following criteria:

(i) Technical capacity includes: water treatment facilities construction and performance, source construction and protection, capacity, storage, pumping and distribution facility construction and protection, water distribution integrity/leakage and water quality issues related to public/user health.

(ii) Managerial capacity includes: water system operation, planning, system governance, development and implementation of system policies, professional support, record keeping, Drinking Water and related regulations to insure protection of public health, communication and involvement with water users.

(iii) Financial capacity includes: adequacy of revenues to meet expenses, revenue sources, affordability of user charges, rate setting process, budgeting, production and utilization of a capital improvement plan, periodic financial audits, bond ratings, debt and borrowing.

(C) CEUs from other states having standards equal to or greater than these rules may be accepted by the Department.

(D) The applicant must provide program information and attendance verification to the Department for evaluation.

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0225

### General Requirements Applying to Water Systems

(1) Each applicant for certification must meet the minimum requirements of experience and training as listed under 333-061-0260 "Operator Grade Requirements" in order to be eligible for admission to the written examination.

(2) Applicants denied admission to the certification examination or denied certification by reciprocity have the right to appeal such a decision to the Department.

(3) Application forms for Operator certification may be obtained upon request from the Department.

(4) Transcripts or proof of satisfactory completion of all education and documentation of experience claimed must be submitted with the application.

(5) Maintaining CEU records shall be the responsibility of the operator.

(6) Experience and education qualifications are based on years of experience and education, or their equivalent.

(a) A year of experience is 12 months of satisfactory full time experience with 100% of time spent on activities directly relating to the certificate type for which application is made.

(b) The Department may give credit to meet experience requirements in OAR 333-061-0260 for related experience in any of the following areas up to 50% of the time with the total in related experience credit not to exceed 6 months:

(A) Wastewater Collection Operator;

(B) Wastewater Treatment Plant Operator;

(C) Wastewater Treatment Plant Laboratory;

(D) Water Treatment Plant Experience when applying for a Water Distribution Certificate;

(E) Water Distribution System experience when applying for a Water Treatment Certificate;

(F) Cross Connection Control Experience when applying for a Water Distribution Certificate;

(c) Education (post-high school): Each year of college education completed, (one year of college education is 30 semester hours or 45 quarter hours, or their equivalent) in the fields of engineering, chemistry, water/wastewater technology, or allied sciences.

(A) Courses must be directly related to the field of water treatment/water distribution and either acceptable as college transfer or valid Continuing Education Units (CEUs).

(B) The Department, or its designee, shall determine the relevance of the subject matter to the public health objectives of certification when determining the number of CEUs allowed for specialized operator training using the following criteria:

(i) Technical capacity includes: water treatment facilities construction and performance, source construction and protection, capacity, storage, pumping and distribution facility construction and protection, water distribution integrity/leakage and water quality issues related to public/user health.

(ii) Managerial capacity includes: water system operation, planning, system governance, development and implementation of system policies, professional support, record keeping, Drinking Water and related regulations to insure protection of public health, communication and involvement with water users.

(iii) Financial capacity includes: adequacy of revenues to meet expenses, revenue sources, affordability of user charges, rate setting process, budgeting, production and utilization of a capital improvement plan, periodic financial audits, bond ratings, debt and borrowing.

(C) CEUs from other states having standards equal to or greater than these rules may be accepted by the Department.

(D) The applicant must provide program information and attendance verification to the Department for evaluation.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 16-2001(Temp), f. 7-31-01, cert. ef. 8-1-01 thru 1-28-02; Administrative correction 3-14-02; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0228

### Certification Requirements for Small Groundwater System Operators

(1) Every water supplier shall employ, contract with or otherwise utilize an operator designated to supervise the water system, to be in direct responsible charge of the water system, and to be available during those periods of time when treatment process and operational decisions that affect public health are made.

(2) The operator(s) described in (1) above, shall be certified at a grade equal to or greater than the classification of that water system.

(3) Water systems will be classified according to the size and complexity of the water system or water treatment plants to determine the classification type and grade required for the operator. (See OAR 333-061-0250).

(4) The owner of a water system subject to these rules shall report to the Department the name(s) of the operator(s) which they have designated to be in direct responsible charge of the system and shall notify the Department within 30 days of any change of operator.

(5) The water supplier may employ, contract with, or utilize other operators as needed on-site in addition to those required under (1) and (2) above. The water supplier must establish a written protocol for each of these other operators that:

(a) Describes the operational decisions the operator is allowed to make;

(b) Describes the conditions under which the operator must consult with the certified operator in direct responsible charge, and when and how contact is made;

(c) Takes into account the certification level of the operator; their knowledge, skills, and abilities, and the range of expected operating conditions of the water system; and

(d) Is signed and dated by the operator in direct responsible charge and the other operator and is available for inspection by the Department.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

# ADMINISTRATIVE RULES

## 333-061-0230

### Examinations for Grades 1-4

(1) Examinations shall be given at least twice annually at locations and at times designated by the Department.

(2) All applications must be submitted to the Department by the first of the month preceding the month of the scheduled examination.

(3) The Department will review the qualifications of each applicant for the purpose of determining whether the applicant has met the minimum requirements for experience, education and special training as listed in these rules.

(a) The applicant must pay an examination fee for all applications submitted to the Department.

(b) The Department, at its discretion, may require or allow oral examination of any applicant seeking certification, as evidence of proficiency in a particular grade.

(c) An applicant must document all claims of education and experience.

(4) The Department or its designee shall review and grade all examinations; and if an applicant passes the examination and meets all other requirements in these rules, the Department shall issue a certificate.

(5) The applicant must obtain a minimum score of 70% on the exam in order to pass the examination.

(6) If an applicant needs to take an examination at a time other than those mentioned above, the applicant shall make a written request to the department and submit a fee that is twice the regular fee established for examination applications. The Department will act upon these requests at its earliest opportunity.

(7) An applicant may not take the same examination more than twice in a twelve month period unless they can demonstrate to the satisfaction of the Department specific education completed in the subject area since taking the second exam.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0235

### Certificates for Grades 1-4

(1) Certificates will be granted to the applicants on the following basis:

(a) The information submitted on the application form;

(b) An evaluation of the applicant's qualifications by the Department; and

(c) Successfully passing an examination approved and conducted by the Department; or

(d) An applicant may apply for reciprocity based on applicable certification in another state or province having recognized certification programs. Certification may be granted at the grade level where the examination, experience and training requirements are equivalent to those outlined in these Rules, and providing the applicant has a currently valid certificate from the state or province from which the applicant is seeking reciprocity.

(2) All certificates shall expire on December 31st each year. An applicant may renew the certificate upon the payment of a renewal fee and satisfactory evidence presented to the Department that the operator has demonstrated the accumulation of two college credits or Continuing Education Units as described in 333-061-0220(6)(c) every two years.

(3) An operator who fails to renew the certificate pursuant to the provisions of this section by the expiration date shall not be in direct responsible charge of a water system. The suspension may be lifted by the payment of the late fee plus the renewal fee, if made by March 31st following the date of expiration. An operator who has failed to renew the certificate after March 31st following the date of expiration must apply for reinstatement of certification by submitting an application accompanied by a reinstatement fee plus the annual renewal fee and provide documentation of Continuing Education Units (CEUs). If an operator fails to renew for a year following the date of expiration, they shall meet the requirements established for new applicants by passing an examination and paying a reinstatement fee.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0245

### Fees for Grades 1-4

(1) All fees shall be made payable to the State of Oregon and are non refundable.

(2) Applicants for initial certification by exam must submit the initial certification fee and the exam fee.

(3) Applications will be accepted for processing only when accompanied by a fee as indicated in Table 35. [Table not included. See ED. NOTE.]

(4) Operators having more than 1 certification pertaining to water systems (water treatment and water distribution) may receive a combination certification. The fee shall be full certification renewal fee for one certification and a lesser fee for each additional certification.

(5) The filtration endorsement is an extension of an operator's water treatment certification and no additional annual renewal fee is required to maintain the endorsement. [ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0250

### Classification of Small Groundwater Systems, Water Distribution Systems and Water Treatment Plants

(1) All water systems shall be classified as small groundwater, water distribution, and water treatment based on size and complexity, as determined by the Department. The classification of these systems and treatment plants are as follows:

(a) Water system is classified as a Small Groundwater System if it has less than 150 connections and uses only groundwater as its source.

(b) Water distribution classification is based on the population served, as follows:

Classification — Population Served

Water Distribution 1 — 1,500 & less

Water Distribution 2 — 1,501 - 15,000

Water Distribution 3 — 15,001 - 50,000

Water Distribution 4 — 50,001 or more

(c) Water treatment plant classification shall be based on a point system assigned to reflect the complexity of treatment as follows:

#### Item — Points

**Treatment system size:** ( population served or flow whichever is greater)

Population served — 1/10,000 (max 30)

Average daily flow — 1/1 mgd (max 30)

**Treatment system water source:**

Groundwater — 3

Surface Water or Groundwater Under the Influence of Surface Water — 5

**Chemical Treatment/Addition Process:**

**Fluoridation** — 5

**Disinfection:** —

Ultraviolet — 2

Ammonia/Chloramination — 3

Chlorine — 5

Mixed Oxidants — 7

Ozonization (on-site generation) — 10

**PH adjustment**

Slaked-Quicklime (Calcium Oxide) — 5

Hydrated Lime (Calcium Hydroxide) — 4

All others (hydrochloric acid, sodium hydroxide, sulfuric acid, sodium carbonate —

1

**Coagulation & Flocculation process**

Chemical addition (1 point for each type of chemical coagulant or polymer added, maximum 5 points) — 1-5

**Rapid mix units:**

Mechanical mixers — 3

Injection mixers — 2

In-line blender mixers — 2

**Flocculation units:**

Hydraulic flocculators — 2

Mechanical flocculators — 3

**Clarification and Sedimentation Process**

Adsorption Clarifier — 10

Horizontal-flow (rectangular basins) — 5

Horizontal-flow (round basins) — 7

Up-flow solid contact sedimentation — 15

Inclined-plate sedimentation — 10

Tube sedimentation — 10

Dissolved air flotation — 30

**Filtration Process:**

Single media filtration — 3

Dual or mixed media filtration — 5

Membrane Filtration — 5

Direct — 5

Diatomaceous earth — 20

Slow sand filtration — 5

Cartridge/bag filters — 5

# ADMINISTRATIVE RULES

Pressure or greensand filtration — 5  
**Stability or Corrosion Control:**  
Slaked-Quicklime (calcium oxide) — 10  
Hydrated Lime (calcium hydroxide) — 8  
Caustic soda (sodium hydroxide) — 6  
Orthophosphate — 5  
Soda ash (sodium carbonate) — 4  
Aeration: Packed tower, Diffusers — 3  
Calcite — 2  
Others: sodium bicarbonate, silicates — 4

## **Other Treatment Processes:**

Aeration — 3  
Packed tower aeration — 5  
Ion exchange/softening — 5  
Lime-soda ash softening — 20  
Copper sulfate treatment — 5  
Powdered activated carbon — 5  
Potassium permanganate — 5  
Special Processes — 15  
**Residuals Disposal:**  
Discharge to lagoons — 5  
Discharge to lagoons and then raw water source — 8  
Discharge to raw water — 10  
Disposal to sanitary sewer — 3  
Mechanical dewatering — 5  
On-site disposal — 5  
Land application — 5  
Solids composting — 5

## **Facility characteristics:**

### **Instrumentation:**

The use of SCADA or similar instrumentation systems to provide data with no process control — 1  
The use of SCADA or similar instrumentation systems to provide data with partial process control — 3  
The use of SCADA or similar instrumentation systems to provide data with complete process control — 5  
Clear well Size less than average day design flow — 5

## Classification of Water Treatment Plants

### Class — Points

Water Treatment 1 — 30 or less  
Water Treatment 2 — 31 to 55  
Water Treatment 3 — 56 to 75  
Water Treatment 4 — 76 or more

(d) In addition to Water Treatment 2 or greater classification, systems using a Conventional Filtration Treatment Plant to treat surface water or groundwater under the influence of surface water shall be classified as Water Filtration and shall have an operator who has a valid Water Treatment 2 or higher certification and a Filtration Endorsement.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 4-2003, f. & cert. ef. 3-28-03; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## **333-061-0260**

### **Operator Grade 1-4 Requirements**

Grades for operator certification shall be awarded at four (4) levels in each classification, water treatment or water distribution, and subject to requirements as follows:

#### Classification — Grades

Water Treatment Operator (WT) — 1-4  
Water Distribution Operator (WD) — 1-4

(1) Water Treatment or Distribution Grade 1 Operator Certification qualifications;

(a) Education; High School (12 years or equivalent).

(b) Experience; 12 months. Education cannot be substituted for this requirement except that an Associate degree in water technology may be substituted for 6 months experience; and

(c) Successful completion of a Water Treatment or Distribution Grade 1 written examination.

(2) Water Treatment or Distribution Grade 2 Operator Certification qualifications:

(a) Education; High School (12 years or equivalent) plus post high school education and/or experience in one of the following combinations:

(A) 3 years of experience; or

(B) 2 years of experience and 1 year of post high school education; and

(b) Successful completion of the Water Treatment or Distribution Grade 2 written examination.

(3) Water Treatment or Distribution Grade 3 Operator Certification qualifications:

(a) Education; High school (12 years or equivalent) plus post high school education and/or experience in one of the following combinations;

(A) 1 year post high school education and 5 years experience, of which 2.5 years must have been involved in operational decision making; or

(B) 2 years of post high school education and 4 years of experience, of which at least 2 years must have been involved in operational decision making; or

(C) 3 years of post high school education and 3 years of experience, of which 1.5 years must have been involved in operational decision making; or

(D) For Distribution Grade 3 only, 8 years of experience, of which 2.5 years must have been involved in operational decision making; and

(b) Successful completion of the Water Treatment or Distribution Grade 3 written examination.

(4) Water Treatment or Distribution Grade 4 Operator Certification qualifications:

(a) Must be certified at the Grade 3 level; and

(b) Must have post high school education and/or experience in one of the following combinations:

(A) 4 years post high school education and 4 years of experience, of which 2 years must have been involved in operational decision making; or

(B) 3 years post high school education and 5 years experience, of which 2.5 years must have been involved in operational decision making; or

(C) 2 years post high school education and 6 years experience, of which 3 years must have been involved in operational decision making; or

(D) For Distribution grade 4 only, 10 years of experience, of which 3 years must have been involved in operational decision making; and

(c) Must successfully complete the Water Treatment or Distribution Grade 4 written examination.

(5) Filtration Endorsement qualifications:

(a) Must be certified at Water Treatment Grade 2 or higher; and

(b) Must have one year experience in the operational decision making of a class 2 or higher level Conventional Filtration Treatment Plant; and

(c) Must successfully complete a written examination on conventional filtration treatment.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 4-2003, f. & cert. ef. 3-28-03; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## **333-061-0265**

### **Contracting for Services**

(1) Water systems may contract with a certified operator or a water system having certified operators to provide supervision. The contract operator shall be certified at the grade equal to or greater than the classification of the water system.

(2) The supervision required in section (1) of this rule shall be sufficient that the contracted certified operator shall:

(a) Be available on 24 hour call and able to respond on-site upon request.

(b) Specify corrective action when the results of analyses or measurements indicate maximum contaminant levels have been exceeded or minimum treatment levels are not maintained and report the results of these analyses as prescribed by OAR 333-061-0040.

(c) Assure that all operational decisions that affect public health are made in accordance with OAR 333-061-0225.

(3) Proof of the contract shall be submitted to the Department by the water system owner.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## **333-061-0270**

### **Refusal or Revocation of Certification**

(1) The Department may deny an applicant or revoke a certification of competency for violation of any of these rules:

(a) The applicant/owner obtained the certificate by fraud or deceit; or

(b) The applicant/owner has been grossly negligent, incompetent or has demonstrated misconduct in the performance of the duties of an operator.

(c) The applicant/operator has violated any agency rule.

(d) The applicant/operator fails to comply with any agency investigation.



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(e) Any applicant /owner whose application or certificate has been denied or revoked has the right to appeal pursuant to ORS Chapter 183.

(2) No person whose certificate has been revoked under this rule shall be eligible to apply for certification for 1 year from the effective date of the final order of revocation. Any such person who applies for certification shall meet all the requirements established for new applicants and pay a reinstatement fee.

Stat. Auth.: ORS 448  
Stats. Implemented: ORS 431.110, 431.150, 448.450, 448.455 & 448.994  
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0272

### Suspension of Certification

The Department may immediately suspend an operator's certificate of competency for violation of any portion of OAR 333-061-0205 to 333-061-0270 if the Department finds that such violation(s) constitute a serious danger to the public health or safety. The Department shall set forth specific reasons for such findings. Hearings, if required pursuant to ORS 183.430(2), shall be held as follows:

(1) If a hearing is requested and the request is received by the Department within ten days after the operator's receipt of notice of immediate suspension, the Department shall cause a hearing to be held as soon as practicable but not later than within ten days of the date it receives the request for hearing.

(2) An operator has 90 days from the date of notice to the operator to request a hearing. The hearing shall be held as soon as practicable if the request for hearing is received by the Department more than ten days after the operator's receipt of notice of immediate suspension.

Stat. Auth.: ORS 448  
Stats. Implemented: ORS 431.110, 431.150, 448.450, 448.455 & 448.994  
Hist.: OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

## 333-061-0290

### Penalties

(1) Violations of these rules shall be punishable as set forth in ORS 448.994, which states that any person who knowingly and willfully violates ORS 448.455 (2) and any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under any of these rules shall upon conviction, be punished by a fine of not more than \$500 or by imprisonment for not more than six months, or both.

(2) Pursuant to ORS 448.280, 448.285 and 448.290, any person who violates these rules shall be subject to a civil penalty. Each and every violation is a separate and distinct offense, and each day's violation is a separate and distinct violation.

(3) Under ORS 448.290, only the Administrator can impose penalties.

(4) The civil penalty for the following violations shall not exceed \$1,000 per day for each violation.

(a) Failure to employ or otherwise utilize an operator to be in direct responsible charge who has an appropriate valid operators certificate as prescribed in these rules.

(b) Failure to employ or otherwise utilize an operator to be in direct responsible charge who has maintained the required continuing education units.

(c) Failure to comply with an order issued by the Department.

(5) Civil penalties shall be based on the population served by the public water system and shall be in accordance with Table 36 below: [Table not included. See ED, NOTE.]

[ED, NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 448  
Stats. Implemented: ORS 448.280, ORS 448.285, ORS 448.290 & ORS 448.994  
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 7-2002, f. & cert. ef. 5-2-02; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04

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

**Adm. Order No.:** SSP 6-2004

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 461-101-0010, 461-110-0390, 461-110-0630, 461-110-0750, 461-120-0125, 461-120-0345, 461-120-0510, 461-125-

0510, 461-135-0700, 461-135-0701, 461-135-0705, 461-140-0120, 461-140-0130, 461-145-0040, 461-145-0050, 461-145-0150, 461-145-0320, 461-145-0360, 461-145-0530, 461-155-0010, 461-155-0210, 461-155-0526, 461-155-0551, 461-160-0015, 461-160-0060, 461-160-0500, 461-160-0550

**Rules Repealed:** 461-125-0600, 461-125-0610, 461-125-0650, 461-125-0660, 461-125-0690, 461-125-0890, 461-125-0910, 461-125-0930, 461-160-0510, 461-160-0520

**Subject:** Rules governing the General Assistance program are being amended or repealed because the State of Oregon's legislature approved funding to restore a limited version of the former General Assistance program. This program provides cash assistance to individuals with severe physical or mental impairments who are waiting for their Supplemental Security Income (SSI) benefits to be approved by the Social Security Administration (SSA). The General Funds expenditures used to provide a monthly cash payment for indigent individuals with disabling conditions who meet the disability and financial requirements for GA are reimbursed to the State when the client becomes eligible for SSI.

Rule 461-120-0125 is also being amended to conform with the federal regulations regarding non-citizens. Specifically, non-citizens who meet the disability criteria for Supplemental Security Income (SSI) benefits are terminated from SSI after seven years if they have not attained citizenship status.

Rule 461-135-0700 is also being amended to allow GA for couples if one meets the impairment criteria for the GA program, and the spouse has a pending Title II claim and the Department has determined the spouse meets the disability criteria of the Social Security Administration.

Rule 461-155-0526 is also being amended to clarify that Community Transition Services payments are not to be used for temporary housing or medical supplies. In addition, payments under this rule are only appropriate when the client is setting up housing in their own home or apartment.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-101-0010

### Program Acronyms and Overview

(1) Acronyms are used when referring to each program (except Assessment and Repatriate). There is an acronym for each umbrella program (for instance, ERDC) and acronyms for each subprogram (for instance, ERDC-SBG).

(2) When no program acronym appears in a rule, that means it applies to all programs listed in this rule. If a rule does not apply to all programs, it uses program acronyms to identify which program(s) it applies to.

(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OSIP means OSIP-AB, OSIP-AD and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity or unemployment. When used alone, ADC refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children — Basic (includes eligibility based on continued absence, death, incapacity and unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children — Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone, ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical - Basic.

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(b) ADCM-EA; Aid to Dependent Children Medical - Emergency Assistance. ADCM-EA offers emergency medical assistance to families without the resources to meet emergent needs.

(c) ADCM-EXT; Aid to Dependent Children Medical - Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(d) ADCM-SAC; Aid to Dependent Children Medical - Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is to convey the message that TANF is primarily a self-sufficiency development program and to help individuals find employment or other alternatives before they become dependent on public assistance.

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and status requirements.

(9) EI; Employment Initiative. Program established to provide assistance to clients who have a disability and who want to work.

(10) ERDC; Employment- or Education-Related Day Care. Helps low-income families pay the cost of child care. When used alone, ERDC refers to all ERDC programs. The following codes are used for ERDC subprograms:

(a) ERDC-BAS; ERDC — Basic. Child care for working families.

(b) ERDC-SBG; ERDC — Student Block Grant. Child care for students.

(11) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the Assessment Program, MAA or MAF due to an increase in their child support or earned income.

(12) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food.

(13) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(14) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(15) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, housing-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 1335) were repealed July 1, 2001.

(16) JOBS; Job Opportunities and Basic Skills. An employment program for REF, REFM and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(17) JOBS Plus. Provides subsidized jobs rather than FS or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for FS clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, FS clients and noncustodial parents of children receiving TANF is determined by AFS. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) ADC-PLS; Clients eligible for JOBS Plus based on TANF.

(b) FS-PLS; Clients eligible for JOBS Plus based on FS.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(18) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Assessment Program or ongoing TANF benefits.

(19) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(20) OFSET. The Oregon Food Stamp Employment Transition Program, which helps FS recipients find employment. This program is mandatory for some FS recipients.

(21) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families.

The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(22) OSIP; Oregon Supplemental Income Program. Cash supplements to elderly and disabled individuals. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(23) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-MN; Oregon Supplemental Income Program Medical — Medically Needy. Medical coverage for individuals who have too many assets to qualify for other OSIPM programs.

(e) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(f) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(24) QMB; Qualified Medicare Beneficiaries. Additional medical coverage for Medicare recipients. When used alone, QMB refers to all QMB programs. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Special Medicare Beneficiary. Payment of all or a portion of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(25) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(26) REFM or REFM-BAS; Refugee Assistance Medical — Basic. Medical coverage for low-income refugees.

(27) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(28) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(29) Senior Prescription Drug Assistance Program; provides that people 65 years of age or older can purchase prescription drugs at the Medicaid price.

(30) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

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(31) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity or unemployment. Cash assistance used to be known as ADC.

Stat. Auth.: ORS 411.060 & 411.816, 414.342  
Stats. Implemented: ORS 411.060 & 411.816, 414.342  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-110-0390

### Filing Group; GA, GAM

For GA and GAM, the filing group consists of the applicant and the applicant's spouse.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-110-0630

### Need Group

(1) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in section (1)(b) of this rule, the need group consists of the financial group members who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110.

(b) The need group cannot include:

(A) Parents who are in foster care and for whom foster care payments are being made.

(B) People who cannot be in the need group because of a disqualification penalty.

(C) Unborn children.

(2) In the MAF program, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except for the following people:

(a) Parents who are in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(3) In the ADCM-EA, EA, REF and REFM programs, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(4) In the EXT program, the need group consists of financial group members who:

(a) Meet all nonfinancial eligibility requirements; and

(b) Were eligible to be in the MAA or MAF benefit group when those benefits ended.

(5) In the SAC program, the need group consists of the person in the financial group.

(6) In the ERDC program, the need group consists of all the people in the financial group.

(7) In the FS program, the need group consists of the financial group members who meet all nonfinancial eligibility requirements, except the following people are not in the need group:

(a) Members disqualified for an intentional program violation.

(b) A client fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the client is fleeing, for a crime that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey.

(c) Persons violating a condition of parole or probation imposed under a state or federal law.

(8) In the GA and GAM programs, the need group consists of the people in the financial group except that the following people may not be in the need group:

(a) A client fleeing to avoid prosecution, or custody or confinement after conviction, or fleeing after trying to commit a crime, under the law of the place from which the client is fleeing, for a crime that is a felony under the law of the place from which the client is fleeing or that, in the case of New Jersey, is a high misdemeanor under the law of New Jersey.

(b) A person in violation of a condition of parole or probation imposed under a state or federal law.

(9) In the OHP program, the need group consists of all the people in the financial group. An unborn child of a pregnant female is included in the need group.

(10) In the OSIP and OSIPM programs:

(a) Except in the OSIPM-MN program, the need group consists of the people in the financial group.

(b) An unborn child of a pregnant female in the need group is also in the need group.

(11) In the QMB program, the need group consists of all the people in the financial group, except for the following:

(a) People who do not meet the citizenship or alien status requirements.

(b) People disqualified for noncooperation in the JOBS program.

(c) People disqualified for failure to meet the requirements of OAR 461-120-0345(2) or for not providing an SSN.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-110-0750

### Benefit Group

(1) For people not assumed eligible, except as provided in section (2) of this rule, the benefit group consists of the people from the need group who:

(a) Meet all nonfinancial eligibility requirements.

(b) Have resources below the resource limit.

(c) Have income below the Income Limits/Payment Standards.

(2) In the GA and GAM programs, a person receiving SSI benefits is not in the benefit group.

(3) For people assumed eligible (see OAR 461-135-0010), the benefit group consists of the people who are in the benefit group of the program used to assume eligibility.

(4) In the OHP-OPU program, a person can choose to be or not to be a member of the benefit group, subject to the following conditions:

(a) If a person chooses not to be in the benefit group at the time of application, the person will not receive benefits and will not be subject to the OHP premium requirements. If the person wishes to join the benefit group after the group is certified, the group must reapply (see OAR 461-115-0530).

(b) If a person chooses to be in the benefit group at the time of application, the person will receive benefits with the benefit group and will be subject to the OHP premium requirements.

(c) Once a benefit group has been found eligible, a person in the group may be excluded from it, upon request of the person, if premium payments for months after January 2003 are current. Premium payments are current if the premiums billed for the months prior to the month of request have been paid and:

(A) If the request is made prior to the 21st of a month, the premium for that month has been paid.

(B) If the request is made after the 20th of a month, the premium for that month and the following month have been paid.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-120-0125

### Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, a person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

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(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp program — a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) In the Food Stamp program — a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) The following people meet the alien status requirements:

(a) American Indians born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the TANF program, the following people meet the alien status requirements:

(a) A person who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) Victims of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(4) In the BCCM, MAA, MAF, OHP, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she:

(a) Was a qualified non-citizen on or before August 22, 1996;

(b) Was a resident of the United States before August 22, 1996; became a qualified non-citizen after August 22, 1996; resided in the United States continuously for five years immediately prior to the date he or she became a qualified non-citizen; and did not leave the United States between August 22, 1996 and the date he or she became a qualified non-citizen; or

(c) Is a person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) Victims of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(5) In the GA and GAM programs, the following people meet the alien status requirement:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(c) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(d) A person who meets one of the alien status requirements listed in section (2) or (8) of this rule.

(6) In the OSIP program, the following people meet the alien status requirement:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(c) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(d) A person receiving SSI benefits.

(e) A person who meets one of the alien status requirements listed in section (2), (8), or (11) of this rule.

(7) In the OSIPM program, the following people meet the alien status requirement:

(a) A qualified non-citizen who physically entered the United States before August 22, 1996.

(b) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(d) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(e) A person receiving SSI benefits.

(f) A person who meets one of the alien status requirements listed in section (2), (8), or (11) of this rule.

(8) In all programs except TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. § 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of a person described in subsection (a) or (b) of this section.

(d) In the FS, OSIP or OSIPM program, a qualified non-citizen who meets the requirement in section (9) of this rule.

(9) Except as provided in sections (2), (4), (5), and (6) of this rule, non-citizens who entered the United States or were given qualified non-citizen status on or after August 22, 1996, are ineligible for the BCCM, GA, MAA, MAF, OHP, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status. They meet the alien status requirement following the five-year period.

(10) In the FS program, the following non-citizens meet the alien status requirement:

(a) A person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

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(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (c) of this section.

(f) A qualified non-citizen who is disabled, as defined in OAR 461-110-0110(4).

(11) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS, OSIP, and OSIPM programs, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-120-0345

### Clients Required to Obtain Medical Coverage

This rule explains the obligation of clients to obtain medical coverage for members of the benefit group. A client is excused from the requirements of section (1)(a) of this rule for good cause defined in OAR 461-120-0350.

(1) To be eligible for any program except ERDC or FS, each adult client must:

(a) Assist the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or her children and obtaining an order directing the non-custodial parent of a child in the benefit group to provide health care for that child.

(b) Make a good faith effort to obtain available coverage under Medicare.

(2) To be eligible for the EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, REFM, and SAC programs, once informed of the requirement, a person who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). For GAM and OSIPM, the client is not required to incur a cost for the health insurance.

(3) In the OHP-OPU program the following applies:

(a) A person who can obtain health insurance through his or her employer must cooperate in determining eligibility for the Family Health Insurance Assistance Program (FHIAP). Rules for FHIAP are at OAR 442-004-0000 and following. If eligible for FHIAP, the person must:

(A) Apply for and accept the employer-sponsored health insurance.

(B) Enroll the other OHP-OPU recipients who are eligible for insurance through FHIAP.

(b) The requirements of subsection (a) of this section do not apply to:

(A) Members of a federally recognized Indian tribe, band or group;

(B) Eskimos, Aleuts or other Alaska natives enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act;

(C) Persons eligible for benefits through an Indian Health Program; or

(D) Persons eligible under the CAWEM program.

(4) A person who fails to meet the requirements of section (1), (2) or (3) of this rule is removed from the need group except that in the OHP program the person is removed from the benefit group.

(5) In the case of a person failing to meet the requirements of section (1)(a) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.

(6) The penalty provided by this rule ends when the client meets the requirements of this rule.

(7) If the TANF grant is affected by the penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined as if the client were receiving cash benefits without the reduction due to the penalty.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-120-0510

### Age Requirements for Clients to Receive Benefits

(1) If the year of a person's birth is known but the month is unknown, the month of birth is presumed to be July. If the date of birth is unknown, the date of birth is presumed to be the first of the month.

(2) To be eligible for the ADCM-EA, EXT, MAA, MAF, OFSET, or TANF program:

(a) A child must be:

(A) Under 18 years of age; or

(B) Under 19 years of age and regularly attending school full time, as determined by the school.

(b) A caretaker relative may be any age.

(3) To be eligible for the SAC program, the child must be under 21 years of age.

(4) To be eligible for payment of child care costs for the ERDC, OFSET, or TANF program, a child must be:

(a) Under 12 years of age for the ERDC program and under 13 years of age for the OFSET and TANF programs; or

(b) Under 18 years of age and:

(A) Physically or mentally incapable of selfcare;

(B) Under court supervision;

(C) Receiving foster care;

(D) Eligible for the special need rate for child care in OAR 461-155-0150; or

(E) Subject to circumstances that significantly compromise the child's safety or the caretaker's ability to work or participate in an assigned activity if child care is not available.

(5) To be eligible for the FS, OSIP-AB, OSIPM-AB, OSIPM-MN, QMB-BAS, QMB-SMB or REFM programs, a client may be any age.

(6) To be eligible for the REF program, a client must be 18 years of age or older or must be emancipated.

(7) To be eligible for the OSIP-AD (except OSIP-EPD) program, a client must be 18 years of age or older and under 65 years of age.

(8) To be eligible for the OHP program, a client must meet the age requirements in OAR 461-135-1100.

(9) To be eligible for OSIPM-AD (except OSIPM-EPD), a client must be:

(a) Eighteen years of age or older and under 65 years of age; or

(b) Receiving SSI, without regard to age.

(10) To be eligible for the OSIP-OAA or OSIPM-OAA programs, a client must be 65 years of age or older.

(11) To be eligible for the QMB-DW program, a client must be under 65 years of age.

(12) To be eligible for OSIP-EPD and OSIPM-EPD, the client must be 18 years of age or older or be legally emancipated.

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(13) To be eligible for the BCCM program, a woman must be under 65 years of age.

(14) To be eligible for the GA and GAM programs, a client must be:

- (a) Eighteen years of age or older and less than 65 years of age; or
- (b) Sixty-five years of age or older and must be a non-citizen who meets the requirements of OAR 461-120-0125.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 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 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 18-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-125-0510

### Impairment Criteria; GA, GAM

(1) To be eligible for GA and GAM, an individual must meet one of the following criteria:

(a) Have a physical or mental impairment that meets or equals the listing of impairments found in 20 CFR 404, Subpart P, Appendix 1, in effect November 1, 2003, and can be expected to:

(A) Last for a continuous period of not less than 12 months from the date of request; or

(B) Result in death within 12 months from the date of request.

(b) Be 55 years of age or older and meet the following requirements:

(A) Have a severe physical impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Prevent the individual from returning to any past relevant work for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Be limited to sedentary residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(c) Be 55 years of age or older and have all of the following:

(A) A severe physical impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Less than a 12th grade education, as evidenced by the lack of a high school diploma or GED.

(C) A history of no past relevant work as defined in section (2) of this rule in the last 15 years.

(d) Be age 50 or older but not yet age 55 and:

(A) Have a severe physical impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Be illiterate or unable to communicate in English.

(C) Be limited to light residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(D) Have a past relevant work history of "unskilled" or "none."

(e) Be age 50 or older but not yet age 55 and:

(A) Have a severe physical impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Have less than a High School education.

(C) Be limited to sedentary residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(D) Have a past relevant work history of "unskilled" or "none."

(f) Be age 45 or older but not yet age 50 and:

(A) Have a severe physical impairment that does not meet the listing of impairments referred to in subsection (a) of this section but will:

(i) Last for a period of not less than 12 months from the date of request; or

(ii) Result in death within 12 months from the date of request.

(B) Be illiterate or unable to communicate in English.

(C) Be limited to sedentary residual functioning capacity as defined in 20 CFR 404, subpart P, appendix 2, in effect November 1, 2003.

(D) Have a past relevant work history of unskilled or none.

(2) As used in this rule:

(a) "Basic work activity" means any kind of work activity that averages at least eight hours a day for which income is received, regardless of the adequacy to meet the client's needs. Work performed against medical advice or at an activity center or sheltered workshop is not basic work activity.

(b) "Equaling" means the medical findings are at least equal in severity and duration to the listed findings. If the client's impairment is not listed, the Department considers the listed impairment most like the client's impairment to decide whether the client's impairment is medically equal to the listed impairment. If the client has more than one impairment, and none of them meets or equals a listed impairment, the Department reviews the symptoms, signs, and laboratory findings about the client's impairments to determine whether the combination of those impairments is medically equal to a listed impairment.

(c) "Light work" means work that requires lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds and requires occasional stooping. It also requires standing or walking for a total of approximately six hours of an eight-hour workday.

(d) "Past relevant work" means work that the individual has performed in the last 15 years and that constitutes substantial gainful activity as defined in 20 CFR 404.1574 and 404.1575, in effect November 1, 2003. Also, the past relevant work must have lasted long enough for the individual to learn the techniques, acquire the necessary information, and develop the facilities needed for average performance of the job situation.

(e) "Sedentary work" means work that requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles such as docket files, ledgers, and small tools. Although sitting is involved, a certain amount of walking and standing is often necessary in carrying out job duties. Periods of walking and standing should total no more than two hours of an eight-hour workday and sitting should total approximately six hours of an eight-hour workday. Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand finger actions.

(f) "Severe physical impairment" means an impairment that significantly limits the individual's physical ability to do basic work activity.

(g) "Unskilled work" is work that requires little or no judgment to do simple duties that can be learned on the job within 30 days.

(3) An applicant is not eligible for GA or GAM if drug addiction or alcoholism is material to his or her disability.

(4) If the client is unable to do so, the Department will obtain medical evidence that documents a claim of physical or mental impairment.

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

Stat. Auth.: ORS 411.060 & 411.710

Stats. Implemented: ORS 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 21-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 24-1996(Temp), f. & cert. ef. 6-11-96; AFS 34-1996, f. 9-26-96, cert. ef. 10-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 35-2000(Temp), f. 12-29-00, cert. ef. 1-1-01 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 4-2002(Temp), f. & cert. ef. 4-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-135-0700

### Specific Requirements; GA, GAM

To be eligible for GA or GAM, a client must meet the following requirements:

(1) The client must be:

(a) An individual, childless or not living with his or her child, who is unmarried or married and not living with his or her spouse; or

(b) Married, living with his or her spouse, and childless or not living with his or her child, if:

(A) Both meet the GA impairment criteria found in OAR 461-125-0510;

(B) One meets the impairment criteria of the GA program and the spouse is receiving disability benefits provided for under title II or title XVI of the Social Security Act;

(C) One meets the impairment criteria of the GA program and the spouse is deemed to be receiving disability benefits provided for under title II or title XVI of the Social Security Act; or

(D) One meets the impairment criteria for the GA program, the spouse is awaiting a disability determination under title II of the Social Security Act, and the Department has determined the spouse meets the disability criteria of the Social Security Administration.

(2) The client must not be eligible for OSIP, OSIPM, except for clients found eligible under OAR 461-125-0370(1)(c), REF or TANF.

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(3) Requirements regarding a work history:

(a) A client described in section (1)(a) of this rule must not have a work history that would meet the eligibility requirements for disability insurance benefits provided for under title II of the Social Security Act.

(b) In the case of a couple described in section (1)(b) of this rule, if one or both clients meet the impairment criteria for the GA program, one who meets the impairment criteria for the GA program must not have a work history that would meet the eligibility requirements for disability insurance benefits provided for under title II of the Social Security Act.

(4) The client must:

(a) Complete the application process for Supplemental Security Income (SSI); cooperate with the Department in applying to the Social Security Administration for SSI; appeal all denials of SSI made below the Administrative Law Judge level; and attend all appointments designated by the Department relating to obtaining SSI.

(b) Sign an interim assistance agreement authorizing the Department to recover interim GA benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or initial post-eligibility payment. The following provisions are considered part of the interim assistance agreement:

(A) Interim GA benefits include only those GA cash benefits paid during the period of time that the SSI benefit covers.

(B) For any month in which SSI is prorated, the Department can recover only a prorated amount of the interim GA cash benefit.

(C) If the Department cannot stop delivery of a GA benefit issued after the SSI payment is made, the GA payment will be included in the interim assistance to be reimbursed to the Department.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 4-1997(Temp), f. 4-30-97, cert. ef. 5-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1999, f. AFS 10-2002, f. & cert. ef. 7-1-02, 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-135-0701

### Terminate GA and GAM Programs February 1, 2003; Opening GA and GAM Programs November 1, 2003

(1) Effective February 1, 2003, the General Assistance (GA) and General Assistance Medical (GAM) programs are not funded. Notwithstanding other rules of the Department, the programs are closed effective that date.

(2) Effective January 31, 2003, all persons eligible for or receiving benefits of the GA or GAM program become ineligible for the program. Except as provided in section (3) of this rule, the Department will not authorize or provide any benefit under the programs after January 31, 2003.

(3) Effective November 1, 2003, the General Assistance (GA) and General Assistance Medical (GAM) programs are funded and are open.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 21-2002(Temp), f. & cert. ef. 12-30-02 thru 6-27-03; SSP 12-2003, f. 5-29-03, f. & cert. ef. 6-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-135-0705

### Specific Requirements; GA, GAM Ineligible

(1) The following are ineligible for GA and GAM:

(a) A resident of a public institution or private psychiatric hospital.

(b) A person held for a proceeding in connection with his or her commitment to a public institution or private psychiatric hospital.

(2) A GA client found by the Social Security Administration (SSA) not to meet SSI disability criteria may continue receiving GA while appealing the SSA finding until a decision is rendered by an Administrative Law Judge (ALJ) for the Social Security Administration's Office of Hearings and Appeals. A client who unsuccessfully appeals to the ALJ is no longer eligible for GA.

(3) A client whose impairment no longer meets the criteria in OAR 461-125-0510 is ineligible for benefits.

(4) The decision by the ALJ is binding on the Department unless the client has a new or significantly worsened impairment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-140-0120

### Lump-Sum Income

*Lump sum income* is treated in accordance with this rule if it is received by a recipient or received by an applicant who has signed an application for program benefits.

(1) In the EA, ADCM-EA, MAA, MAF, REF, REFM, SAC, and TANF programs, lump-sum income is a resource.

(2) In the EXT and ERDC programs, lump-sum income is excluded.

(3) In the OHP program:

(a) If the lump-sum income is \$30 or less in a quarter, it is excluded for:

(A) Each financial group member who receives the lump-sum income; and

(B) Each financial group member the lump-sum income is intended for.

(b) If the lump-sum income exceeds \$30 in a quarter, it is counted as unearned income in the month received.

(4) In the Food Stamp program:

(a) *Lump-sum income* not exceeding \$30 a quarter is excluded income.

(b) If lump-sum income exceeds \$30 in a quarter, the entire amount is a resource.

(c) For Food Stamp clients in a filing group that includes at least one member who is working under a JOBS Plus agreement, lump-sum income is excluded.

(5) (a) In the GA and GAM programs, the lump-sum income described in subsection (b) of this section is excluded. After all exclusions are taken, the remaining lump-sum income is counted as unearned income. If the lump-sum income puts the client over the payment standard, the client is ineligible for the period of time provided for in OAR 461-140-0130.

(b) The following lump-sum income is excluded:

(A) The first \$50 received in a month.

(B) The income the client turns over to the Department as reimbursement for previous assistance.

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at OAR 461-155-0500 and following.

(6) For OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB, lump-sum income is treated as follows:

(a) Lump sum income not excluded is unearned income in the month of receipt, and any amount remaining in future months is a resource.

(b) The following lump sum income is excluded:

(A) The first \$20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at OAR 461-155-0500 and following.

(c) For OSIP-EPD and OSIPM-EPD, lump-sum income is a resource.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-140-0130

### Calculating the Lump-Sum Ineligibility Period; GA and GAM

In the GA and GAM programs, the following method is used to determine the financial group's ineligibility period due to receipt of lump-sum income:

(1) The *available*, countable lump-sum income (see OAR 461-140-0120 and 461-140-0123) is added to the other countable income received by the financial group in the budget month, minus allowable deductions.

(2) The sum is divided by the appropriate Payment Standard for the need group in the month the lump-sum income is received. The whole number of the quotient is the number of months the financial group is ineligible for benefits.

(3) The balance of the quotient is countable income for the first month after the client's ineligibility ends. For example, if the quotient is 4 with a

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remainder of \$82, the client is ineligible for four months, and \$82 is deducted from the GA grant for the fifth month.

Stat. Auth.: ORS 411.060 & 411.710

Stats. Implemented: ORS 411.060 & 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-145-0040

### Burial Arrangement

(1) Burial arrangements may include funeral agreements, burial insurance, and trust funds that make allowance for burial costs. Burial arrangements do not include a burial space. A funeral agreement is a prepaid arrangement made with a licensed funeral director.

(2) For ERDC, MAA, MAF, OHP, REF, REFM, SAC and TANF exclude the equity value of all prepaid burial arrangements.

(3) For FS, exclude the value of one bona fide funeral agreement per household member, provided that the agreement does not exceed \$1,500 in equity value. If the agreement exceeds \$1,500 in value, the value above \$1,500 is counted as a resource. Exclude the value of irrevocable burial arrangements.

(4) For grandfathered OSIP and OSIPM clients, exclude up to \$1,000 combined equity value of burial arrangements with a licensed funeral director (plus accrued interest) and life insurance policies. Count the amount of combined cash and equity value of all life insurance and burial arrangements that is over \$1,000 as a resource.

(5) For GA, GAM, OSIP, OSIPM, and QMB:

(a) A burial fund includes revocable burial contracts, burial trusts (or other burial arrangements) and any other identifiable funds set aside for a client's burial costs. A burial fund:

(A) Cannot be excluded if it is commingled with nonburial-related assets. The amount set aside for burial must be in a separate account to be considered excluded from resource consideration.

(B) May be established only from financial means such as cash, burial contracts, bank accounts, stocks, bonds or life insurance policies. No overpayment or ineligibility results if the client or their representative agrees to establish the burial fund.

(C) May be established if the countable resources of the client exceeds allowable limits.

(D) Exclusion applies only if the burial fund makes the client ineligible due to excess resources.

(b) Exclude up to \$1,500 of a burial fund for each of the following:

(A) The client.

(B) The client's spouse.

(c) Subtract both the following from the amount each client may set aside for a burial fund:

(A) The face value of life insurance policies owned by the client that have already been excluded from resources.

(B) The amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs.

(d) Exclude all interest earned on excluded burial funds or increases in the value of excluded burial arrangements if left in the fund.

(e) There is no penalty if a client uses excluded burial funds for any purpose other than burial costs. No overpayment is determined and future OSIP/Title XIX benefits will not be reduced.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-145-0050

### Burial Space and Merchandise

(1) Burial spaces include conventional grave sites, crypts, mausoleums, urns, and other repositories that are traditionally used for the remains of deceased persons. They also include headstones and the opening and closing of the grave.

(2) Burial merchandise includes, but is not limited to, caskets, liners, burial vaults, markers, and foundations.

(3) In the ERDC, FS, MAA, MAF, OHP, SAC, REF and TANF programs, one burial space is excluded for each financial group member. Burial merchandise is excluded if owned by the client and designated for

themselves, their spouse, minor and adult children, siblings, parents and the spouse of any of these people.

(4) In the GA, GAM, OSIP, OSIPM, and QMB programs, a burial space and burial merchandise are excluded if owned by the client and designated for themselves, their spouse, minor and adult children, siblings, parents and the spouse of any of these people.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-145-0150

### Educational Income

(1) Educational income is income designated specifically for educational expenses. To be considered educational income, the income must be received by one of the following:

(a) A student at a recognized institution of post-secondary education. Post-secondary education is education offered primarily to individuals 18 years of age or older. Admission may — but does not necessarily — require a high school diploma or equivalent.

(b) A student at a school for the disabled.

(c) A student in a vocational education program.

(d) A student in a program that provides for completion of requirements for a secondary school diploma or the equivalent.

(2) To determine the amount of educational income to exclude, educational expenses listed in the financial aid award letter are used unless one of the following is true:

(a) The student provides verification of amounts different from those listed in the award letter, in which case the verified amounts from the student are used.

(b) The student receives child care benefits — that is, ERDC or other child care subsidies. In that situation, the amount the student actually pays for child care (including the ERDC copay) is excluded from the educational income instead of the amount shown in the award letter.

(c) The student states actual transportation costs exceed the amount allowed for the expense in the award letter. In that situation, the number of miles to and from school is multiplied by \$0.20. The product or the amount from the award letter, whichever is greater, is excluded.

(3) In the GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, REF, REFM, SAC and TANF programs:

(a) Educational income authorized by the Carl D. Perkins Vocational and Applied Technology Education Act or Title IV of the Higher Education Act or made available by the Bureau of Indian Affairs (BIA) is excluded.

(b) All income from loans is excluded.

(c) An amount used (or anticipated to be used) for tuition, mandatory fees, books and supplies, transportation, child care, and miscellaneous personal expenses (except room and board) is excluded.

(4) In the ERDC and FS programs, educational income from the BIA and Title IV of the Higher Education Act is excluded.

(5) The cost of the following items from remaining educational funds (including non-Title IV work study and educational loans) is excluded:

(a) In the ERDC and FS programs — tuition, mandatory fees, books and supplies, transportation, required rental or purchase of equipment or materials charged to students enrolled in a specific curriculum, other miscellaneous personal expenses (except room and board), and loan originator fees and insurance premiums required to obtain an educational loan.

(b) In the FS program — dependent care.

(6) In all programs, after allowing exclusions, the remaining income is treated as follows:

(a) Income received through work study (including work study provided through a VA program or other educational program), fellowships and teaching-assistant positions not excluded by section (3), (4), or (5) of this rule is earned income.

(b) Educational income not covered by section (6)(a) of this rule is treated as follows:

(A) In all programs except OHP, educational income is prorated over the period it is intended to cover. If the client has already received the income, the prorated amount is counted monthly beginning with the first month of the period. If the client has not received the income at the time the determination is made, the prorated income is counted starting in the month the client expects to receive it.

(B) In the OHP program, educational income is counted in the month received.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816



# ADMINISTRATIVE RULES

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-145-0320

### Life Insurance

(1) Benefits paid on a life insurance policy are counted as unearned income. A deduction is allowed, not to exceed \$1,500, for the cost of the deceased person's last illness and burial if these costs were not otherwise insured.

(2) The equity value of a life insurance policy is treated as follows:

(a) In all programs except GA, GAM, OSIP, OSIPM and QMB, the equity value of the life insurance policy is excluded.

(b) Clients eligible for OSIPM under OAR 461-135-0771 are allowed an exclusion up to \$1,000 from the total equity value of burial arrangements with a licensed funeral director (plus accrued interest) and life insurance policies. The value in excess of \$1,000 is counted as a resource.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, the total equity value of life insurance policies owned by the client or the client's spouse is excluded if the total face value of all policies is less than or equal to \$1,500. If the total face value of all policies is more than \$1,500, the entire equity value is counted as a resource.

(d) All term insurance is excluded.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-145-0360

### Motor Vehicle; Not FS

(1) In the MAA, MAF, REF, SAC, and TANF programs, up to \$10,000 equity value of one licensed motor vehicle selected by the financial group is excluded.

(2) In the ADCM-EA, EA, ERDC, and OHP programs, all motor vehicles are excluded.

(3) In the GA and GAM programs, up to \$4,500 equity value of one licensed motor vehicle selected by the financial group is excluded. Any remaining equity in that vehicle and the total equity value of all other vehicles is counted as a resource.

(4) For grandfathered financial groups in the OSIP and OSIPM programs, one motor vehicle in operating condition is excluded, and the equity value of any other motor vehicles is counted as a resource.

(5) In the OSIP, OSIPM, and QMB programs:

(a) The total value of a vehicle selected by the financial group is excluded if it is used for employment or necessary and continuing medical treatment. If it is not, the first \$4,500 of the fair market value is excluded.

(b) The amount above \$4,500 is counted as a resource.

(c) The total equity value of all other vehicles is counted as a resource.

(6) In the OSIP-EPD and OSIPM-EPD programs, if a vehicle was purchased as an *employment and independence expense* or with moneys from an *approved account*, the total value of the vehicle is excluded.

Stat. Auth.: ORS 411.060 & 418.100

Stats. Implemented: ORS 411.060, 418.100 & 411.117

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-145-0530

### Tax Refund

For all programs, the following types of tax refunds are counted as a resource:

(1) Federal and state income tax refunds.

(2) Property tax refunds, including Elderly Rental Assistance (ERA).

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-155-0010

### Use of Payment Standards to Establish Need

(1) *Need* is the amount at the Department's payment standards that represents the client's need for items covered by the benefit.

(2) *Special needs* are costs in addition to standard allowances. If required, for all programs except GA and GAM they must be used to determine:

(a) Initial eligibility; and

(b) Ongoing eligibility for non-waivered OSIP and OSIPM clients in SDDS or AAA facilities and clients in MHDDSD facilities.

(3) In the GA and GAM programs, special needs are used to determine initial and ongoing eligibility as specified in OAR 461-160-0500.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-155-0210

### Payment Standard; GA, GAM

In the GA and GAM program, the payment standard is as follows:

(1) The payment standard is \$314 for a one-person need group and \$628 for a two-person need group unless a different rate is specified in section (2) or (3) of this rule.

(2) The payment standard for a GA or GAM client living in a community-based care setting is \$297 for room and board, plus \$40 personal allowance for clothing and personal incidentals.

(3) For a client in a nursing facility, intermediate care facility for the mentally retarded, psychiatric training center, or an acute hospital for greater than 30 days, the payment standard is \$30 for clothing and personal incidentals.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1993(Temp), f. & cert. ef. 9-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 16-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-1996(Temp), f. 1-30-96, cert. ef. 2-1-96; AFS 10-1996, f. 3-27-96, cert. ef. 4-1-96; AFS 11-1997(Temp), f. & cert. ef. 8-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-1999, f. 7-29-99, cert. ef. 8-1-99; AFS 19-2000, f. 7-31-00, cert. ef. 8-1-00; AFS 16-2001(Temp), f. & cert. ef. 8-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-155-0526

### Special Need; Community Transition Services; OSIP and OSIPM

(1) In the OSIP and OSIPM programs, the Department will authorize one-time payments for allowable expenses necessary for clients to set up housing in their own homes or apartment, not including an adult foster home. Payments are allowed only for the following clients who are returning to the community if they meet the criteria for one of the service priority levels served by the Department according to OAR 411-015-0015(1):

(a) Clients leaving a nursing facility.

(b) Clients who have been admitted as an inpatient and are leaving an acute care hospital.

(2) Examples of allowable expenses are expenses for moving; housing security deposits; essential furnishings; eating utensils; food preparation items; deposits for utility hook-ups for heat, electricity and telephone; and health and safety measures such as pest eradication or allergen control. Allowable expenses do not include rent for housing or temporary housing, ongoing utility costs, medical supplies such as reachers, grabbers, wheelchairs, and transfer trays, or recreational items such as a television or cable television access.

(3) Payment will be authorized only for the minimum amount necessary to establish the client's basic living arrangement.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-155-0551

### Special Need; Home Adaptations to Accommodate a Client's Physical Condition

(1) In the OSIP and OSIPM programs, the Department will authorize — consistent with the restrictions in this rule — a one-time special needs payment for a home adaptation required by the client's care plan, if the adaptation is needed to accommodate the client's physical condition and prevent the client's placement in a nursing facility.

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(2) For a home adaptation:

- (a) The client must be the owner or buyer of the house.
- (b) The adaptation must cost less than moving to another home.

(c) Payment is limited to the lowest possible cost that will provide adequate facilities. The client must provide three competitive bids for the repairs, unless there are not three providers of the service in the local area.

(d) Providers of the adaptations must ensure that the work being completed meets current building codes.

(e) Adaptations authorized by this rule include only changes to the structure of the building, such as installation of ramps, grab-bars, and railings; widening of doorways; modification of bathroom facilities; and installation of electric and plumbing systems necessary to accommodate the client's medical equipment or supplies.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-160-0015

### Resource Limits

(1) In the MAA, MAF, REF, SAC and TANF programs, the resource limit is:

(a) \$10,000 for need groups with at least one JOBS participant who is progressing in a case plan.

(b) \$10,000 for need groups with at least one member who is working under a JOBS Plus agreement.

(c) \$2,500 for all other need groups, including all TANF applicants.

(2) In the ADCM-EA and EA programs, all countable resources must be used to meet the emergent need.

(3) In the ERDC, EXT, and REFM programs, there is no resource limit.

(4) In the FS program, the resource limit is:

(a) \$3,000 for need groups with at least one member who is elderly or disabled.

(b) \$10,000 for need groups with at least one member who is working under a JOBS Plus agreement.

(c) \$2,000 for all other need groups.

(5) In the OHP program:

(a) There is no resource limit for a person whose eligibility is determined under the OHP-OPC, OHP-OP6 or OHP-OPP programs.

(b) The resource limit for a person whose eligibility is determined under the OHP-OPU program is \$2,000.

(c) The resource limit for children whose eligibility is determined under the OHP-CHP program is \$5,000.

(6) In the GA, GAM, OSIP and OSIPM programs, the resource limit is as follows:

(a) \$2,000 for a one-person need group and \$3,000 for a two-person need group.

(b) \$1,000 for an OSIP need group eligible under OAR 461-135-0771. The total cash resources may not exceed \$500 for a one-person need group or \$1,000 for a two-person need group.

(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-145-0025 for funds that may be excluded as approved accounts).

(7) In the QMB program, the resource limit is \$4,000 for a one-person need group and \$6,000 for a need group containing two or more people.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-160-0060

### Use of Rounding in Calculating Benefit Amount

(1) In the REF and TANF programs, a benefit amount not a whole number of dollars is rounded down to the next lower whole dollar.

(2) In the ERDC program, total countable income is rounded down to the next lower whole dollar. The benefit figures are not rounded.

(3) In the GA, GAM, OHP, OSIP, OSIPM and QMB programs, rounding is not used.

(4) In the FS program, when income and deductions are calculated, a figure ending with less than 50 cents is rounded to the next lower dollar and a figure ending with 50 cents or more is rounded to the next higher dollar. Rounding is done as follows:

(a) All income from the same source is added and the sum is rounded.

(b) Weekly income is rounded before the weekly conversion factor is used to convert it to monthly income. The converted amount is rounded before the earned income deduction is applied.

(c) The costs of dependent care for each financial group member is rounded before it is compared to the limit for dependent care.

(d) The medical costs for each person who is eligible for a medical deduction are added and the sum is rounded before the deduction is calculated.

(e) The costs for shelter are added and the sum is rounded before the shelter deduction is calculated.

(f) After multiplying the adjusted income by 30 percent, any amount from 1 to 99 cents is rounded up to the next higher dollar.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-160-0500

### Use of Income To Determine Eligibility and Benefits; GA, GAM

In the GA and GAM programs, a financial group's countable and *adjusted income* (see OAR 461-140-0010 and 461-160-0020) are used to determine eligibility and benefit amount as follows:

(1) If the financial group's countable income equals or exceeds the payment standard for the need group, the need group is ineligible for GA and GAM. If the countable income is less than the standard, the need group meets the income standard for GA and GAM.

(2) The benefit amount is determined by subtracting the financial group's adjusted income from the sum of the payment standard for the need group and its ongoing special needs.

(3) The benefit cannot exceed the sum of the payment standard for the benefit group plus the ongoing special needs.

Stat. Auth.: ORS 411.060 & 411.710

Stats. Implemented: ORS 411.060 & 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 17-1995, f. 7-31-94, cert. ef. 8-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

## 461-160-0550

### Income Deductions; GA, GAM, QMB and Non-SSI OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD) in the Community

(1) This rule is used to determine adjusted income for all GA, GAM, and QMB clients and for clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

- (a) Live in the community;
- (b) Do not receive SSI; and
- (c) Do not receive Title XIX waived services.

(2) To determine adjusted income, deductions from income are made in the following order:

(a) One standard deduction of \$20.

(b) One standard earned income deduction of:

(A) \$65 for GA, GAM, OSIP-AD, OSIP-OAA, OSIPM-AD, OSIPM-OAA, and QMB clients who are not blind; or

(B) \$85 for GA, GAM, OSIP-AB, OSIPM-AB, and QMB clients who are blind.

(c) An income deduction for documented impairment-related work costs for:

(A) OSIP-AB, OSIP-AD, OSIPM-AB and OSIPM-AD clients; and

(B) QMB clients under age 65.

(d) One half of the remaining earned income.

(e) Deductions under a plan for self-support for clients in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs, and QMB clients less than the age of 65.

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002,

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f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04

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**Adm. Order No.:** SSP 7-2004(Temp)

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04 thru 6-30-04

**Notice Publication Date:**

**Rules Amended:** 461-150-0020

**Subject:** Rule 461-150-0020 is being amended to clarify that there is an agency-caused overpayment when the agency does not follow agency policy or use all information available to process the income and calculate the benefits.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-150-0020

### Prospective Eligibility or Budgeting

(1) For prospective eligibility and budgeting, the budget month and payment month are the same.

(2) In the prospective eligibility and budgeting system, the client's known and anticipated income, household composition, and other relevant factors are used to determine the client's eligibility and benefit level for the period of eligibility. The client and Department jointly determine the known and anticipated income to be used to determine the client's benefits.

(3) When prospective budgeting is used and the actual income differs from the income predicted by the Department and the client, the Department will use the predicted income to determine whether there is an overpayment except as follows: if the financial group withheld information or provided inaccurate information, the Department uses the actual income to determine whether there is, and the amount of, an overpayment.

(4) The client is not entitled to a benefit supplement if the predicted income exceeds the actual income.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 7-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04

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**Adm. Order No.:** SSP 8-2004

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 461-110-0350, 461-115-0015, 461-135-0301, 461-135-0400, 461-135-0401, 461-135-1130, 461-135-1220, 461-135-1230, 461-135-1235, 461-145-0190, 461-155-0150, 461-155-0225, 461-155-0235, 461-155-0250, 461-155-0290, 461-155-0291, 461-155-0295, 461-160-0560, 461-195-0531, 461-195-0551, 461-195-0601, 461-195-0621

**Rules Repealed:** 461-135-0301(T), 461-135-1130(T)

**Subject:** Rule 461-110-0350 is being amended to exempt a child care provider from being counted in the filing group when a child is in full time care due to their caretaker being called to active duty for the National Guard or military reserve for more than 30 days.

Rules 461-115-0015, 461-135-0400 and 461-135-0401 are being amended to reinstate a student child care subsidy program authorized by the 2001-2003 Legislature. Because funding is limited and the number of student parents who may qualify is so large, a random selection and waiting list process is being established in rule. To qualify, students must be enrolled for at least 12 credits in a 2 or 4 year college eligible for federal financial aid. To remain in the program, students must earn 36 credits annually.

Rule 461-135-0301 is being amended to add new language that allows DHS to re-open the Emergency Assistance (EA) program.

Rule 461-135-1130 is being amended to clarify that an Oregon Health Plan (OHP) disqualification period for not paying a premium on time starts the first of the month after the notice period ends.

The clarification ensures that the disqualification policy will be consistently applied to all clients required to serve a penalty.

Rule 461-135-1220 is being amended to allow the Department additional time to determine eligibility for TA-DVS from 8 working hours up to 16 working hours.

Rule 461-135-1230 is being amended to state that more than one eligibility period for TA-DVS within a 12-month period must be jointly approved by the Department's field office and central office.

Rule 461-135-1235 is being amended to correct "second" business day to align with the proposed amendment in rule 461-135-1220.

Rule 461-145-0190 is being amended to exclude Nutrition Assistance program benefits received in Puerto Rico, American Samoa or the Commonwealth of the Northern Mariana Islands as income for the Food Stamp program.

Rule 461-155-0150 is being amended to add a monthly limit to child care subsidy when a child is in full-time care due to their caretaker being called to active duty for the National Guard or military reserve for more than 30 days.

Rules 461-155-0225, 461-155-0235, 461-155-0250, 461-155-0290, 461-155-0291 and 461-155-0295 are being amended to reflect the annual increase in the federal poverty levels when those levels are published in the Federal Register. These rules includes standards/allowances based on the federal poverty levels. Rule 461-155-0295 is also being amended to accurately reflect federal policy and close gaps in income that previously existed.

Rule 461-160-0560 is being amended to include the federal language under the state can claim federal matching funds to purchase certain items for individuals who are being relocated from a nursing facility to home setting. State Medicaid Director Letter #02-008 from the Centers for Medicare and Medicaid Services provides for the availability of federal funds for those served under a home and community based waiver, if they are being relocated as part of comprehensive plan to provide services at home.

Rule 461-195-0531 is being amended to include specific language about when to establish overpayments in TA-DVS cases.

Rule 461-195-0551 is being amended to include a distraint warrant as a method to collect a liquidated claim. This method was added with the passage of HB 3629.

Rule 461-195-0601 is being amended to include a specific section on Temporary Assistance for Domestic Violence Survivor's (TA-DVS). Current rule does not separate TA-DVS from TANF. TA-DVS will only pursue intentional program violation (IPV) in TA-DVS cases when coercion from the abuser wasn't present.

Rule 461-195-0621 is being amended to include specific language around the TA-DVS program. It includes language around liability in repayment situations and actions for staff to take if a person who has been found responsible for a IPV applies for TA-DVS in the future. Current rule language does not provide IPV information in the TA-DVS program.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-110-0350

### Filing Group; ERDC

(1) For ERDC, the filing group consists of applicants who meet all nonfinancial eligibility requirements and the following applicants and household group members, even if they do not meet nonfinancial eligibility requirements:

(a) The caretaker of the child for whom ERDC benefits are requested, except that this section (1) does not apply to a provider of child care for the child of a person:

(A) Who is a member of an armed forces reserve unit or a member of the National Guard;

(B) Who has been called to active duty; and

(C) Who is away from the child's home for more than 30 days.

(b) Unmarried children and their siblings, under age 18 or under the age of 19 and attending school full time, in the care and custody of the caretaker. Foster children are included if the caretaker wants to include them in the need group.

(c) The parents of a child required to be in the filing group.

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(d) The parents of an unborn, if the unborn's siblings are required to be in the filing group.

(e) The spouse of the caretaker.

(2) Minor parents may form a separate filing group with their dependent children when the minor parent applies as the caretaker.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 32-2003(Temp), f. & cert. ef. 12-17-03 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-115-0015

### Application Process; Waiting List for ERDC-SBG

(1) Eligibility for the ERDC-SBG program is subject to the availability of funds. A waiting list of prospective applicants is created and maintained by the Department.

(2) A random drawing from among those returning a "waiting list information" form during the initial period will establish the positions of prospective applicants on the waiting list to apply for funds. Following the initial application period, prospective applicants will be added to the waiting list following those remaining from the initial application period in order of the date and time the Department receives the "waiting list information" form.

(3) An appropriate number of persons from the initial waiting list are notified of their right to apply. Those not selected are notified of their position on the waiting list.

(4) Each month, on the basis of an estimate of available funds, an appropriate number of persons on the waiting list are notified of their right to apply.

(5) The processing time frame for the ERDC-SBG application is the same as that specified in OAR 461-115-0190, except that:

(a) The date the Department sends the notification described in section (3) of this rule establishes the date of request.

(b) If the Department does not receive an application within 15 days following the date of request, the applicant is dropped from the waiting list. An applicant who applies after the 15 days must reapply to be put on the waiting list and will be added to the waiting list in order of the date and time the Department receives the "waiting list information" form.

(c) Effective January 1, 2004 through March 31, 2004, if the student is not enrolled in school when his or her name comes up on the waiting list, the application processing time frame may not be extended to allow the student time to register and enroll in school.

(d) Effective April 1, 2004, if the student is not enrolled in school when his or her name comes up on the waiting list, the application processing time frame will be extended to allow the student time to register and enroll in school no later than the next school term.

(6) The Department updates the waiting list monthly by notifying all persons who have been on the waiting list for six months or more that they must submit a new "waiting list information" form. A person on the waiting list who does not respond within 15 days from the date the notification is sent to the person or who indicates assistance with child care expenses is not needed will be removed from the waiting list.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 24-1992(Temp), f. & cert. ef. 8-18-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-135-0301

### Closure of the Emergency Assistance (EA) Program Effective January 1, 2003; Reopening of the EA Program Effective December 1, 2003

(1) Effective January 1, 2003, the EA program is not funded. Notwithstanding other rules of the Department, the program is closed effective that date.

(2) Effective December 31, 2002, all persons eligible for or receiving benefits of the program become ineligible for the program. The Department will not authorize or provide any benefit for any period after December 31, 2002 except as provided below in this rule.

(3) Effective December 1, 2003, the EA program is funded. The program is open effective that date for any person who meets the eligibility requirements on or after December 1, 2003.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 30-2003(Temp), f. & cert. ef. 12-1-03 thru 4-30-04; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-135-0400

### Specific Requirements; ERDC

The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules. To be eligible for ERDC, a filing group must meet the following requirements:

(1) For a filing group to be eligible for the ERDC-BAS program, at least one caretaker (see OAR 461-120-0610) must receive income from employment, including employment through a work study program. For clients who are in the start-up phase of self-employment, working on commission, or participating in job-related training that is a condition of employment, the requirement to have earned income may be waived for three months.

(2) For the ERDC-SBG program:

(a) At least one *caretaker* must be a student without a bachelor's degree who is an undergraduate who has obtained a high school diploma or GED and has been formally admitted to a two- or four-year post-secondary institution that is eligible for federal financial aid and registered for or attending at least twelve quarter hours — or an equivalent number of credit hours in a semester system — that count toward graduation.

(b) A *caretaker* who meets the requirements of subsection (a) of this section must attend school for at least:

(A) Three out of four school quarters per academic year; or

(B) Two semesters per academic year.

(c) Students may use ERDC-SBG benefits for school — or employment-related child care needs during an absence from school or during a term in which they are attending school less than full time as defined in subsection (a)(A) of this section if:

(A) They intend to attend school full time the following term; and

(B) The absence or part-time status does not exceed:

(i) One out of four school quarters for students on the quarter system.

(ii) For students on the semester system, the summer break period.

(d) Students must maintain good standing according to the standards of the institution they are attending.

(e) Students must complete at least 36 quarter hours — or an equivalent number in a semester system — that count toward graduation each academic year.

(f) Participation in the student child care program is limited to a total of six years.

(3) The family must have an allowable child care need as described in OAR 461-160-0040. If in the filing group there are two adults who are required to be in the filing group, and if one of the adults is unemployed, the unemployed adult is considered available to provide child care, making the group ineligible, except in the following situations:

(a) The unemployed adult is physically or mentally unable to provide adequate child care.

(b) For ERDC-SBG only, the unemployed adult is physically or mentally unable to provide adequate child care.

(c) The unemployed adult is unavailable to provide care while participating in requirements of a case plan other than requirements associated with post-secondary education.

(4) The caretaker must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(5) A client is not eligible for a child care payment in the ERDC program for more than six calendar months if the client is unwilling to obtain for the child a Certificate of Immunization Status.

(6) It is a requirement for eligibility in the ERDC-BAS program that child care is necessary to enable the caretaker to remain employed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-135-0401

### ERDC-SBG; Effective Dates for the Program

(1) The ERDC — Student Block Grant (ERDC-SBG) program is not funded between October 1, 2002 and December 31, 2003. Notwithstanding other rules of the Department, the program is closed during this time period. The Department will not authorize or provide any benefit for any part of the period between October 1, 2002 and December 31, 2003, and the waiting list of prospective applicants referred to in OAR 461-115-0015(1) will not be maintained during that period.

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(2) Effective January 1, 2004, the ERDC — Student Block Grant (ERDC-SBG) program is restored. The waiting list of prospective applicants referred to in OAR 461-115-0015(1) will be started for new applications. The Department will authorize and provide benefits to eligible persons effective February 1, 2004.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 12-2002(Temp) f. & cert. ef. 10-1-02 thru 3-30-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-135-1130

### Disqualification for Nonpayment of OHP Premium

(1) Disqualification for failure to pay a premium on time. Clients are disqualified from receiving OHP benefits for failure to pay an OHP premium required by OAR 461-135-1120. Clients who are disqualified are ineligible under the OHP-OPU program. The disqualification affects only non-exempt HPN clients applying for or receiving benefits under the OHP-OPU program as follows:

(a) A non-exempt HPN applicant is disqualified if the applicant has an OHP premium arrearage.

(b) All non-exempt HPN recipients in a benefit group are disqualified if a required OHP premium for the group is not paid on time.

(c) A non-exempt HPN applicant is disqualified when joining an OHP filing group that includes a person with an OHP premium arrearage.

(2) Duration of the disqualification

(a) A disqualification resulting from a premium arrearage incurred prior to February 1, 2003, remains in effect until the arrearage is paid or is waived in accordance with this rule.

(b) A disqualification resulting from a premium billed after February 1, 2003, remains in effect until the premium is paid and for a minimum of six months. The six-month disqualification period starts the first day of the month after the notice period ends.

(c) A disqualification resulting from a non-exempt HPN applicant joining an OHP filing group that includes a person with a premium arrearage remains in effect until the arrearage is paid unless the entire arrearage was incurred prior to February 1, 2003, and is waived in accordance with this rule.

(3) Only for premiums billed before February 1, 2003, an arrearage is canceled and there is no disqualification based on the arrearage if the applicant is otherwise eligible for OHP and any of the following is true:

(a) The financial group has no income in the budget month and had no income in the prior two months.

(b) One of the following occurred either during the certification period in which the arrearage occurred or during the current budget month:

(A) A member of the filing group was the victim of a crime resulting in the loss of income or resources.

(B) A member of the filing group was the victim of domestic violence.

(C) The filing group was the victim of a natural disaster.

(D) A member of the filing group died.

(E) The filing group was homeless or lost their housing.

(c) The arrearage was incurred while the client was exempt from the requirement to pay a premium (see OAR 461-135-1120).

(d) The arrearage is a debt that has been stayed in a bankruptcy proceeding.

(e) The arrearage is over three years old.

(4) Any premium arrearage over three years old is canceled and no disqualification is based on the arrearage.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060, 414.025

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2003(Temp), f. & cert. ef. 9-15-03 thru 12-31-03; SSP 31-2003(Temp) f. & cert. ef. 12-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 3-2004(Temp), f. & cert. ef. 2-19-04 thru 6-30-04; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-135-1220

### TA-DVS; Application for Assistance and Effective Dates

The client may apply for the program in person, in writing, or by phone. The Department will assess the client's safety concerns within eight working hours of receiving the application and will offer options to the client for addressing immediate safety needs. The Department will determine eligibility within sixteen working hours after the application is complete, whether or not the client has signed the application.

Stat. Auth.: ORS 411.060 & 418.100  
Stats. Implemented: ORS 411.060, 411.117, 418.100  
Hist.: AFS 9-1999, f. & cert. ef. 7-1-99; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-135-1230

### TA-DVS; Benefits of the Program

(1) A client may receive benefits of the program for 90 days from the date the client was found eligible. Clients may receive benefits simultaneously from the TA-DVS and TANF programs. A client may receive benefits under the program not to exceed \$1,200 during the 90-day period of eligibility.

(2) If a client submits an application meeting all eligibility criteria set forth in OAR 461-135-1215 and 461-135-1225 less than 12 months after the commencement of a 90-day period of eligibility, that application must be jointly approved or denied by the Department's field and central offices.

(3) The client and the Department prepare a case plan that identifies activities necessary to enhance the client's safety. The case plan specifies the payments the Department makes to meet the client's needs for shelter and food and for relocation or other support services that will enhance the client's safety. The case plan either is in writing and signed by the client or is narrated by the Department in the client's case file.

(4) A client's available, liquid resources may be considered when developing the case plan.

(5) Payments issued for items in the client's case plan are issued as dual-payee checks unless the use of a dual-payee check is likely to put the client at risk of harm.

Stat. Auth.: ORS 411.060 & 418.100  
Stats. Implemented: ORS 411.060, 411.117 & 418.100  
Hist.: AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-135-1235

### TA-DVS; Right to Hearing

A client whose application is denied or who does not receive a decision on an application by the close of the second business day following the date the application is complete is entitled to an expedited hearing (see OAR 461-025-0315). A dispute over the amount of any payment provided to or for the client is resolved in an expedited hearing; other disputes about the contents of a case plan is resolved through conciliation.

Stat. Auth.: ORS 411.060 & 418.100  
Stats. Implemented: ORS 411.060, 411.117, 418.100  
Hist.: AFS 9-1999, f. & cert. ef. 7-1-99; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-145-0190

### Food Programs Other Than the Food Stamp Program

The following is excluded in all programs:

(1) Benefits from the Special Supplemental Food Program for Women, Infants and Children (WIC).

(2) The value of supplemental food assistance provided under the Child Nutrition Act of 1966 and the National School Lunch Act.

(3) Nutrition Assistance program benefits received in Puerto Rico, American Samoa or the Commonwealth of the Northern Mariana Islands.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-155-0150

### Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, OFSET and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: A child aged birth through 12 months.

(b) Toddler: A child aged 1 year through 30 months.

(c) Preschool Child: A child aged 31 months through 5 years.

(d) School Child: A child aged 6 years or older.

(e) *Special needs child*: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts:

(a) The *Standard Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

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(b) The *Enhanced Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider meets:

(A) The training requirements of the Professional Development Registry (PDR) entry level, established by the Oregon Center for Career Development in Childhood Care and Education; or

(B) The training requirements established by the Child Care Division for registered family providers who apply to become registered after October 1, 1999.

(c) The *Enhanced Group Rate* applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Group Child Day Care Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(d) The *Standard Center Rate* applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

(e) The *Enhanced Center Rate* applies to child care provided in a center that is certified by the Child Care Division or in an exempt center whose staff meet the training requirements of the PDR entry level established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the PDR entry level training requirements noted in section (2)(b)(A) of this rule.

(B) New staff must meet the PDR entry level training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(f) An exempt center is eligible to receive the enhanced rate for a maximum of six months while in the process of meeting the requirements of section (2)(e) of this rule if it files a statement of intent to meet the requirements on a form prescribed by the Department.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of section (2)(b), (c), (e) or (f) of this rule.

(3) Subject to the provisions in section (6) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (6) of this rule.

(b) The product of the hours of care, limited by section (4) of this rule, multiplied by the hourly rate provided in section (6) of this rule.

(4) The number of payable billable hours for a child is limited as follows:

(a) For the ERDC-BAS, OFSET and TANF programs, the total in a month may not exceed:

(A) The number of hours of care necessary for the client to maintain his or her job including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client, or to participate in activities included in a case plan (see OAR 461-190-0161 and 461-190-0310); or

(B) 125 percent of the time the client is at work or participating in an approved activity of the JOBS or OFSET program.

(b) For the ERDC-SBG program, the total may not exceed the number of hours of care necessary for the client to maintain his or her education, training or employment. The total may not exceed 125 percent of the sum of 200 percent of class hours and the time the client is at work.

(c) In the ERDC-BAS and TANF programs, for a client who earns less than state minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage. The limitation of this subsection is waived for the first three months of the client's employment.

(5) The following provisions apply to all programs:

(a) Providers not eligible for the enhanced rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced rate will be paid at an hourly rate for children in care less than 136 hours a month unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate.

(c) At their request, providers eligible for the enhanced rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month and customarily bill all families at a part-time monthly rate.

(d) Unless required by the client's or child's circumstances, the Department will not pay for care at a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(6) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (7) of this rule, is the lesser of the following:

(a) The amount billed by the provider or providers; and

(b) The monthly rate established in section (8) of this rule multiplied by a factor, limited to 1.5, determined by dividing the number of hours billed by 215.

(7) The limit allowed by section (6) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this rule, a client has special circumstances when it is necessary, in order for the client to perform the requirements of his or her employment or training, to obtain child care for a child in excess of 215 hours in a month.

(8) The payment available for care of a child who meets the special needs criteria described in section (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(9) The following are the child care rates. The rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (that is, hourly or monthly). [Table not included. See ED. NOTE.]

(10) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is 1.50 times the amount given in OAR 461-155-0225(2)(a), rounded down to the next whole number. The ERDC copay is \$25 or the amount determined by the formula in subsection (b) of this section, whichever is greater.

(b) The maximum copay equals the constant determined by the table in subsection (c) of this section, added to the product of a constant determined by the table in subsection (d) of this section times the constant determined by the table in subsection (e) of this section raised to a power equal to the family's gross income, expressed in dollars. The formula is as follows:  $y = k + (b X m^x)$ :

(c) The constant k is determined by the number of people in the need group, as follows:

(A) 2 persons: k = -30

(B) 3 persons: k = -55

(C) 4 persons: k = -50

(D) 5 persons: k = -51

(E) 6 persons: k = -80

(F) 7 persons: k = -92

(G) 8 or more persons: k = -103

(d) The constant b is determined by the number of people in the need group, as follows:

(A) 2 persons: b = 18.0

(B) 3 persons: b = 23.0

(C) 4 persons: b = 20.9

(D) 5 persons: b = 20.6

(E) 6 persons: b = 33.2

(F) 7 persons: b = 33.2

(G) 8 or more persons: b = 40.4

(e) The constant m is determined by the number of people in the need group, as follows:

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- (A) 2 persons: m = 1.001885
- (B) 3 persons: m = 1.001550
- (C) 4 persons: m = 1.001380
- (D) 5 persons: m = 1.001250
- (E) 6 persons: m = 1.000990
- (F) 7 persons: m = 1.000910
- (G) 8 or more persons: m = 1.000795

(11) Effective October 1, 2003, a client's copay is limited to \$25 during the first month the client is eligible for ERDC. This limitation cannot be used in more than one month in any 12 consecutive months.

(12) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

- (a) The amount billed by the provider or providers.
- (b) The monthly rate established in this rule for 215 hours of care.

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04

## 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. [Table not included. See ED. NOTE.]

(b) The countable income standard for OHP-OP6 is 133 percent of the 2004 federal poverty level. [Table not included. See ED. NOTE.]

(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). [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409.050, 411.060

Stats. Implemented: ORS 411.060, 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. 3-1-98 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; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-155-0235

### OHP Premium Standards

In the OHP program, the following steps are followed to determine the amount of the monthly premium for the filing group:

(1) The number of persons in the OHP need group is determined in accordance with OAR 461-110-0630.

(2) The financial group's countable income is determined in accordance with OAR 461-150-0055 and 461-160-0700.

(3) Based on the number in the need group and the countable income, the monthly premium for each non-exempt OHP-OPU client in the benefit group is determined from the following table: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 35-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 22-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 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; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2003(Temp), f. 2-26-03, cert. ef. 3-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 5-2004(Temp), f. & cert. ef. 3-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-155-0250

### Income and Payment Standard; OSIP, OSIPM

(1) For OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) clients in long-term care and in waived nonstandard living arrangements, the countable income limit standard is 300 percent of the SSI standard. The one-person SSI standard is used for an individual who has no income and is living alone in the community to compute the countable income limit. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for housing, utilities, food, clothing, personal incidentals and household supplies. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The payment standard is used as the adjusted income limit and to calculate cash benefits for non-SSI OSIP clients. The OSIP-AB adjusted income standard includes a transportation allowance. The total standard is: [Table not included. See ED. NOTE.]

(4) The payment standard for SSI/OSIP clients living in the community is either the SIP amount or the ESB amount. The SIP (supplemental income payment) is a need amount added to any other special or service needs to determine the actual payment. The ESB (excess SSI benefit) is a resource amount used to offset special and service need payments:

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For SSI couples in an AFC, ALF or RCF, an amount is added to each person's SIP entry that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unusual medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted income limit is 250 percent of the 2004 federal poverty level for a family of one. This 250 percent limit equals \$1,940 per month or \$23,280 per year.

(7) In the OSIP-EPD and OSIPM-EPD programs, \$900 in earnings is needed to meet the requirement in OAR 461-110-0115 for "sufficient earnings" in the definition of "attached to the workforce."

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp), f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-155-0290

### Income Standard; QMB-BAS

The adjusted income standard for the QMB-BAS program is 100 percent of the 2004 federal poverty level. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f.

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& cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; 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 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-155-0291

### Income Standard; QMB-DW

The adjusted income standard for the QMB-DW program is 200 percent of the 2004 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; 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 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-155-0295

### Income Standard; QMB-SMB

The adjusted income standard for QMB-SMB is 135 percent of the 2004 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-160-0560

### Terms Used for OHP, OSIP, OSIPM Long-Term Care or Waivered

These terms apply to OHP, OSIP and OSIPM long-term care and waivered clients:

(1) *Community spouse*: A person who is legally married to an institutionalized spouse and is not in a medical institution or nursing facility.

(2) *Continuous period of care*: A period of at least 30 consecutive days of care in a long-term care facility or waiverable home or community-based setting. There must be sufficient evidence to show there is a reasonable expectation that the client will remain in care for at least 30 consecutive days. For the purposes of this policy, an interruption in care (for example, leaving and then returning to a nursing home, or switching from one type of care to another) that lasts less than 30 days is not considered a break in the 30 consecutive days of care. A new period of care begins if care is interrupted for 30 or more days.

(3) *Eligible dependent*:

(a) For cases with a community spouse, eligible dependents are minor (under the age of 21) or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse and are claimed as tax dependents by either spouse.

(b) For cases without a community spouse, eligible dependents are minor (under the age of 21) or dependent children living in the client's household group.

(4) *Institutionalized spouse*: A person who is in long-term care or receiving waiverable home or community-based services for a continuous period and is married to a community spouse.

(5) *Waivered services* are services needed to keep a person out of a long-term care facility. Waivered services are:

(a) In-home services (companionship and home care).

(b) Services in a residential care facility.

(c) Services for a person in an assisted living facility.

(d) Adult foster care services.

(e) Home adaptations to accommodate a client's physical condition.

(f) Home-delivered meals provided in conjunction with in-home services.

(g) Specialized Living Facilities.

(h) Adult Day Care.

(i) Community transition services.

(6) *Waivered client*: A client receiving Title XIX waivered services for a continuous period.

## 461-195-0531

### Establishment of Overpayments

(1) The Department will not establish an administrative technical overpayment if the client was willing and able to meet the eligibility requirements and would have been eligible for the same amount of benefits had the requirements been met.

(2) For MAA, MAF, REF, REFM and TANF, the Department will establish an overpayment for the initial month of eligibility only when:

(a) The client withheld material information;

(b) The client provided false information;

(c) The Department failed to use income reported as received or anticipated in determining the client's benefits; or

(d) The error was due to an error in computation by the Department.

(3) In the TA-DVS program, the Department will establish an overpayment only if an IPV in the TA-DVS program has been established.

Stat. Auth.: ORS 411.060, 411.660, 411.816

Stats. Implemented: ORS 411.630, 411.635, 411.660

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-195-0551

### Methods of Recovering Overpayments

(1) For all programs, in addition to judicial process, the Department may recover overpayments through an agreed repayment plan, reduction in benefits, voluntary payment from the client, and offset of the debt. In medical programs, benefits are reduced to collect an overpayment only in the GAM program, and only non-medical benefits are reduced.

(2) The Department will reduce current benefits to collect an overpayment only as follows:

(a) For overpayments in REF and TANF, the Department will:

(A) Allow only half of the 50 percent earned income deduction described in OAR 461-160-0160.

(B) Reduce the benefit payment for REF and TANF, in an amount equal to ten percent of the benefit group's total benefit requirement at the full standard of need. The benefit payment after such reduction, when combined with all other income (before allowing the 50 percent earned income deduction), must be sufficient to provide the benefit group with 90 percent of the standard for a family with no income. In the TANF program, the cooperation incentive (see OAR 461-135-0210) is not included in the calculations prescribed by this paragraph.

(b) The Department may recover an overpayment in the GA, GAM, or OSIP program by reducing cash benefit payments by the lesser of the following:

(A) The total overpayment amount.

(B) The total benefit amount.

(C) Ten percent of the client's total benefit requirement at the standard of need.

(c) Unless the Department and the client agree to a repayment plan and the filing group meets the terms of the plan, the Department will collect an overpayment from a liable filing group participating in the Food Stamp program by reducing the benefit group's food stamp allotment each month as follows:

(A) For an overpayment caused by *client error or administrative error*, ten percent of the group's monthly allotment or \$10 a month, whichever is greater.

(B) For an overpayment caused by conduct that constituted an IPV, 20 percent of the group's monthly entitlement or \$20 a month, whichever is greater.

(3) For overpayment of child care benefits, the Department will not recover an overpayment through reduction of a client's child care benefits.

(4) The Department may recover an overpayment by offset as follows:

(a) For all programs, the Department uses the collection services provided by the Department of Revenue and any other state or federal agency to collect a liquidated claim established by:

(A) A court judgment.

(B) A confession of judgment.

(C) A document signed or acknowledged by the debtor that acknowledges the debt, such as:

(i) The Department-designated form to acknowledge an IPV.

(ii) A plea-bargain agreement.

(iii) Any other document acknowledging the overpayment.



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(D) A written notification of overpayment from the Department to the debtor, advising the debtor of the basis and amount of the overpayment and the right to request a hearing, if the debtor has exhausted his or her rights of administrative appeal.

(E) A written communication from the debtor acknowledging the debt.

(b) In cases that have both an underpayment and an overpayment in the same program, the Department will offset one against the other.

(c) The amount of any retroactive payment or restoration of lost benefits otherwise payable to the client, when the retroactive payment corrects a prior underpayment of benefits in the program in which the overpayment occurred.

(d) By offsetting the full amount of the overpayment against restored benefits owed to the benefit group or to another FS benefit group that a liable member of the overpaid group has joined.

(e) Through use of a warrant authorized by chapter 663, Oregon Laws 2003.

(5) A confession of judgement is used in the case of a client error overpayment. The Department will not file a confession of judgement while the client receives public assistance and will file one only if the client has refused to agree to or has defaulted on a repayment plan.

(6) The Department will not take collection action against a filing group while a member of the group is working under a JOBS Plus agreement.

Stat. Auth.: ORS 411.060, 411.660, 411.816  
Stats. Implemented: ORS 411.630, 411.635, 411.660  
Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2001, f. & cert. ef. 11-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-195-0601

### Intentional Program Violations; Defined

(1) In the child care programs, a provider commits an *intentional program violation* by intentionally making a false or misleading statement or misrepresenting, concealing or withholding information related to his or her request to be eligible for a child care payment under OAR 461-165-0180 or a claim for a child care payment.

(2) In the Food Stamp program, a person commits an *intentional program violation* by:

(a) Making a false or misleading statement or misrepresenting, concealing or withholding a fact relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp benefits; or

(b) Committing any act that constitutes a violation of the Food Stamp Act, the Food Stamp program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp benefits.

(3) In the TANF program, a person commits an *intentional program violation* by intentionally:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing or maintaining eligibility for TANF or increasing, or preventing a reduction in, the amount of the TANF grant; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing or maintaining eligibility for TANF or increasing, or preventing a reduction in, the amount of the TANF grant.

(4) In the TA-DVS program, a person commits an IPV by intentionally and without intimidation or coercion by an abuser:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program.

Stat. Auth.: ORS 411.060, 411.660, 411.816  
Stats. Implemented: ORS 411.630, 411.635, 411.660  
Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 8-2004, f. & cert. ef. 4-1-04

## 461-195-0621

### Intentional Program Violations; Penalties and Liability for Overpayments

(1) Disqualification penalties resulting from intentional program violations and other violations of law are listed in this rule. A person may be subject to disqualification for an IPV only if the person was advised of the disqualification penalties prior to committing the IPV. A disqualification established in another state continues in effect in Oregon.

(2) A child care provider found to have committed an intentional program violation (IPV) in the child care program is ineligible for payment for child care.

(3) In the Food Stamp and TANF programs, when an IPV is established against a person through a contested case hearing or a waiver of the right to hearing:

(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court.

(b) The client is disqualified from receiving benefits in the program in which the IPV was committed for a period of 12 calendar months for the first IPV, 24 calendar months for the second IPV and permanently for the third IPV.

(c) If the TANF grant is affected by the IPV penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined as if the client were receiving cash benefits without the reduction due to the penalty.

(4) In the TA-DVS program, when an IPV is established against a person through a contested case hearing or a waiver of the right to hearing:

(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court. The Department will seek repayment from the client only if seeking repayment would not place the client at greater risk of domestic violence.

(b) Subsequent applications for TA-DVS that meet the eligibility criteria set forth in OAR 461-135-1215 and 461-135-1225 must be staffed with the Department's central office.

(5) A person found by a federal, state or local court to have traded a controlled substance for food stamp coupons ("coupon" is defined in 7 U.S.C. 2012 (1999)) is disqualified from participation in the Food Stamp program as follows:

(a) For a period of two years upon the first occasion.

(b) Permanently upon the second occasion.

(6) A person found by a federal, state or local court to have traded firearms, ammunition, or explosives for coupons (as defined in 7 U.S.C. 2012 (1999)) is permanently disqualified from participation in the Food Stamp program.

(7) A person convicted of an act prohibited by 7 U.S.C. 2024(b) or (c) (1999) involving an item covered by those subsections and having a value of \$500 or more is permanently disqualified from participation in the Food Stamp program.

(8) A person convicted in state or federal court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states under programs that are funded under Title IV or XIX of the Social Security Act or the Food Stamp Act of 1977, or benefits in two or more states under the supplemental security income program under Title XVI of the Social Security Act is disqualified from receiving benefits in the program in which the fraud occurred for the 10-year period that begins on the date the individual is convicted.

(9) Once a disqualification period begins, it continues uninterrupted until completed, regardless of the eligibility of the disqualified person's filing group.

Stat. Auth.: ORS 411.060, 411.816, 418.100  
Stats. Implemented: ORS 411.060, 411.816, 418.100  
Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 8-2004, f. & cert. ef. 4-1-04

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**Adm. Order No.:** SSP 9-2004(Temp)

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04 thru 6-30-04

**Notice Publication Date:**

**Rules Amended:** 461-135-0730, 461-135-1130

**Subject:** Rule 461-135-0730 is being amended to add an enrollment cap for those QMB-SMB clients at the 121-135% FPL income level. We refer to these clients as SMF clients. The Federal term for them is QI-1s.

Rule 461-135-1130 is being amended to clarify that an Oregon Health Plan (OHP) disqualification is rescinded if the past due premium payment is received by the 20th of the month following the month for which the premium was billed.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

# ADMINISTRATIVE RULES

## 461-135-0730

### Specific Requirements; QMB

(1) The following requirements apply to QMB-BAS:

(a) To qualify for QMB-BAS, a person must be receiving Medicare hospital insurance under Part A. This includes people who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-BAS are not eligible to receive the full range of the Department's medical services. QMB-BAS benefits are limited to payments toward Medicare cost-sharing expenses. These expenses are:

(A) Medicare Part A and Part B premiums; and

(B) Medicare Part A and Part B deductibles and coinsurance up to the Department's fee schedule.

(2) The following requirements apply to QMB-DW:

(a) To qualify for QMB-DW program, a person must be eligible for Part A of Medicare as a qualified disabled worker under Section 1818(A) of the Social Security Act. These are people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed, but can continue to receive Part A of Medicare by paying a premium.

(b) QMB-DW clients are eligible only for payment of their premiums for Part A of Medicare. They are not eligible for MAA, MAF or OSIPM at the same time they are eligible for QMB benefits.

(3) The following requirements apply to QMB-SMB:

(a) To qualify for QMB-SMB, a person must be receiving Medicare hospital insurance under Part A. This includes people who must pay a monthly premium to receive coverage.

(b) Clients who qualify for QMB-SMB are not eligible to receive the full range of the Department's medical services. QMB-SMB benefits are limited to payment of Medicare Part B premiums.

(c) Clients who are institutionalized (reside in nursing facilities, ICF/MRs or hospitals) are not eligible for QMB-SMB if they have income equal to or greater than 120% of the Federal Poverty Level (FPL).

(d) The QMB-SMB program is subject to an enrollment cap effective April 1, 2004. Because of the cap, a person with income at or over 120% of the federal poverty level (see OAR 461-155-0295) may not receive QMB benefits on or after April 1, 2004 except as follows:

(A) A person receiving QMB-SMB on March 31, 2004 is affected by the cap only if the person's benefits are subsequently closed.

(B) A person eligible for the OSIPM program and the QMB-SMB program simultaneously is not affected by this subsection (d).

(C) A person found eligible for QMB-SMB based on a date of request for benefits prior to April 1, 2004, is affected by the cap only if the person's benefits are subsequently closed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 9-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04

## 461-135-1130

### Disqualification for Nonpayment of OHP Premium

(1) Disqualification for failure to pay a premium on time. Clients are disqualified from receiving OHP benefits for failure to pay an OHP premium required by OAR 461-135-1120. Clients who are disqualified are ineligible under the OHP-OPU program. The disqualification affects only non-exempt HPN clients applying for or receiving benefits under the OHP-OPU program as follows

(a) A non-exempt HPN applicant is disqualified if the applicant has an OHP premium arrearage.

(b) All non-exempt HPN recipients in a benefit group are disqualified if a required OHP premium for the group is not paid on time. The disqualification is rescinded if the past due premium payment is received by the 20th of the month following the month for which the premium was billed.

(c) A non-exempt HPN applicant is disqualified when joining an OHP filing group that includes a person with an OHP premium arrearage.

(2) Duration of the disqualification:

(a) A disqualification resulting from a premium arrearage incurred prior to February 1, 2003, remains in effect until the arrearage is paid or is waived in accordance with this rule.

(b) A disqualification resulting from a premium billed after February 1, 2003, remains in effect until the premium is paid and for a minimum of six months. The six-month disqualification period starts the first day of the month after the notice period ends.

(c) A disqualification resulting from a non-exempt HPN applicant joining an OHP filing group that includes a person with a premium arrearage remains in effect until the arrearage is paid unless the entire arrearage was incurred prior to February 1, 2003, and is waived in accordance with this rule.

(3) Only for premiums billed before February 1, 2003, an arrearage is canceled and there is no disqualification based on the arrearage if the applicant is otherwise eligible for OHP and any of the following is true

(a) The financial group has no income in the budget month and had no income in the prior two months.

(b) One of the following occurred either during the certification period in which the arrearage occurred or during the current budget month:

(A) A member of the filing group was the victim of a crime resulting in the loss of income or resources.

(B) A member of the filing group was the victim of domestic violence.

(C) The filing group was the victim of a natural disaster.

(D) A member of the filing group died.

(E) The filing group was homeless or lost their housing.

(c) The arrearage was incurred while the client was exempt from the requirement to pay a premium (see OAR 461-135-1120).

(d) The arrearage is a debt that has been stayed in a bankruptcy proceeding.

(e) The arrearage is over three years old.

(4) Any premium arrearage over three years old is canceled and no disqualification is based on the arrearage.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 414.025

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 22-2003(Temp), f. & cert. ef. 9-15-03 thru 12-31-03; SSP 31-2003(Temp) f. & cert. ef. 12-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 3-2004(Temp), f. & cert. ef. 2-19-04 thru 6-30-04; SSP 9-2004, f. & cert. ef. 4-1-04; SSP 9-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04

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**Adm. Order No.:** SSP 10-2004(Temp)

**Filed with Sec. of State:** 4-9-2004

**Certified to be Effective:** 4-9-04 thru 6-30-04

**Notice Publication Date:**

**Rules Amended:** 461-120-0125

**Subject:** Rule 461-120-0125 is being amended to comply with federal regulations. For the OSIP, GA, and GAM programs, individuals that are qualified noncitizens that have resided in the United States since August 22, 1996 are not eligible for SSI and therefore not eligible for OSIP, GA, or GAM. Victims of trafficking are only eligible for OSIP, OSIPM, GA and GAM for seven years from the date their status was granted. Additionally for OSIP, a qualified noncitizen who entered the United States on or after August 22, 1996 and has been in the qualified noncitizen status for at least five years must have forty qualifying quarters of coverage. For OSIPM, language was added to state that a qualified noncitizen who entered the United States on or after August 22, 1996 must have been in the qualified noncitizen status for at least five years.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-120-0125

### Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, a person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

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(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp program—a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) In the Food Stamp program — a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) The following people meet the alien status requirements:

(a) American Indians born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) Members of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the TANF program, the following people meet the alien status requirements:

(a) A person who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) Victims of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(4) In the BCCM, MAA, MAF, OHP, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she:

(a) Was a qualified non-citizen on or before August 22, 1996;

(b) Was a resident of the United States before August 22, 1996; became a qualified non-citizen after August 22, 1996; resided in the United States continuously for five years immediately prior to the date he or she became a qualified non-citizen; and did not leave the United States between August 22, 1996 and the date he or she became a qualified non-citizen; or

(c) Is a person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) Victims of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(5) In the GA and GAM programs, the following people meet the alien status requirement:

(a) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(b) A person who meets one of the alien status requirements listed in section (2) or (8) of this rule.

(6) In the OSIP program, the following people meet the alien status requirement:

(a) A qualified noncitizen who physically entered the United States on or after August 22, 1996, has had the qualified noncitizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (11) of this rule.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(c) A person receiving SSI benefits.

(d) A person who meets one of the alien status requirements listed in section (2), (8), or (11) of this rule.

(7) In the OSIPM program, the following people meet the alien status requirement:

(a) A qualified noncitizen who physically entered the United States before August 22, 1996.

(b) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified noncitizen.

(c) A qualified noncitizen who physically entered the United States on or after August 22, 1996 and has had the qualified noncitizen status for at least five years.

(d) An individual granted one of the following statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(e) A person receiving SSI benefits.

(f) A person who meets one of the alien status requirements listed in section (2), (8), or (11) of this rule.

(8) In all programs except TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. § 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of a person described in subsection (a) or (b) of this section.

(d) In the FS, OSIP or OSIPM program, a qualified non-citizen who meets the requirement in section (11) of this rule.

(9) Except as provided in sections (2), (4), (5), and (8) of this rule, non-citizens who entered the United States or were given qualified non-citizen status on or after August 22, 1996, are ineligible for the BCCM, GA, MAA, MAF, OHP, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(10) In the FS program, the following non-citizens meet the alien status requirement:

(a) A person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (c) of this section.

(f) A qualified non-citizen who is disabled, as defined in OAR 461-110-0110(4).

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(11) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS, OSIP, and OSIPM programs, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, meanstested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04

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**Adm. Order No.:** SSP 11-2004(Temp)

**Filed with Sec. of State:** 4-15-2004

**Certified to be Effective:** 4-15-04 thru 6-30-04

**Notice Publication Date:**

**Rules Amended:** 461-135-0700

**Subject:** Rule 461-135-0700 is being amended to clarify what constitutes an acceptable form of prima facie evidence regarding Title II verification. Specifically, the "VERSA" screen maintained by the Department, or a printed copy of the screen, is prima facie evidence that the information on the screen reflects the client's non-disability determination of Title II eligibility by the Social Security Administration.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

**461-135-0700**

**Specific Requirements; GA, GAM**

To be eligible for GA or GAM, a client must meet the following requirements:

(1) The client must be:

(a) An individual, childless or not living with his or her child, who is unmarried or married and not living with his or her spouse; or

(b) Married, living with his or her spouse, and childless or not living with his or her child, if

(A) Both meet the GA impairment criteria found in OAR 461-125-0510;

(B) One meets the impairment criteria of the GA program and the spouse is receiving disability benefits provided for under title II or title XVI of the Social Security Act;

(C) One meets the impairment criteria of the GA program and the spouse is deemed to be receiving disability benefits provided for under title II or title XVI of the Social Security Act; or

(D) One meets the impairment criteria for the GA program, the spouse is awaiting a disability determination under title II of the Social Security

Act, and the Department has determined the spouse meets the disability criteria of the Social Security Administration.

(2) The client must not be eligible for OSIP, OSIPM, except for clients found eligible under OAR 461-125-0370(1)(c), REF or TANF.

(3) Requirements regarding eligibility for disability benefits under Title II of the Social Security Act:

(a) A client described in section (1)(a) of this rule must have filed an application for disability benefits under the Social Security Act and must not meet the non-disability eligibility requirements under Title II of the Social Security Act.

(b) In the case of a couple described in section (1)(b) of this rule, the person or persons required by section (1)(b) to meet the GA impairment criteria must meet the requirements of subsection (a) of this section.

(c) The client must present evidence of having made the application for disability benefits under the Social Security Act required by this section.

(d) The "VERSA" screen maintained by the Department, or a printed copy of the screen, is prima facie evidence of the information provided on the screen.

(4) The client must:

(a) Complete the application process for Supplemental Security Income (SSI); cooperate with the Department in applying to the Social Security Administration for SSI; appeal all denials of SSI made below the Administrative Law Judge level; and attend all appointments designated by the Department relating to obtaining SSI.

(b) Sign an interim assistance agreement authorizing the Department to recover interim GA benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI payment or initial post-eligibility payment. The following provisions are considered part of the interim assistance agreement:

(A) Interim GA benefits include only those GA cash benefits paid during the period of time that the SSI benefit covers.

(B) For any month in which SSI is prorated, the Department can recover only a prorated amount of the interim GA cash benefit.

(C) If the Department cannot stop delivery of a GA benefit issued after the SSI payment is made, the GA payment will be included in the interim assistance to be reimbursed to the Department.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.710

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 4-1997(Temp), f. 4-30-97, cert. ef. 5-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1999, f. & cert. ef. 7-1-02, 11-30-99, cert. ef. 12-1-99; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 11-2004(Temp), f. & cert. ef. 4-15-04 thru 6-30-04

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

**Adm. Order No.:** SPD 4-2004

**Filed with Sec. of State:** 3-18-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 1-1-04

**Rules Amended:** 411-055-0000, 411-055-0003, 411-055-0005, 411-055-0010, 411-055-0015, 411-055-0019, 411-055-0024, 411-055-0029, 411-055-0034, 411-055-0039, 411-055-0045, 411-055-0051, 411-055-0061, 411-055-0081, 411-055-0085, 411-055-0091, 411-055-0101, 411-055-0111, 411-055-0115, 411-055-0121, 411-055-0131, 411-055-0141, 411-055-0151, 411-055-0161, 411-055-0170, 411-055-0180, 411-055-0190, 411-055-0200, 411-055-0210, 411-055-0220, 411-055-0230, 411-055-0240, 411-055-0250, 411-055-0260, 411-055-0270, 411-055-0280

**Subject:** The Residential Care Facilities rules, Chapter 411, Division 055, have been adopted for permanent amendment effective April 1, 2004. These rulemaking actions have been taken to: (a) clarify refund policy for facility closures and evictions; (b) include specific training topics under direct care staff qualifications; (c) remove redundant rule language under classification requirements; (d) align assessment and service planning, physical environment requirements for new construction, facility services and administrative management section with some of the assisted living standards; (e) clarify infection control procedures; (f) require staff to be up and awake when resi-

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dents are housed in more than one building; (g) require a minimum of two scheduled staff whenever a resident requires the assistance of two persons; (h) require that an initial assessment and service plan be completed prior to admission; (i) specify criteria for 30 days written notice and circumstances for emergency treatment; (j) adopt the assisted living Bill of Rights under residents' rights; (k) prohibit restraint use and to specify the procedures to utilize supportive devices; and (l) update definitions.

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

### 411-055-0000

#### Definitions

(1) "AAA" means a Type B Area Agency on Aging (AAA) that is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act that 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 to the Department regarding residential care facility 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 those resulting from hitting, pinching, striking or rough handling;

(b) Neglect that 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 that 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 that the resident cannot benefit from or appreciate; spending resident funds to acquire items for use in common areas when such purchase is not authorized by the resident; or the owner, administrator or employee becoming a resident's guardian, conservator, trustee or attorney in fact.

(e) Verbal abuse, including the use of oral, written or gestured communication to a resident, or to a visitor or staff about a resident, 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) Inappropriate use of restraints.

(3) "Activities of Daily Living (ADL)" are tasks usually performed in the course of a normal day in an individual's life that 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) "Full Assist" 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) "Administrator" means the person designated by the licensee as his/her agent for the daily operation and maintenance of the facility.

(5) "Applicant" means the person or persons who complete(s) 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.

(6) "Change of Condition" means that a decline or improvement has occurred with a person's physical, mental or behavioral health status. This includes both temporary and permanent changes.

(7) "Choice" means a resident has viable options that 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.

(8) "Classification" means a designation of license assigned to a facility based on the type, education, experience, training and number of the facility staff.

(9) "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.

(10) "Department of Human Services, Seniors and People with Disabilities" or "Department" 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.

(11) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by designing a structure that allows personal assistance to be provided in privacy and delivering services in a manner that shows courtesy and respect.

(12) "Direct Care Staff" means an employee who provides care services and assistance to residents including activities of daily living and medication tasks.

(13) "Directly Supervised" means that a qualified staff member maintains visual contact with the supervised person.

(14) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services and operations.

(15) "Exception" means a written variance from a regulation or provision of these rules.

(16) "First Payor" means policy of insurance, or benefits from Veterans Administration, Medicare, Medicaid, Long Term Care insurance or other payor source.

(17) "FPS" means the Office of Facilities Planning and Safety within the Department of Human Services, Health Services.

(18) "Home" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Home is also supported by the use of residential building materials and furnishings.

(19) "Incident of ownership" means:

(a) An ownership interest; or

(b) An indirect ownership interest; or

(c) A combination of direct and indirect ownership interest.

(20) "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.

(21) "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.

(22) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to the needs and preferences.

(23) "Licensee" means the individual, firm, company, partnership, association or corporation who applied for and was issued a license.

(24) "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.

(25) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (e.g., heart disease or diabetes). These diets include, but are not limited to, small frequent meals, no added salt, reduced or no added sugar and simple textural modifications. Medically complex diets are not included.

(26) "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.

(27) "Owner" means a person with an ownership interest.

(28) "Ownership interest" means the possession of equity in the capital, the stock, or the profits of an entity.

# ADMINISTRATIVE RULES

(29) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(30) "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.

(31) "Psychoactive Medications" means medications used to alter mood, level of anxiety, behavior or cognitive processes. This term includes antidepressants, antipsychotics, sedatives, hypnotics, and anti-anxiety medications.

(32) "Resident" means any person who is receiving room, board, care, and services in a residential care facility for compensation on a 24-hour basis.

(33) "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. Facility services address the residents' activities of daily living, health, and social needs in a way that promotes choice, dignity, individuality and independence.

(34) "Restraint" means any physical device that the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.

(35) "Service Area" means a geographic area within a fifteen (15) mile radius of the proposed site.

(36) "Service Plan" means a written plan for services developed by a service planning team and the resident, or the resident's legal representative, that 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.

(37) "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.

(38) "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.

(39) "Supportive Device" means a physical device that enables the resident to function at a higher level.

(40) "Underserved" means that 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; SDDS 1-2002, f. & cert. ef. 4-23-02; SDDS 6-2002, f. & cert. ef. 8-1-02; SPD 1-2004 f. & cert. ef. 2-4-04; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 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:

(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 targeted 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, completed by a third party professional, that 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 that 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 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 & 443

Stats. Implemented: ORS 443.415

Hist.: SDDS 1-2002, f. & cert. ef. 4-23-02; SPD 1-2004 f. & cert. ef. 2-4-04; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0005

### License

(1) Licensing Standard

(a) No person, entity, or governmental unit acting individually or jointly with any other person, entity, or governmental unit will establish, maintain, conduct, or operate a residential care facility, use the term residential care facility, or hold itself out as being a residential care facility or as providing residential care services, without being duly licensed as such.

(b) No residential care facility will be operated in combination with a nursing facility, hospital, assisted living, or other type of congregate or retirement facility unless licensed, maintained, and operated as a separate and distinct part.

(c) A license will not be required:

(A) For a building, complex, or distinct part thereof, where six or more individuals reside where activities of daily living assistance and health services are not offered or provided by the facility; and

(B) Facility representatives and written materials do not purport that such care and services are offered or provided by the facility; and

(C) Prospective and actual tenants have no expectations that such care and services are offered or will be provided by the facility.

(2) The Assistant Director of the Department or his/her designee will determine whether a residential care facility license is required in cases where the definition of a facility's operations is in dispute.

(3) NOT TRANSFERABLE. Each license is issued only for the premises and persons named in the application and is not transferable or assignable.

(4) SEPARATE BUILDINGS. Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same management. Distinct staffing plans are required for each building.

(5) LICENSE CLASSIFICATION. Appropriate classification must be requested by the facility and approved by the Department. Applicants must submit information and supporting documentation regarding qualifications and training of staff as required by the Department.

(6) IDENTIFICATION. Every facility will have distinct identification or name and will notify the Department of any intention to change such identification.

(7) DESCRIPTIVE TITLE. A residential care facility licensed by the Department will neither assume a descriptive title nor be held under any descriptive title other than what is permitted within the scope of its license.

(8) REPORTING OF CHANGES. Prior to change of ownership or management company, each residential care facility will provide written

# ADMINISTRATIVE RULES

notification to the Department as soon as possible, but no later than thirty calendar days prior to expected change.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0010

### Pre-Application Requirements

(1) Prior to application for a building permit, a prospective applicant with intent to build or operate a residential care facility must submit to the Department a letter of intent that must include the following:

- (a) Identification of the city, the intended number of units and maximum capacity, and intended payor sources;
- (b) An independent market study conducted within the twelve months prior to the submission of the letter of intent to the Department; and
- (c) A pro forma, that includes projected revenues, expenditures and resident days by month, for the first twelve months of operation of the facility and a cash flow analysis that demonstrates the ability to cover any cash flow problems identified by the pro forma.

(2) **REQUIRED FEES.** Each application for a residential care facility license will be accompanied by the required non-refundable fee.

(3) **NEW APPLICATIONS.** New applicants must meet all requirements in section (1) of this rule, including all requirements for Fire Marshal inspection, building inspection, construction plan review and payment of fees required by the Oregon Health Services.

#### (4) Submission of Building Plans:

(a) After the letter of intent has been submitted to the Department, one set of building plans and specifications will be submitted to Health Services, Facilities Planning and Safety (FPS). Facilities Planning and Safety will review the plans for compliance with the building requirements set forth in these rules.

(b) Building plans must be submitted to FPS:

- (A) Prior to beginning construction of any new building;
- (B) Prior to beginning construction of any addition to an existing building;
- (C) Prior to beginning any remodeling, modification, or conversion of an existing building that requires a building permit; or
- (D) Subsequent to application for an initial license of a facility not previously licensed under this rule.

(c) Plans will not be considered to have been received by FPS if a letter of intent has not been received by the Department.

(d) Plans will comply with the current edition of the Oregon Structural Specialty Code and Oregon Fire Code as required for the occupancy classification and construction type.

(e) Plans will be drawn to a scale of one-fourth inch or one-eighth inch to the foot, and will specify the date when construction, modification or conversion is expected to be completed.

(f) Construction containing 4,000 square feet or more will be prepared by, and bear the stamp of, an Oregon licensed architect or engineer.

(g) The applicant will respond in writing to FPS for all findings of non-compliance resulting from construction plans and construction onsite reviews. All findings of non-compliance will be the basis of action on the part of the applicant to ensure compliance with the rules. The applicant will send a copy of the response(s) to the Department.

#### (5) Application Requirements:

(a) At the same time building plans are submitted to FPS, an application for a license accompanied by the required fee will be made to the Department on forms provided by the Department. The application must be signed and dated by the applicant's legally authorized representative, and will contain all information requested by the Department including, but not limited to, the following:

(A) The name, physical location address, mailing address, and telephone and fax numbers of the facility;

(B) Number of resident units and the maximum facility capacity;

(C) The name and address of any and each person having an incident of ownership in the facility of ten percent or more;

(D) The name and address of:

(i) Each officer and director if organized as a corporation;

(ii) Each partner if organized as a partnership;

(iii) Each member of a limited liability company; and

(iv) Each member of the governing body if the facility is government owned.

(E) If applicable, the name and address of the management company, including the name(s) of the management company's legally authorized

representative(s), who has been designated by the applicant as responsible for the ongoing operations of the facility;

(F) The identity of any individual identified in subsections (5)(a)(C), (5)(a)(D), and (5)(a)(E) of this rule who has ever been convicted of a crime associated with the operation of a long-term, community-based, or health care facility or agency under federal law or the law of any state;

(G) The identity of all states where the individuals identified in subsection (5)(a)(C), (5)(a)(D), and (5)(a)(E) of this rule have currently or previously been licensed as owners(s) or operator(s) of a long-term, community-based, or health care facility or agency under the laws of any state;

(H) The identity of any facility, currently or previously owned or operated by any individual identified in subsection (5)(a)(C), (5)(a)(D), and (5)(a)(E) of this rule that had its license denied or revoked or received notice of the same under the laws of any state.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0015

### Licensing Process

(1) At least 60 days prior to anticipated licensure the applicant must submit to the Department a copy of the facility's written rental agreements, disclosure information, and facility policies and procedures, ensuring that the facility's administrative, personnel and resident care operations are conducted in compliance with these rules.

(2) At least 30 days prior to anticipated licensure the applicant must submit the following on Department designated forms:

(a) A completed and signed Administrator Reference Sheet that reflects the qualifications and training of the individual designated as facility administrator, including the Criminal History Release Authorization;

(b) A completed and signed Application Information Attestation that confirms the accuracy of all information offered on the original license application; and

(c) A completed and signed Project Substantial Completion Notice that attests substantial completion of the building project and requests that an onsite licensing inspection be scheduled. A copy of this form will be submitted to FPS.

(3) At least two working days prior to the scheduled onsite licensing inspection of the facility the applicant must submit to the Department and FPS a completed and signed Project Completion/Inspection Checklist (on a Department designated form) that confirms that the building project is complete and fully in compliance with these rules. The scheduled, onsite licensing inspection will not be conducted until this document has been received by both FPS and the Department.

(4) Should the scheduled, onsite licensing inspection reveal that the building is not in compliance with these rules, as attested to on the Project Completion/Inspection Checklist, the onsite licensing inspection may be rescheduled at the Department's convenience.

(5) Applicant must submit to the Department and FPS, a copy of the Certificate of Occupancy issued by the Building Codes Agency having jurisdiction that indicates the intended occupancy classification and construction type.

(6) Applicant will not admit any resident to the facility prior to receiving a written confirmation of licensure from the Department.

(7) **Descriptive Titles.** A residential care facility licensed by the Department will neither assume a descriptive title nor be held under any descriptive title other than what is permitted within the scope of its license.

(8) **Demonstrated Capability and Performance History:**

(a) If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, the Department may cause initial licensure to be delayed, or may deny or revoke the license.

(b) Any applicant or person with a controlling interest in a long-term, community-based, or health care facility or agency will be considered responsible for acts occurring during and relating to, the operation of such facility or agency for the purpose of licensing.

(c) The Department may consider the background and operating history of the applicant(s) and each person with a controlling ownership interest when determining whether to issue a license.

(d) When an application for initial licensure is made by an applicant(s) who owns or operates other licensed facilities in Oregon, the Department may deny the license if the applicant's existing facility(ies) are not, or have not been, in substantial compliance with the Oregon Administrative Rules.

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(9) No facility will be operated or maintained in combination with a nursing facility, hospital, assisted living facility or retirement facility unless licensed, maintained and operated as a separate and distinct part.

(10) No residential care facility will admit individuals whose care needs exceed the classification on its license without prior written consent of the Department.

(11) The license will be posted in public view in the facility and be available for inspection at all times.

(12) License Issued:

(a) The Department will issue a license to an applicant found to be in compliance with these rules. The license will be in effect for two years from the date issued unless revoked or suspended.

(b) No residential care facility license is transferable or applicable to any location, facility, management agent or ownership other than that indicated on the application and license.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0019

### License Expiration, Termination of Operation, License Return

(1) Unless revoked or terminated earlier or issued for a shorter specified period, each license to operate a residential care facility will expire two years following the date of issuance.

(2) If facility operation is discontinued for any reason, the license will be considered to have been terminated.

(3) Each license will be considered void immediately if the operation is discontinued by voluntary action of the licensee or if there is a change in ownership.

(4) The licensee will notify the Department 90 days prior to a voluntary closure of a facility. The licensee will notify the Department immediately of a sale or transfer of ownership and give residents, families, and case managers for Department clients 30 days' written notice except in circumstances where undue delay might jeopardize the health, safety or well-being of residents.

(5) The license will be returned to the Department immediately upon suspension or revocation of the license or when operation is discontinued.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0024

### Conditions on License

(1) The Department may attach conditions to the license that limit, restrict or specify other criteria for operation of the facility. The conditions will be posted with the license.

(2) A condition may be attached to a license to limit the facility to the type of care it may provide.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0029

### Renewal of License

(1) A license is renewable upon submission of an application to the Department and the payment of the required non-refundable fee, except that no fee will be required of a governmental owned facility.

(2) Filing of an application for renewal before the date of expiration extends the effective date of expiration until the Department takes final action upon such application. If the renewal application and fee are not submitted prior to the expiration date, the facility will be treated as an unlicensed facility subject to Civil Penalties (OAR 411-055-0250).

(3) The Department will refuse to renew a license if the facility is not in substantial compliance with these rules, or if the State Fire Marshal or the authorized representative has given notice of noncompliance pursuant to ORS 479.220.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0034

### Exceptions and Waivers

(1) The Department of Human Services may grant exceptions to these OAR chapter 411, division 055 Rules as provided herein. Exceptions will not be granted that are determined in the discretion of the Department to be

detrimental to the residents. The facility seeking an exception will submit to the Department, in writing, reasons for the exception request.

(2) No exception will be granted from a regulation or provision of these rules pertaining to the monitoring of the facility, resident rights, and inspection of the public files.

(3) Exceptions granted by the Department will be in writing and be reviewed periodically. Exceptions and waivers may be rescinded at any time if the Department determines that continuance of the waiver has a potential adverse impact on resident well-being, privacy, or dignity. The Department will send written notice to the provider with reason(s) why a waiver is denied or rescinded.

(4) Exceptions will not be granted by the Department without prior consultation with other agencies involved, if applicable.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0150; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0039

### Disclosure Residency Agreement

(1) The facility must provide a Department-designated disclosure statement to each person who requests information about a facility. The residency agreement/contract and the following disclosure information are required to be provided to all potential residents prior to move-in. All disclosure information and residency agreements/contracts must be written in compliance with these administrative rules. The residency agreement and disclosure statement must be reviewed by the Department prior to distribution and will include the following:

(a) Terms of occupancy;

(b) Payment provisions, including the following:

(A) Basic rental rate, and what it includes;

(B) Additional services costs;

(C) Billing method, payment system and due dates;

(D) Deposits/fees, if applicable;

(e) Policy for rate changes including:

(A) Thirty days prior written notice of any facility-wide increases, additions or changes;

(B) Immediate written notice at the time the facility determines a resident's service rates will increase due to increased service provision as negotiated in a service plan;

(C) Refund/proration conditions;

(D) A description of the scope of services available according to OAR 411-055-0061;

(E) A description of the service planning process and the relationship between the service plan and cost of services;

(F) Additional available services;

(G) The philosophy of how health care and ADL services are provided to the resident;

(H) Residents' Rights;

(I) The facility system for packaging medications and the resident's right to choose a pharmacy;

(J) Criteria, actions, circumstances or conditions that may result in a move, transfer or discharge notification and the resident's rights pertaining to notification of a move.

(K) Notice that the Department has the authority to examine resident's records as part of the evaluation of the facility; and

(L) Staffing plan.

(2) The facility will not include any provision in a contract/residency agreement or disclosure statement that is in conflict with these rules and will not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence.

(3) The facility will retain a copy of the signed and dated contract/residency agreement and provide copies to the resident or their designated representative; and

(4) The facility will give residents thirty days prior written notice of any additions or changes to the contract/residency agreement. Changes to the contract/residency agreement and disclosure information must be faxed or mailed to the Department prior to implementation.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04



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## 411-055-0045

### Refunds

(1) If a resident dies, the provider must not require payment for more than 15 days, or the time specified in the provider contract, whichever is less, after the date of the resident's death.

(2) If a resident leaves for medical reasons and the resident or their representative indicates the intent not to return, the provider must not charge the resident for more than 15 days or the time specified in the admission agreement, whichever is less, after the date the provider receives notification from the resident or their representative.

(3) The provider may charge a reasonable fee for storage of the resident's belongings beyond the 15 days if the contract/admission agreement includes fees for storage.

(4) If a resident dies or leaves a residential care facility due to substantiated neglect, substantiated abuse at the facility, or due to conditions of imminent danger of life, health or safety, the provider will not charge the resident beyond the resident's last day in the facility.

(5) If the facility closes, or has given written notice for the resident to leave, the licensee waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.

(6) The provider will refund any advance payments within 30 days after the resident leaves the residential care facility.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.415

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0051

### Qualifications of Administrators and Staff

#### (1) ADMINISTRATOR QUALIFICATIONS:

(a) Be at least 21 years of age, and possess a high school diploma or equivalent; and have at least two years professional or management experience that has occurred within the last five years, in a health or social service related field or program, or have a combination of experience and education; or

(b) Possess an accredited Bachelors Degree in a health or social service related field.

#### (2) ADMINISTRATOR REQUIREMENTS:

(a) Facility administrators hired on or after January 1, 2003, must meet the following training requirements prior to employment:

(A) Complete a Department approved classroom administrator training program of at least 40 hours; or

(B) Complete a Department approved administrator training program that includes both a classroom training of less than 40 hours and a Department approved 40-hour internship program with a Department approved administrator.

(b) Effective August 1, 2002 administrators who transfer from one facility to another must complete an approved administrator training within six months of hire if the administrator has not completed (2)(a)(A) or (2)(a)(B) of this rule.

(A) Administrators must have 20 hours of documented Department approved continuing education credits each year. The approved administrator training program fulfills the 20 hour continuing education requirement for the first year.

(B) Individuals who have met Department approved training program requirements but have been absent from an administrator position for five years or less, do not have to re-take the administrator training, but must provide evidence of 20 hours of continuing education annually.

(c) Comply with OAR chapter 410, division 007, Criminal History Clearance and OAR chapter 333, division 019, Health Services Tuberculosis testing.

(d) The Department must be notified within five working days of an administrator's departure or employment.

#### (3) ADMINISTRATOR TRAINING COURSE STANDARDS

(a) The Department will approve, in writing, the training curriculum for the Administrator Training. The curriculum will be re-evaluated by the Department at periodic intervals.

(b) Individuals, companies or organizations providing the Administrator Training Course will be approved by the Department. The Department may withdraw approval under the following conditions:

(A) Failure to follow the Department approved curriculum;

(B) The trainer demonstrates lack of competency in training;

(C) There is insufficient frequency of training to meet the need; or

(D) Facilities owned or operated by the training entity have a pattern of substantial non-compliance with these rules.

(c) Approved training will be open and available to all applicants and will not be used to orient trainees to a specific company's management or operating procedures.

(4) QUALIFICATIONS OF STAFF GIVING DIRECT CARE. All direct care staff will meet the following criteria:

(a) Be at least 18 years of age. Persons under 18 may be employed if they meet all work permit requirements and are directly supervised at all times;

(b) Comply with OAR chapter 410, division 007, Criminal History Clearance and OAR chapter 333, division 019, Health Services Tuberculosis requirements.

(c) Be literate and capable of understanding written and oral orders; communicate in English with residents, physician, case manager, and appropriate others; and be able to respond appropriately to emergency situations at all times;

(d) Have a clear understanding of job responsibilities, knowledge of residents' service plans and be able to provide care specified for each resident's needs;

(e) Have completed a minimum of six hours job-related pre-service orientation that will include review of the philosophy of residential care, review of residents' unique needs, use of the care plan, nurse delegation, facility fire evacuation plan and instruction in universal precautions;

(f) Have training in the abdominal thrust, CPR and basic first aid training are recommended but not required;

(g) Complete 12 hours in-service training annually; and

(h) Be tested for tuberculosis and document test results.

(5) QUALIFICATIONS OF NON-DIRECT CARE STAFF. All non-direct care staff will meet the following criteria:

(a) Be at least 18 years of age; or if under 18 years of age, will meet all work permit requirements and be directly supervised at all times;

(b) Satisfy a Criminal Record Clearance under OAR chapter 410, division 007, and sign a Criminal Record Authorization, form SDS 303. The criminal record clearance may require a fingerprint check at the discretion of the Division. Non-direct care staff may not have been convicted of an offense as provided in OAR 410-007.

(c) Have a clear understanding of job responsibilities;

(d) Have completed a minimum of four hours job related pre-service training that will include a review of the philosophy of residential care, fire safety and fire evacuation plan, emergency procedures and instructions in universal precautions.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0061

### Classification of Residential Care Facility

(1) A Class I or Class II license be issued by the Department based upon the qualifications and number of staff in the residential care facility, and compliance with the requirements of OAR chapter 411, division 055.

(a) A Class I license is required for a facility that provides basic residential care services to people who require only assistance in activities of daily living. Class I licenses cannot serve persons who require full assistance in any activity of daily living.

(b) A Class II license is required for a facility that provides basic residential care services to people who may require full assistance in activities of daily living; and, in addition, serve people who have an increase in medical acuity. A Class II residential care facility will have:

(A) Regularly scheduled licensed nursing available either on staff or through a facility contract; or

(B) Regularly scheduled licensed practical nursing (an LPN) available either on staff or through a contract. In addition a Registered Nurse must be available to provide nurse delegation and LPN supervision;

(2) Class I providers will admit only residents with impairment levels within the classification level of the facility.

(3) A Class I facility may retain a resident who requires full assistance in an ADL if the provider establishes the following criteria are met:

(a) The provider is able to provide appropriate care of the resident in addition to the care of the other residents;

(b) Staff are available to meet the additional care requirements of all residents in the facility; and

(c) The fire evacuation standard for all residents and staff members can be met.

(4) A licensee may request a change in license classification at any time. The request will be in writing. The Department will respond within 60 days of the request.

Stat. Auth.: ORS 443.410

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 443.410  
Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0081

### Fire and Life Safety

(1) **BUILDING AND FIRE CODES.** Each residential care facility will meet the requirements of the **Oregon Structural Specialty Code and the Oregon Fire Code** in effect at the time of original licensure and as required by Building and Fire Code Agencies having jurisdiction. When a change in use and building code occupancy classification occurs, licensure approval will be contingent on meeting the Oregon Structural Specialty Code in effect at the time of such change.

(2) **EMERGENCY PROCEDURE AND DISASTER PLAN.** A written procedure and disaster plan for meeting all emergencies and disasters will be approved by the Fire Authority or authorized representative. The plan will be immediately available to the administrator and employees. The plan will be kept up to date and will include:

(a) Emergency instructions for employees in the event of fire, explosion, missing person, accident, or other emergency;

(b) The telephone numbers of the local fire departments, police departments, the administrator, the administrator's designee, and other persons to be contacted in emergencies; and

(c) Instructions for the evacuation of residents and employees in the event of a fire, explosion, or other emergency.

(3) **COMBUSTIBLE AND HAZARDOUS MATERIALS.** Flammable and combustible liquids and hazardous materials will be safely and properly stored in original, properly labeled containers in areas inaccessible to residents in accordance with the Oregon Fire Code.

#### (4) SAFETY EVACUATION CAPABILITY:

(a) The evacuation capability of the residents and staff is a function of both the ability of the residents to evacuate and the assistance provided by the staff. Facilities classified as impractical or slow will meet one of the following evacuation levels:

(A) **SR-1 IMPRACTICAL OR I-2.** A group that cannot reliably move to a point of safety in a timely manner, with evacuation drill times in excess of 13 minutes, even with staff assistance. Facilities specializing in the care of persons with Alzheimer's Disease or other dementia are within this category due to the diminished ability of residents to respond appropriately to an emergency; or

(B) **SR-2 SLOW.** A group that can move to a point of safety in a timely manner with some assistance and have evacuation drill times over 3 minutes, but not in excess of 13 minutes;

(b) All existing facilities will be subject to review and may be reclassified into one of these two classification groups. Waivers will be given only with the approval of the Fire Authority having jurisdiction.

(c) All two or more story RCF's with a capacity of more than 16 capacity that submit final construction documents and receive plans of approval on or after April 1, 2004 will be constructed to meet SR-1 Standards, or if less than an SR-2, will include a minimum of one 2-hour area separation wall constructed to standards as defined in the OSSC.

(5) **APPROVED DOCUMENTATION OF EVACUATION CAPABILITY.** The adult residential care facility will document on forms of the Fire Authority the evacuation capability of the residents, as specified in **NFPA 101**, Chapter 32, 2000 Edition.

(6) **FIRE DRILLS.** Unannounced fire drills will be conducted and recorded every other month at different times of the day, evening, and night shifts. Fire and life safety instruction to staff will be provided on alternate months. The Fire Authority may develop an alternative fire drill plan for the facility. Any such plan will be submitted to the Department.

(7) **EVACUATION ASSISTANCE.** Staff will provide fire evacuation assistance to residents from the building to a designated point of safety outside the building, through a horizontal exit (2 hour minimum fire wall) or other areas approved by the Fire Authority having jurisdiction.

(8) **INABILITY TO EVACUATE.** When the facility is unable to meet the applicable evacuation level, the facility will make an immediate effort to make changes to insure the evacuation standard is met. Changes will include, but are not limited to, increasing staff levels, changing staff assignments, requesting change in resident rooms and arranging for special equipment. If the facility fails to meet the applicable evacuation level, the facility will prepare to transfer or discharge the resident(s) in accordance with OAR 411-055-0190.

(9) **ALTERNATE EXIT ROUTES.** Alternate exit routes will be used during fire drills to react to varying potential fire origin points.

(10) **FIRE ALARMS OR SMOKE DETECTORS.** Fire alarms, smoke detectors, or other approved signal devices will be set off during each fire

drill. Fire detection and protection equipment, including visual signals with alarms for hearing-impaired residents, will be inspected and maintained in accordance with the Oregon Fire Code and the manufacturer's instructions.

(11) **FIRE DRILL RECORDS.** A written fire drill record will be kept to include the date and time of day, location of simulated fire origin, the escape route used, comments relating to residents who resisted or failed to participate in the drills, whether the alarm system was operative at the time of the drill and evacuation time period needed. Records will be maintained for a minimum of 24 months.

(12) **SAFETY PROGRAM.** A safety program will be developed and implemented to avoid hazards to residents, such as dangerous substances, sharp objects, unprotected electrical outlets, slippery floors or stairs, exposed heating devices, broken glass, water temperatures and fire prevention.

(13) **TRAINING FOR RESIDENTS.** Residents will be instructed about the facility's procedures.

(a) Each resident will be instructed within 24 hours of admission and re-instructed annually in general safety procedures, evacuation methods, responsibilities during fire drills, designated meeting places outside the building or within the fire safe area in the event of an actual fire, and smoking safety procedures if residents smoke in the building. This requirement does not apply to residents whose mental capability does not allow for following such instruction; and

(b) A written record of fire safety training, including content of the training sessions and the residents attending, will be kept.

(14) **UNOBSTRUCTED EGRESS.** Stairways, halls, doorways, passageways, and exits from rooms and from the building will be unobstructed.

(15) **SMOKING.** Resident's ability to smoke safely will be evaluated and addressed in the service plan. The rights of non-smoking residents will be given priority in settling smoking disputes. Smoking within the building common areas or shared space will be conducted in a designated location.

(16) **FIRST-AID SUPPLIES.** First-aid supplies will be provided and kept in a locked area, properly labeled, and readily accessible.

(17) **FIRE EXTINGUISHER(S).** The provider will provide and maintain one or more 2A:10B:C fire extinguisher on each floor in accordance with the Oregon Fire Code.

(18) Covers, grates, or screens of wall heaters and associated heating elements will not exceed 120 degrees Fahrenheit when they are installed in locations that are subject to incidental contact by people or with combustible material.

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

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0050; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0085

### Emergency Notification

**IMMEDIATE NOTIFICATION.** In the case of serious communicable disease, serious illness or injury, suicide attempt, death, fire, missing person or immediate threat to health and safety, the Administrator or designee will immediately notify:

(1) Next of kin, guardian, conservator, or designated other;

(2) The Department or authorized representative; and

(3) Medical, fire, or law enforcement agency, when applicable.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0091

### Physical Environment Generally

(1) **GOOD REPAIR AND CLEANLINESS:**

(a) All interior and exterior materials and surfaces (e.g., floors, walls, roofs, ceilings, windows, and furniture) and all equipment necessary for the health, safety and comfort of the resident will be kept clean and in good repair;

(b) Measures will be taken to prevent the entry of rodents, flies, mosquitoes, and other insects; and

(c) The facility grounds will be kept orderly and free of litter and refuse.

(2) **ENTRANCE.** At least one primary grade level entrance to the building will be arranged to be fully accessible to disabled persons.

(3) **ACCESSIBILITY FOR PERSONS WITH DISABILITIES.**

(a) Facilities licensed, constructed or renovated after April 1, 2004 will meet accessibility requirements of the Americans With Disabilities Act

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under Title III as a public accommodation and the Oregon Structural Specialty Code, as enforced by the Oregon Building Codes Division and local jurisdictions having authority.

(b) Facilities that submit final construction documents and receive plans approval on or after April 1, 2004 will not include bedrooms or other resident use spaces on floors above or below the main entry floor unless an elevator meeting accessibility requirements for persons with disabilities is provided.

(4) STORAGE. The facility will include sufficient storage for the following:

(a) Locked storage for all poisons, chemicals, rodenticides, and other toxic materials. All materials will be properly labeled;

(b) Locked storage for any flammable and combustible materials. Materials will be properly labeled and stored in their original containers;

(c) All maintenance equipment used and stored at the facility, including yard maintenance tools; and

(d) Garbage stored in covered refuse containers.

(5) OUTDOOR RECREATION AREA. An accessible outdoor recreation area is required and will be made available to all residents and have lighting equal to a minimum of five footcandles. Alzheimer's Indorsed Facilities will be located on the ground floor with direct access to a secure outdoor recreation area.

(6) CORRIDORS.

(a) For facilities initially licensed on or after January 1, 1994, all resident use areas and resident units will be accessible through temperature controlled common corridors with a minimum width of 36 inches except that 48 inches minimum will be provided at accessible bedrooms. Resident use corridors exceeding 20 feet will have a minimum width of 72 inches.

(b) Corridors in facilities that submit final construction documents and receive plans approval on or after April 1, 2004 will not exceed 150 feet in length from any resident bedroom to a seating or other common area.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.450

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0040; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0101

### Administrative Area

An office or designated area(s), separate from resident facilities, will be provided and include the following:

(1) Secure space for the confidential storage of all resident and business records. All records will be kept for a period of three years. It will also include space for menus and other dietary records unless they are provided in conjunction with kitchen facilities;

(2) Space and facilities for staff charting; and

(3) Nurse call station, door alarm annunciator, telephone, and fire alarm panels where provided or required by **OSSC** and **Oregon Fire Code**.

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

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.450

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0111

### Resident Use Areas

(1) GENERAL:

(a) Resident units may be comprised of individual apartments with private bathroom and kitchenette facilities or be limited to a bedroom only, with bathroom facilities centrally located off common corridors. While these rules do not mandate aesthetic design, it is recommended designers attempt to emphasize a residential appearance while retaining the features required of such a facility to support special resident needs as outlined in this rule.

(b) For bedroom units, the door will exit to a common hallway and residents will not enter a room through another resident's bedroom.

(2) RESIDENT UNITS.

(a) DIMENSIONS:

(A) For facilities initially licensed on or after January 1, 1994, each resident unit will be limited to two residents;

(B) For facilities licensed prior to January 1, 1994, resident units will include a minimum of 60 square feet per resident and allow for a minimum of 3 feet between beds;

(C) For facilities initially licensed on or after January 1, 1994, resident units will include a minimum of 80 square feet per resident exclusive of closets, vestibules, and bathroom facilities and allow for a minimum of 3 feet between beds;

(D) In facilities that submitted final construction documents and received plans approval on or after April 1, 2004, 100% of resident bed-

room capacity will be accessible for persons with disabilities, meeting requirements of the OSSC, FHA, and the Americans With Disabilities Act.

(b) WARDROBE CLOSET. A separate wardrobe closet will be provided for each resident's clothing and personal belongings. Resident wardrobe and storage space will total a minimum volume of 64 cubic feet for each resident and be accessible to persons with disabilities when located within an accessible bedroom as required by OAR 411-055-0111(2)(a)(D).

(c) WINDOWS:

(A) All units initially licensed on or after January 1, 1994, will have an escape window that opens directly into a public street, public alley, yard or exit court except for Alzheimer's Care Units constructed to an SR-1 or I-2 occupancy classification. This window section will be operable from the inside to provide a full clear opening without the use of separate tools and will comply with the specifications of an escape window when required by the OSSC. Windows will not be below grade;

(B) Each resident's bedroom will have an exterior window that has an area at least one-tenth of the floor area of the room. Facilities constructed on or after January 1, 1994, will also have a nominal maximum windowsill height of 38 inches. Operable units will be designed to prevent accidental falls when sill heights are lower than 36 inches and above the first floor;

(C) Bedroom windows will be equipped with curtains or blinds for privacy and control of sunlight.

(d) RESIDENT UNIT BATHROOMS. If resident bathrooms are provided within a resident unit, they will include a toilet, hand wash sink, mirror and towel bar. Shower stalls, if provided, will comply with subsection (3)(a) of this rule. The bathrooms must be designed for persons with disabilities

(e) UNIT KITCHENS. If cooking facilities are provided in resident units, cooking appliances will be readily removable or disconnect able and the facility will have and carry out a written safety policy regarding resident use and nonuse.

(3) ANCILLARY AND COMMON USE AREAS:

(a) BATHING FACILITIES. Centralized bathing fixtures will be provided at a minimum ratio of one tub or shower for each 10 residents not served by fixtures within their own unit. At least one centralized shower or tub will be designed for disabled access without substantial lifting by staff. Curbless showers of nominal size or tubs equipped for horizontal transfer or hydraulic lift are acceptable. All bathing facilities must meet ADA and OSSC requirements.

(A) Grab bars will be provided in all resident showers;

(B) Showerheads will be hand holdable and mounted on a flexible supply hose unless the resident requests otherwise;

(C) Bathing areas will be located or screened to allow for resident privacy while bathing and provide space for drying and an attendant.

(b) TOILET FACILITIES. In facilities licensed prior to January 1, 1994, toilets and hand wash sinks will be conveniently located for resident use at a minimum ratio of one to eight residents for all residents not served by these fixtures in their own unit.

(A) In facilities licensed on or after January 1, 1994, toilets and hand wash sinks will be located for resident use at a minimum ratio of one to six residents for all residents not served by these fixtures in their own unit;

(B) For facilities that submit final construction documents and receive plans approval on or after April 1, 2004 toilet facilities for all

of the licensed resident capacity will be accessible to persons with disabilities in accordance with the Americans With Disabilities Act and the Oregon Structural Specialty Code as enforced by the Oregon Building Codes Division or local jurisdictions having authority. For conversions of existing structures that receive plans approval on or after April 1, 2004, toilet facilities serving at least half of the licensed resident capacity will be accessible to persons with disabilities in accordance with the Americans with Disabilities Act and the Oregon Structural Specialty Code;

(C) At least one separate toilet and hand wash lavatory will be provided for staff and visitor use in facilities licensed for more than 16 on or after January 1, 1994;

(D) Mirrors will be installed in all toilet rooms at a height usable by the resident except when a resident's care plan indicates mirror availability as contra positive.

(c) DINING ROOM:

(A) In facilities licensed prior to January 1, 1994, dining space will be provided to seat at least half of the residents with a minimum area of 15 square feet per resident. When double shifting is employed, the facility will have policies and equipment to assure that food is served fresh and at proper temperature for both servings;

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(B) In facilities licensed on or after April 1, 2004, dining space will be provided to seat all residents with a minimum area of 22 square feet per resident, exclusive of serving facilities and required exit pathways.

(d) **LOUNGE AND ACTIVITY AREAS.** The facility will include lounge and activity area(s) for social and recreational use totaling a minimum of 15 square feet per resident.

(e) **SMOKING AREA.** If there is a designated smoking area, it will be separate from other common areas.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.450

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0115

### Support Service Areas

(1) **LAUNDRY AND SOILED STORAGE.** Laundry facilities may be located to allow for both resident and staff use when a time schedule for resident use is provided and equipment is of residential type. Facilities will be separate from food preparation and other resident use areas. When the primary laundry is not in the building or suitable for resident use, separate resident laundry facilities will be provided in all facilities licensed on or after January 1, 1994. The following will be included in the primary laundry:

(a) Locked storage for chemicals and equipment;

(b) Separate area or room and containers that assure separate storage and handling of soiled linens. Arrangement will preclude potential for contamination of clean linens and clothing. Incontinent linen and clothing will be stored and processed separately from other soiled linen and clothing. Facilities that submit final construction documents and receive plans approval on or after April 1, 2004, will provide for a one-way flow of linens from the soiled storage room or area to the washing, drying, folding and clean linen storage;

(c) Processing space and equipment to handle laundry processing needs. Washers will have a minimum rinse temperature of 140 degrees Fahrenheit (160 degrees recommended). In facilities that submit final construction documents and receive plans approval prior to April 1, 2004 a chemical disinfectant may be used in lieu of the otherwise required water temperature; and

(d) Covered or enclosed clean linen storage, that may be on shelves or carts. Clean linens may be stored in closets outside the laundry area.

(2) **KITCHEN AND FOOD STORAGE.** Kitchen facilities and equipment in residential care facilities of 16 or less capacity may be of residential type except as required by the **Oregon Structural Specialty Code and Oregon Fire Code**. Residential care facilities of 17 or more capacity will have facilities and equipment meeting Food Sanitation Rules of the Oregon Health Services under OAR 333 divisions 150 through 168 as applicable. The following will be included:

(a) Dry storage space, not subject to freezing, in cabinets or a separate pantry for a minimum one-week's supply of staple foods;

(b) Refrigeration and freezer space at proper temperature for a minimum two days' supply of perishable foods;

(c) Enclosed or covered storage for all dishware and utensils used by residents;

(d) In residential care facilities licensed to serve 16 or fewer residents, a dishwasher will be provided (may be residential type) with a minimum final rinse temperature of 140 degrees Fahrenheit (160 degrees recommended). In facilities that submit final construction documents and receive plans approval prior to April 1, 2004 a chemical disinfectant may be used in lieu of the otherwise required water temperature. In residential care facilities of 17 or more capacity, a commercial dishwasher is required meeting Oregon Health Services Food Sanitation Rules;

(e) In residential care facilities of 16 or less capacity, a two compartment sink or separate food preparation sink and hand wash lavatory will be provided. In residential care facilities of 17 or more capacity, a triple pot wash sink will be provided unless all pots are sanitized in the dishwasher, a food prep sink and separate hand wash lavatory;

(f) Smooth and cleanable counters for food preparation and serving;

(g) Storage for cooking utensils free from dust and potential for contamination;

(h) Stove and oven equipment for cooking and baking needs;

(i) Enclosed storage in the food preparation area for garbage separate from food storage. Closed garbage cans or a dumpster will also be provided outside the facility;

(j) Storage for a mop and other cleaning tools and supplies used for dietary areas. Such tools will be separate from those used in toilet rooms, resident and other support areas. In residential care facilities of 17 or more

capacity, a separate janitor closet or alcove will be provided with a floor or service sink and storage for cleaning tools and supplies; and

(k) Storage for cookbooks, diet planning information and records.

(3) **MEDICATION STORAGE.** The following will be provided:

(a) Locked and separate closed storage for medications, supportive of the distribution system utilized;

(b) A method for refrigeration of perishable medications that provides for locked separation from stored food items;

(c) In residential care facilities of 17 or greater capacity, constructed on or after January 1, 1994, a medication sink will be provided; and

(d) Medications will be stored in an area that is separate from any poisons, hazardous material or toxic substance.

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

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0130; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0121

### Details and Finishes

(1) **HANDRAILS.** Handrails will be installed at one or both sides of resident use corridors in all residential care facilities licensed on or after January 1, 1994, and in all facilities constructed prior to this date when residents are admitted and retained needing their use.

(2) **DOORS.** The following will apply to all facilities licensed on or after January 1, 1994:

(a) All doors to resident units, bathrooms, and other common use areas will provide a minimum clear opening of 32 inches (36-inch doors recommended); and

(b) Door hardware:

(A) Lever type hardware will be provided on all doors used by residents;

(B) If locks are used on doors to resident units, they will be interactive to release with operation of the inside lever handle and be master keyed from the corridor side; and

(C) Exit doors will not include locks that prevent evacuation except as approved by the Fire Authority and Oregon Building Codes Agencies having jurisdiction. Such locks will not be installed except for purposes of resident safety and with written approval of the Department.

(3) **FLOORS:**

(a) Carpeting and other floor materials will be constructed and installed to minimize resistance for passage of wheelchairs and other ambulation aids. Thresholds and floor junctures will also be designed and installed for passage of wheelchairs and to prevent a tripping hazard; and

(b) Hard surface floors and base will be free from cracks and breaks that limit the ability to clean. A non-slip surface in bathing areas is required in facilities constructed on or after January 1, 1994.

(4) Walls and ceilings will be washable in kitchen, laundry and bathing areas constructed on or after January 1, 1994. In kitchens of facilities 17 or greater capacity, walls will also be finished smooth per Health Services Food Sanitation Rules, OAR 333-156-0080.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0131

### Heating and Ventilating Systems

(1) **TEMPERATURE.** For all areas occupied by residents, design temperature for construction will be 75 degrees Fahrenheit. All existing facilities will include heating systems capable of maintaining 68 degrees Fahrenheit in resident areas. Required minimum temperatures are no less than 68 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, fans will be made available when air conditioning is not provided. All systems will comply with the **Oregon Mechanical Specialty Code** in effect at the time of construction.

(2) **EXHAUST SYSTEMS.** All toilet, shower and smoking rooms (when provided) will be equipped with a mechanical exhaust fan or central exhaust system that discharges to the outside.

(3) **FIREPLACES, FURNACES, WOODSTOVES AND BOILERS.** Where used, installation will meet standards of the Oregon Mechanical Specialty Code.

(4) **HOT WATER TEMPERATURE:**

(a) In resident areas, hot water temperature will be maintained within a range of 110 to 120 degrees Fahrenheit; and

# ADMINISTRATIVE RULES

(b) Hot water temperatures in laundry and dietary areas will be as needed for sanitizing dishware and laundry as stated in OAR 411-055-0115(1)(c) and 411-055-0115(2)(d).

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

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.450

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0141

### Electrical Requirements

#### (1) WIRING SYSTEMS:

(a) All wiring systems will meet the **Oregon Electrical Specialty Code** in effect at the date of installation and devices will be properly wired and in good repair. When not fully grounded, circuits in resident areas may be protected by GFCI type receptacles or circuit breakers as an acceptable alternative;

(b) All electrical circuits will be protected by circuit breakers or limiters in fuse boxes of proper capacity. Electrical loads on circuits will be limited in accordance with proper circuit capacity;

(c) Sufficient electrical outlets will be provided to meet resident and staff needs without the use of extension cords or other special taps; and

(d) Lighting fixtures will be provided in each resident bedroom and bathroom, switchable near the entry door. Lighting for evacuation will be operable during a failure of the normal power supply. The following illumination requirements will apply to facilities that submit final construction documents and receive plans approval on or after April 1, 2004:

(A) Each resident bedroom will have illumination for way finding from the room entrance to each bed and to the adjoining toilet room, if one exists, with at least 20 foot candles of illumination measured at the floor.

(B) Lighting in resident toilet rooms and bathing areas will be at least 50 foot candles, measured at the handwash basin and 3 feet above the shower floor with the curtain open.

(C) Corridor lighting will equal a minimum of 20 foot candles measured from the floor.

(D) Task lighting in dining rooms will equal a minimum 25 foot candles, without light from windows, measured from table height.

(2) CALL SYSTEM. A call system will be provided from each resident unit to a central annunciator panel at the administrative center in all facilities licensed on or after January 1, 1994, if over 16 capacity, or when bedrooms are remote from the main facility. All facilities will provide such a call system when staff is not up and awake on a 24-hour basis, that sounds an alarm at the location where staff is sleeping. In facilities that submit final construction documents and receive plans approval on or after April 1, 2004 an emergency call station will also be placed in each toilet and bathing room, when a call system is otherwise required.

(3) EXIT DOOR ALARMS. An exit door alarm or other acceptable system will be provided for security purposes and to alert staff when resident(s) exit the facility. When individual door alarms cannot be heard throughout the facility, such alarms will be wired or otherwise annunciated at central alarm panel(s), in accordance with their listing, that can be readily heard by staff. The door alarm system may be integrated with the nurse call system.

(4) TELEPHONES. Adequate telephones will be available for resident, staff and visitor use, including the physically disabled. If the only telephone is located in a staff area, it must be posted that the phone is available for normal resident use at any time and that staff will ensure the resident's uninterrupted privacy. Staff may provide assistance when necessary or requested.

(5) TELEVISION ANTENNA OR CABLE SYSTEM. In facilities constructed or licensed on or after January 1, 1994, a television antenna or cable system with an outlet in each resident unit will be provided.

(6) FIRE ALARM AND SMOKE DETECTION SYSTEM. An approved manual and automatic supervised fire alarm system meeting the requirements of the **Oregon Structural Specialty Code** is required.

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

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.450

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0151

### Administrative Management

#### (1) Administrative Standards

(a) The licensee will be responsible for the operation of the facility.

(b) Each licensed residential care facility will employ a full-time (40-hours per week) administrator.

(c) The administrator is designated by the licensee as the person responsible for the daily operation of the facility and for the daily care provided in the facility.

(d) The administrator will appoint a staff member as designee to oversee the operation of the facility in the administrator's absence. The administrator or designee will be in charge on site, at all times and will ensure there are sufficient, qualified staff and the care, health and safety needs of the residents are met at all times.

(e) The administrator will maintain and post in public view the facility staffing plan and the name of the administrator or designee in charge will be posted by shift.

#### (2) Responsibilities of Administration

(a) The facility will develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes and resident satisfaction.

(b) The facility will develop and implement written policies and procedures approved by the Department that promote high quality services, health and safety for residents and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a home-like environment.

(c) The facility will comply with Health Services Administrative Rules, chapter 333, division 019.

(d) The facility will develop and implement infection control procedures that include appropriate hand washing.

(e) The facility will evaluate prospective employees consistent with OAR chapter 410, division 007, Criminal History Clearance.

#### (3) Abuse and Reporting

(a) The facility will not inflict, or tolerate to be inflicted, abuse of residents.

(b) All employees who have reasonable cause to believe a resident has suffered abuse are responsible for reporting to appropriate facility personnel or to the Department. Upon receipt of an allegation of abuse the facility will immediately conduct an investigation. The facility administrator will notify the Department's local office of the incident unless the facility investigation reasonably concludes that abuse did not occur.

(c) No complainant, witness, resident or employee of a facility will be subject to any retaliation. If the employee is the complainant, he or she will not be dismissed or harassed for making a good faith report, or being interviewed about a complaint, or being a witness.

(4) The facility will identify methods of preventing and responding to incidents such as injury, loss of property and abuse.

(5) The facility will exercise reasonable precautions against any condition that could threaten the health, safety or welfare of residents.

(6) The facility is responsible for the supervision, training and overall conduct of staff when acting within the scope of their employment duties.

(7) The facility will develop and implement effective methods of resolving resident complaints.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0020; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0161

### Staffing

(1) Direct Care Staffing. The staffing requirements described in this section are the minimum number of direct care staff that must be available. Irrespective of minimum number of staff stated below, the licensee and administrator are responsible for assuring an adequate number of qualified staff are available at all times to meet the unique care, health and safety needs of the residents including fire safety and evacuation. Administrators are responsible for assuring staff are increased or adjusted to compensate for the changing physical or mental needs of residents.

(2) When one or more residents are in the facility, at least the minimum number of direct care staff will be available and directly responsible for resident care and activities at all times. If direct care staff is responsible for other duties such as laundry or monitoring a detached building, there will be a method of alerting staff if a resident requires help while they are performing the other duties. The call system must be usable by the residents.

(a) In Class I facilities where residents are housed in two or more detached buildings, staff will be up and awake and will monitor each building at least once an hour during the night shift. A method for alerting staff of problems in the building not being monitored at any given time will be in place.

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(b) In Class II facilities where residents are housed in two or more detached buildings, a designated staff person must be awake and available in each building at all times.

(3) Direct care staffing ratio minimums in Class I facilities: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.450

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0030; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0170

### Range of Services

Initial Screening:

(1) The facility will determine whether a potential resident meets the facility's admission requirements.

(2) Prior to the resident moving in, an appropriate staff person will conduct an initial screening to determine the prospective resident's service needs and preferences. The screening will determine the ability of the facility to meet those needs and preferences considering the needs of the other residents and the facility's overall service capability.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0080; SDSL 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0180

### Assessment and Service Plan

(1) Assessment:

(a) Based on the initial screening, an assessment and initial service plan will be developed before the resident moves in to the facility. The initial service plan will be reviewed within 30 days of move-in to ensure the plan accurately reflects the resident's needs and preferences.

(2) Service plan

(a) The service plan will be followed for each resident consistent with that person's unique physical, psycho-social, and health care needs with recognition of his/her capabilities and preferences.

(b) The plan will include a written description of: who will provide the services; what, when, how, and how often the services will be provided, and if applicable, the desired outcome. Each resident will actively participate in the development of the service plan to the extent of his/her ability and willingness to do so. The resident or legal representative will be offered a copy of the agreed upon service plan.

(c) The plan will reflect assessed needs and resident decisions, (including resident's level of involvement), support principles of dignity, privacy, choice, individuality, independence, and a home-like environment; and identify others who will participate in the delivery of services.

(d) A service plan will be developed by a service planning team. The service planning team will consist of the resident or legal representative and two or more of the following persons:

(A) Local DHS/SPD or AAA case manager, if applicable;

(B) Facility administrator or designee; and

(C) A licensed nurse if the resident will be, or is, receiving nursing services.

(e) In addition, the service planning team may include any or all of the following persons as appropriate, or as requested by the resident or his/her legal representative:

(A) Facility personnel such as direct care givers, activity director, food preparer, etc.;

(B) Resident's physician or other health practitioner; and

(C) Other persons as requested by the resident or his/her legal representative.

(f) The service planning team will:

(A) Conduct an assessment of the resident's needs;

(B) Plan responsive services;

(C) Implement services; and

(D) Periodically evaluate results of the plan.

(g) The service plan will be reviewed and updated quarterly by the service planning team and the resident, or more often, if the resident's needs change requiring service plan modification. The service plan will be updated based on a current assessment of the resident.

(h) The service plan will be readily available and followed by all staff.

(i) The service plan will include agreed upon actions if a managed risk plan is developed.

(j) The facility will identify the need for and develop a managed risk plan following the facility's established guidelines and procedures. A managed risk plan will include:

(A) An explanation of the cause(s) of concern;

(B) The possible negative consequences to the resident and/or others;

(C) A description of resident preference(s);

(D) Possible alternatives/interventions to minimize the potential risks associated with the resident's current preference/action;

(E) A description of the services the facility will provide to accommodate the resident's choice or minimize the potential risk; and

(F) The final agreement, if any, reached by all involved parties.

(k) The facility will involve the resident, the resident's designated representative and others as indicated, to develop, implement and review the managed risk plan. The resident's preferences will take precedence over those of a family member(s). A managed risk plan will not be entered into or continued with or on behalf of a resident who is unable to recognize the consequences of his/her behavior or choices.

(l) The managed risk plan will be reviewed at least quarterly.

(3) INCIDENT REPORTS. A written report by facility staff will be completed within 24 hours of an incident. Incident reports will be available on the premises. All incident reports will include:

(a) Time, date, place and individuals present;

(b) Complete description of the incident;

(c) Response of the staff at the time;

(d) Follow-up action and resolution; and

(e) Administrator's review.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0110; SDSL 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0190

### Involuntary Move-out Criteria

The Department of Human Services, Seniors and People with Disabilities encourages facilities to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the community based care setting due to safety and medical limitations.

(1) Residents will be given a minimum of 30 days written notice when they are requested to move-out. A resident may, but is not required to be, asked to leave under the following circumstances:

(a) The resident's needs exceed the level of ADL services the facility provides. The minimum required services identified in OAR 411-055-0210 will be provided before a resident can be asked to move-out for this reason;

(b) The resident exhibits behavior or actions that repeatedly and substantially interfere with the rights or well being of other residents and the facility has tried prudent and reasonable interventions. There will be documentation of the interventions attempted;

(c) The resident has a medical condition that is complex, unstable or unpredictable and treatment cannot be appropriately developed and implemented in the residential care environment. There will be documentation of the facility's efforts to obtain appropriate care for the resident;

(d) Non-payment of charges;

(e) The facility is unable to accomplish resident evacuation in accordance with OAR 411-055-0081(4).

(2) A resident who leaves to receive urgent medical or psychiatric care will have the right of return to the facility unless, at the time the resident is to return, facility staff have re-evaluated the resident's needs and have determined that the resident's needs cannot be met at the facility.

(a) A resident who is refused the right of return will be immediately notified in writing of their right to an informal conference and hearing.

(b) If the resident appeals the notification to move out, the facility will not rent the resident's unit pending completion of the appeals process.

(3) A resident or his/her legal representative will be given at least 30 days notice if a facility has had its license revoked, not renewed or voluntarily surrendered.

(4) The written move-out notice will be completed on a Department approved form. The form will be filled out in its entirety and a copy of the notice will be sent by certified mail or delivered in person to the resident, the resident's legal representative, or any person designated by the resident, guardian, or conservator and if applicable, the case manager. Where a person lacks capacity and there is no legal representative, a copy of the notice to move-out will be faxed or sent next-day delivery to the State Long Term Care Ombudsman, who may request an informal conference for the resident.

(5) The Department will hold an informal conference as promptly as possible after the request is received. Participants will include the resident and others as requested by the resident. The purpose of the informal conference is to resolve the matter without a formal hearing. If a resolution is

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reached at the informal conference, no formal hearing will be held. If a resolution is not reached at the informal conference, the resident or resident's representative may request a formal hearing.

(6) The resident has the right to a formal administrative hearing prior to an involuntary move-out.

(7) Intra-facility move policy will be included in the facility's disclosure statement. In the case of a facility requested move, the facility will provide 30 days written notice and pay all associated costs with the move. Residents will not be relocated from one unit to another for the convenience of the facility.

Stat. Auth.: ORS 443.410  
Stats. Implemented: ORS 443.410  
Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0090; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0200

### Resident Rights

The facility will implement a residents' Bill of Rights. Each resident or resident's designated representative will be given a copy of their rights and responsibilities. The Bill of Rights will state that residents have the right:

- (1) To be treated with dignity and respect;
- (2) To be given informed choice and opportunity to select or refuse service and to accept responsibility for the consequences;
- (3) To exercise individual rights that do not infringe upon the rights or safety of others;
- (4) To be free from neglect, financial exploitation, verbal, mental, physical or sexual abuse;
- (5) To receive services in a manner that protects privacy and dignity;
- (6) To have access to his/her records;
- (7) To have medical and other records kept confidential except as otherwise provided by law;
- (8) To interact freely with others within their residential care home and in the community;
- (9) To be free from physical restraints and inappropriate use of psychoactive medications;
- (10) To manage personal financial affairs unless legally restricted;
- (11) To have access to and participate in social activities;
- (12) To be encouraged and assisted to exercise rights as a citizen.
- (13) To voice grievances, be informed of grievance procedures, and suggest changes in policies and services to either staff or outside representatives without fear of reprimand or retaliation;
- (14) To have a safe and homelike environment;
- (15) To be free of discrimination in regard to race, color, national origin, gender, sexual orientation or religion; and
- (16) To have proper notification if requested to move out of the facility, and to be required to move out only for reasons stated in OAR 411-055-0190, Involuntary Move-out Criteria, and have the opportunity for an informal conference and hearing.

Stat. Auth.: ORS 443.450 & 880  
Stats. Implemented: ORS 443.200  
Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0100; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0210

### Resident Services

- (1) The residential care facility will provide the following:
- (a) Three nutritional meals daily with snacks available seven days a week, in accordance with the recommended dietary allowances found in the USDA Food Guide Pyramid, including seasonal fresh fruit and fresh vegetables;
  - (b) Modified special diets that are appropriate to residents' needs and choices;
  - (c) Menus prepared at least one week in advance, and made available to all residents. Meal substitutions may be made in compliance with this subsection. The facility will encourage residents' involvement in developing menus;
  - (d) Personal and other laundry services;
  - (e) A program of social and recreational activities that is based upon individual and group interests and creates opportunities for active participation in the community at large;
  - (f) Services to assist the resident in performing all activities of daily living, on a 24-hour basis, including:
    - (A) Assistance with mobility, including one-person transfers;
    - (B) Assistance with bathing/personal hygiene;
    - (C) Assistance with dressing/grooming;
    - (D) Assistance with eating;

(E) Assistance with bowel and bladder management, including incontinency management;

(F) Intermittent cuing, redirecting and environmental cues for cognitively impaired residents;

(G) Services for residents who exhibit behavioral symptoms that may benefit from intermittent intervention, supervision, and staff support;

(g) Household services essential for the health and comfort of the resident that are based upon the resident's needs and preferences. (e.g., floor cleaning, dusting, bed making, etc.)

(2) The residential care facility will provide or arrange for the following:

(a) Transportation for medical and social purposes;

(b) Ancillary services for medically related care (e.g., physician, pharmacist, therapy, podiatry, barber/beauty services, social/recreational opportunities, hospice, home health), and other services necessary to support the resident;

(c) Maintenance of a personal fund account for residents that documents deposits and withdrawals.

(3) The facility will provide health services that include:

(a) Accessing first payor benefits to provide health care for residents who are eligible for those benefits. When benefits are no longer available or if the resident is not eligible for benefits, the facility will provide or coordinate the required services for residents whose health status is stable and predictable.

(b) An Oregon-licensed registered nurse, either on staff or on contract who provides:

(A) Health care assessment and periodic monitoring of residents as appropriate;

(B) Delegation and teaching of basic tasks of nursing and delegation of special tasks of nursing in accordance with the Oregon State Board of Nursing Administrative Rules, chapter 851, division 047;

(c) Providing intermittent nursing services for a resident whose medical needs are stable and predictable. The facility will assist in the coordination of nursing care such as home health, when a resident's medical condition is complex, unstable, or unpredictable, and such care can be managed in the facility.

(d) Oversight and monitoring of resident's health status;

(e) Health care teaching and counseling;

(f) Interaction with other health care professionals on behalf of the resident as needed;

(g) Coordinating the provision of health services with outside service providers such as hospice, home health, physicians' offices etc;

(h) Systems that respond to the health and medical care needs of residents on a 24-hour basis;

(4) Medications and Treatments:

(a) Medication/Treatment Administration:

(A) The facility will have safe medication and treatment administration systems in place that are approved by a pharmacist consultant, registered nurse, or physician. The administrator is responsible for ensuring adequate professional oversight of the medication and treatment administration system.

(B) Medication and treatment orders will be carried out as prescribed. Written, signed physician or other legally recognized practitioner orders will be documented in the resident's facility record for all medications and treatments that the facility is responsible to administer. Medication or treatment changes will not be made without a physician's or other legally recognized practitioner's order.

(C) All medications administered by the facility to a resident will be reviewed at least every ninety days by a registered pharmacist, or registered nurse.

(D) The resident or the person legally authorized to make health care decisions for the resident has the right to consent to, or refuse medications and treatments. The physician/practitioner will be notified if a resident refuses consent to an order. Subsequent refusals to consent to an order will be reported as required by the physician/practitioner.

(E) An accurate medication record for each resident will be kept of all medications, including over-the-counter medications, administered by the facility to that resident. The record will include:

(i) Name of medication, reason for use, dosage, route and date/time given;

(ii) Name of the primary care or prescribing physician/nurse practitioner and telephone number;

(iii) Current month, day and year;

(iv) Allergies and sensitivities, if any;

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(v) Resident specific parameters and instructions for p.r.n. (as needed) medications;

(vi) Documentation of treatments with resident specific parameters;

(vii) Initials of the person administering the medication and treatment at the time of administration; and

(viii) Review date and name of reviewer.

(F) The facility will maintain legible signatures of staff who administer medications and treatments, either on the medication administration record or on a separate signature page.

(G) Residents may keep and use over-the-counter medications in their unit without a written order unless otherwise contraindicated by a physician or other legally recognized practitioner's written orders.

(H) If the facility administers or assists a resident with his/her medication, all medication obtained through a pharmacy will be clearly labeled with the pharmacist's label in the original container in accordance with the facility's established medication delivery system.

(I) Over-the-counter medication or samples of medications will have the original manufacturer's label(s) if the facility administers or assists a resident with his/her medication.

(J) The facility will not require residents to purchase prescriptions from a pharmacy that contracts with the facility. The facility will comply with ORS 443.437, Residential Facilities and Homes, regarding prescription and non-prescription medications and supplies.

(K) The facility will have a system approved by a pharmacist consultant, registered nurse, or physician, for tracking controlled substances and for disposal of all unused, outdated or discontinued medications administered by the facility.

(L) All medications administered by the facility will be stored in a locked container(s) in a secured environment such as a medication room or medication cart.

(M) The facility will obtain and place a written signed order in the resident's record for any medications administered by the facility. Order changes obtained by telephone must be followed-up with written, signed orders.

(b) Psychoactive Medication:

(A) The facility will not request psychoactive medication to treat a resident's behavioral symptoms without a consultation from a physician, nurse practitioner, registered nurse or mental health professional. Facility administered psychoactive medication(s) will be used only when required to treat a resident's medical symptoms or to maximize a resident's functioning.

(B) Prior to administering any psychoactive medication(s) to treat a resident's behavior, all care givers administering medications for the resident will know the specific reasons for the use of the psychoactive medication for that resident, the common side effects and when to contact a health professional regarding side effects. P.R.N. medications that are given to treat a resident's behavior will have written, specific parameters. These medication(s) may be used only after documented, non-pharmacological interventions have been tried with ineffective results. All caregivers will have knowledge of non-pharmacological interventions.

(C) Psychoactive medications will not be given to discipline a resident, or for the convenience of the facility. Psychoactive medications may be used only pursuant to a prescription that specifies the circumstances, dosage and duration of use.

(c) Self-Medication:

(A) Residents must have a physician's or other legally recognized practitioner's written order of approval for self-administration of prescription medications. The resident will be encouraged to have his/her medications reviewed by the prescriber, nurse practitioner, registered nurse or pharmacist at least every 90 days;

(B) Residents able to administer their own medication regimen may keep prescription medications in their unit; and

(C) If more than one resident resides in the unit, an assessment will be made of each person and his/her ability to safely have medications in the unit. If safety is a factor, the medications will be kept in a locked container in the unit.

(5) Financial Management. The Residential Care Facility must have written policies, procedures, and accounting records for handling residents' personal incidental funds, that are managed in the resident's own best interest.

(a) The resident may manage his/her personal financial resources, or may authorize another person or the facility to manage personal incidental funds.

(b) Records will include a statement as to whether or not the facility will handle the resident's money, if requested by the resident.

(c) Records will include the Resident Account Record (SDS 713) or other comparable expenditure form if the facility manages or handles a resident's money. The resident account record will show in detail with supporting documentation all monies received on behalf of the resident and the disposition of all funds received. Persons shopping for residents will provide a list showing description and price of items purchased, along with payment receipts for these items.

(d) Funds containing more than \$150.00 must be maintained in the resident's own interest-bearing account or in an interest bearing account with a system that credits the appropriate interest specifically to each resident.

(e) Upon the death of a Medicaid resident with no known surviving spouse, personal incidental funds held by the facility for the resident must be forwarded to the Department of Human Services, Estate Administration Unit, P.O. Box 14021, Salem OR 97309 within ten (10) business days of the death of the resident. The facility must maintain documentation of the action taken and the amount of funds conveyed.

Stat. Auth.: ORS 443.410

Stats. Implemented: ORS 443.410

Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0120; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0220

### Restraints and Supportive Devices

Residential Care Facilities are intended to be restraint free environments. Research indicates that restraints are more likely to cause harm than prevent it. Restraints may cause strangulation, muscle loss, bone weakness and depression. Restraints pose increased risk for people who are agitated or confused. In some cases, a supportive device intended to improve resident function may also have restraining qualities.

(1) Restraints are not permitted except when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

(2) Supportive devices with restraining qualities are permitted under the following documented circumstances:

(a) The resident specifically requests or approves of the device and the facility has informed the individual of the risks and benefits associated with the device; and,

(b) The facility registered nurse, a physical therapist or occupational therapist has conducted a thorough assessment; and,

(c) The facility has documented other less restrictive alternatives evaluated prior to the use of the device; and,

(d) The facility has instructed care givers on the correct use and precautions related to use of the device.

(3) Supportive devices with restraining qualities may be utilized for residents who are unable to evaluate the risks and benefits of the device when (2)(b)(c) and (d) have been met.

(4) Documentation of the use of supportive devices with restraining qualities must be included in the resident service plan and evaluated on a quarterly basis.

Stat. Auth.: ORS 443.450

Stats. Implemented: ORS 443.220

Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0230

### Inspections and Investigations

(1) Staff of the Department will visit and inspect every residential care facility at least, but not limited to, once every two years to determine whether it is maintained and operated in accordance with these rules. The facility will cooperate with Department personnel in inspections, complaint investigations, planning for resident care, application procedures and other necessary activities.

(2) Facilities not in compliance with these rules will submit a plan of correction that satisfies the Department within 30 days of receipt of the inspection report. In addition, the Department may impose sanctions for failure to comply with these licensing rules.

(3) Department staff may consult with and advise the facility administrator concerning methods of care, records, housing, equipment and other areas of operation.

(4) Records will be made available to the Department upon request. Department personnel will have access to all resident and facility records and may conduct private interviews with residents.

(5) The State Long Term Care Ombudsman has access to all resident and facility records. Certified Ombudsman volunteers have access to resident records with written permission from the resident or guardian and facility records that relate to an investigation.



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(6) The State Fire Marshal or his/her authorized representative(s) will be permitted access to the facility and records pertinent to resident evacuation and fire safety.

(7) Copy of the most current inspection survey and any conditions placed upon the license will be made available for the public in the facility. A sign will be posted in the facility stating the survey is available upon request.

Stat. Auth.: ORS 443.410  
Stats. Implemented: ORS 443.410  
Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0240

### Conditions

(1) Conditions may be attached to a license upon a finding that:

- (a) Information on the application or initial inspection requires a condition to protect the health and safety of residents;
- (b) There exists a threat to the health, safety, and welfare of a resident;
- (c) There is reliable evidence of abuse, neglect, or exploitation;
- (d) The home is not being operated in compliance with these rules; or
- (e) The provider is licensed to care for a specific person(s) only and further placements will not be made into that facility.

(2) Conditions which may be imposed on a licensee include, but are not limited to:

- (a) Restricting the total number of residents;
  - (b) Restricting the number and impairment level of residents allowed within a licensed classification level based upon the capacity of the provider and staff to meet the health and safety needs of all residents;
  - (c) Reclassifying the level of residents that can be served;
  - (d) Requiring additional staff or staff qualifications;
  - (e) Requiring additional training of provider/staff;
  - (f) Requiring additional documentation; or
  - (g) Restriction of admissions.
- (3) The provider will be notified in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.310 to 183.550.

(4) Conditions may be imposed for the duration of the licensure period (two years) or limited to some other shorter period of time. If the condition corresponds to the licensing period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition will be indicated on the attachment to the license.

Stat. Auth.: ORS 443.440 & 450  
Stats. Implemented: ORS 443.450  
Hist.: SSD 13-1985, f. & ef. 10-17-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0025; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0250

### Civil Penalties

(1) For purposes of imposing civil penalties, residential care facilities licensed under ORS 443.400 to 443.455 and subsection (2) of ORS 443.991 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) "Person" means a licensee under ORS 443.420 or a person who the Assistant Director of the Seniors and People with Disabilities finds should be so licensed but is not, but does not include any employee of such licensee or person.

(3) "Resident rights" means that each resident will be assured the same civil and human rights accorded to other citizens as described in OAR 411-055-0200.

(4) The Department will exercise the powers under ORS 441.705 to 441.745 and thereby issues the following schedule of penalties applicable to residential care facilities:

(a) A Class I violation exists when there is non-compliance involving direct resident care or feeding, adequate staff, sanitation involving direct resident care or resident rights. A Class I violation may result in imposition of a fine for first and subsequent violations of no less than \$5 and no more than \$500 per occurrence per day, not to exceed \$6,000 in any calendar quarter;

(b) A Class II violation exists when there is non-compliance with the license requirements relating to a license required, the license requirements relating to administrative management, personal services (care) and activities. Class II violations may result in imposition of a fine for violations found on two consecutive monitorings of the residential care facility. The fine may be no less than \$5 and no more than \$300 per occurrence per day, not to exceed \$6,000 in any calendar quarter; and

(c) A Class III violation exists when there is non-compliance with the license requirements relating to building requirements, and resident furnishings. Class III violations may result in imposition of a fine for violations found on two consecutive monitorings of the residential care facility. The fine may be no less than \$5 and no more than \$150 per occurrence per day, not to exceed \$6,000 in any calendar quarter.

(5) For purposes of this rule, a monitoring occurs when a residential care facility is surveyed, inspected or investigated by an employee or designee of the Department or an employee or designee of the State Fire Marshal.

(6) In imposing a penalty pursuant to the schedule published in section (4) of this rule, the Department's Assistant Director of Seniors and People with Disabilities or a designee will consider the following factors:

- (a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;
- (b) Any prior violations of statutes or rules pertaining to residential care facilities; The economic and financial conditions of the person incurring the penalty; and
- (d) The immediacy and extent that the violation threatens the health, safety, and well-being of residents.

(7) Any civil penalty imposed under ORS 443.455 and 441.710 will become due and payable when the person incurring the penalty receives a notice in writing from the Department's Assistant Director of Seniors and People with Disabilities or a designee. The notice referred to in this section will be sent by registered or certified mail and will include:

- (a) A reference to the particular sections of the statute, rule, standard, or order involved;
  - (b) A short and plain statement of the matters asserted or charged;
  - (c) A statement of the amount of the penalty or penalties imposed; and
  - (d) A statement of the party's right to request a hearing.
- (8) The person to whom the notice is addressed will have 10 days from the date of mailing the notice to make written application for a hearing before the Department.

(9) All hearings will be conducted pursuant to the applicable provisions of ORS Chapter 183.

(10) If the person notified fails to request a hearing within ten days, an order may be entered by the Department assessing a civil penalty.

(11) If, after a hearing, the person is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.

(12) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Department's Assistant Director of Seniors and People with Disabilities considers proper and consistent with the public health and safety.

(13) If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, will constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(14) A violation of any general order or final order pertaining to a residential care facility issued by the Department's Assistant Director of Seniors and People with Disabilities is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(15) Judicial review of civil penalties imposed under ORS 441.710 will be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(16) All penalties recovered under ORS 443.455 and 441.710 to 441.740 will be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 443.410  
Stats. Implemented: ORS 443.410  
Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0160; SDSD 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0260

### Non-Renewal, Denial, Suspension or Revocation of License

(1) The Department will deny, suspend, revoke or refuse to renew a license where it finds there has been substantial failure to comply with these rules; or where the State Fire Marshal or his/her representative certifies there is failure to comply with all applicable ordinances and rules relating to safety from fire.

(2) The Department may deny, suspend, revoke or refuse to renew a license if the licensee fails to implement a plan of correction or comply

# ADMINISTRATIVE RULES

with a final order of the Department imposing an administrative sanction, including the imposition of a Civil Penalty.

(3) The Department will immediately suspend a license in cases where imminent danger to the health or safety of residents exists.

(4) Such revocation, suspension or denial will be done in accordance with rules of the Department and ORS Chapter 183.

(5) Failure to disclose requested information on the application or provision of incomplete or incorrect information on the application will constitute grounds for denial or revocation of the license.

Stat. Auth.: ORS 443.410  
Stats. Implemented: ORS 443.410  
Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSA 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0270

### Criminal Penalties

(1) Violation of any provision of ORS 443.400 to 443.455 is a Class B misdemeanor.

(2) Violation of any provision of ORS 443.881 is a Class C misdemeanor.

Stat. Auth.: ORS 443.991  
Stats. Implemented: ORS 443.881  
Hist.: SSD 1-1985, f. & ef. 2-1-85; SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; Renumbered from 411-055-0165; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

## 411-055-0280

### Additional Authority

The Department may commence a suit in equity to enjoin operation of a residential care facility when:

(1) A residential care facility is operated without a valid license; or

(2) Notice of revocation has been given and a reasonable time has been allowed for placement of individuals in other facilities.

Stat. Auth.: ORS 443.410  
Stats. Implemented: ORS 443.410  
Hist.: SSD 12-1993, f. 12-30-93, cert. ef. 1-1-94; SDSA 6-2002, f. & cert. ef. 8-1-02; SPD 4-2004, f. 3-18-04, cert. ef. 4-1-04

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**Adm. Order No.:** SPD 5-2004(Temp)

**Filed with Sec. of State:** 3-23-2004

**Certified to be Effective:** 3-23-04 thru 4-27-04

**Notice Publication Date:**

**Rules Amended:** 411-015-0015

**Subject:** Temporary rule 411-015-0015 is being amended because, since the 10-26-03 temporary rule filing, the Department has identified people who are being served under two different federal waivers. People can only receive services from one waiver. People must meet the eligibility criteria specific to each waiver. The Department has been directed to correct this situation. This amendment clarifies that persons determined to be eligible for developmental disabilities services are not eligible for Title XIX Home and Community Based Waiver Services paid for under the Departments 1915 C Waiver for seniors and people with physical disabilities.

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

## 411-015-0015

### Current Limitations

The Department has the authority to establish by Administrative Rule the priority level within which to manage its limited resources. The Department is currently able to serve:

(1) Persons determined eligible for OSIPM, TANF or GA if they are assessed on CA/PS in conjunction with the priority levels of OAR 411-015-0010; and

(a) Who are assessed as meeting at least one of the priority levels (1) through (14) will be served through March 31, 2003; and

(b) Who are assessed as meeting at least one of the priority levels (1) through (11) will be served from April 1, 2003 thereafter, or unless otherwise stated by future amendments to this rule.

(2) Persons eligible for Oregon Project Independence funded services if they meet at least one of the priority levels (1) through (18) of OAR 411-015-0010.

(3) Persons needing Risk Intervention Services in areas designated to provide such services. Persons with the greatest priority under OAR 411-015-0010 will be served first.

(4)(a) Persons sixty-five years of age or older determined eligible for Developmental Disability services or having a primary diagnosis of mental illness are eligible for nursing facility and community based care services

if they meet Sections (1), (2), or (3) of this rule and are not in need of specialized mental health treatment services or other specialized Department residential program intervention as identified through the PASARR or mental health assessment process.

(b) Persons under sixty-five years of age determined eligible for developmental disability services or having a primary diagnosis of mental illness are not eligible for Department nursing facility services unless determined appropriate through the PASARR process.

(c) Persons under sixty-five years of age determined to be eligible for developmental disabilities services in accordance to OAR 411-320-0080 or having a primary diagnosis and primary need for service due to mental illness are not eligible for Title XIX Home and Community Based Care Waivered Services paid for under the Departments 1915C Waiver for seniors and people with physical disabilities.

Stat. Auth.: ORS 410.060, ORS 410.070 & ORS 411  
Stats. Implemented: ORS 410.070  
Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 5-1986, f. & ef. 4-14-86; SSD 9-1986, f. & ef. 7-1-86; SSD 12-1987, f. 12-31-87, cert. ef. 1-1-88; SSD 12-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 21-1991, f. 12-31-91, cert. ef. 1-1-92; Renumbered from former 411-015-0000(4); SSD 1-1993, f. 3-19-93, cert. ef. 4-1-93; SDSA 11-2002(Temp), f. 12-5-02, cert. ef. 12-6-02 thru 6-3-03; SPD 1-2003(Temp), f. 1-7-03, cert. ef. 2-1-03 thru 6-3-03; SDP 3-2003(Temp), f. 2-14-03, cert. ef. 2-18-03 thru 6-3-03; SPD 5-2003(Temp), f. & cert. ef. 3-12-03 thru 6-3-03; SPD 6-2003(Temp), f. & cert. ef. 3-20-03 thru 6-3-03; SPD 12-2003, f. 5-30-03, cert. ef. 6-4-03; SPD 16-2003(Temp), f. & cert. ef. 10-27-03 thru 4-23-04; SPD 5-2004(Temp), f. & cert. ef. 3-23-04 thru 4-27-04

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**Adm. Order No.:** SPD 6-2004(Temp)

**Filed with Sec. of State:** 3-23-2004

**Certified to be Effective:** 3-23-04 thru 9-19-04

**Notice Publication Date:**

**Rules Amended:** 411-056-0010, 411-056-0018, 411-056-0030

**Subject:** OARs 411-056-0010, 411-056-0018 and 411-056-0030 are being temporarily amended to remove reference to the criminal history rules in Chapter 411-009 that were repealed on 03/01/2004 and to add reference to the current Criminal History rules in OAR 410-009 effective 3/1/2004.

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

## 411-056-0010

### Responsibilities of Administration

(1) The facility shall develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes and resident satisfaction.

(2) The facility shall develop and implement written policies and procedures approved by the Department that promote high quality services, health and safety for residents and incorporate the assisted living principles of individuality, independence, dignity, privacy, choice, and a home-like environment.

(3) The facility shall ensure that all employees and residents comply with DHS, Health Services Administrative Rules, chapter 333, division 019, Tuberculosis testing. Documentation of results shall be available for review by the Department.

(4) The facility shall evaluate prospective employees consistent with OAR chapter 410, division 007, Criminal History Clearance.

(5) Abuse and Reporting

(a) The facility shall not inflict, or tolerate to be inflicted, abuse of residents.

(b) All employees who have reasonable cause to believe a resident has suffered abuse are responsible for reporting to appropriate facility personnel, the Department, or the State Long Term Care Ombudsman Office. Upon receipt of an allegation of abuse the facility shall immediately conduct an investigation. The facility administrator shall notify the local Senior or Disability Services or AAA office of the incident unless the facility investigation reasonably concludes that abuse did not occur.

(A) A person who, in good faith, reports abuse shall have immunity from any civil or criminal liability with respect to the making, or content of a report. Immunity under this subsection does not protect a self-reporting facility from liability for the underlying conduct, if any, that is described in the report.

(B) No complainant, witness, resident or employee of a facility shall be subject to any retaliation. If the employee is the complainant, he or she shall not be dismissed or harassed for making a good faith report, or being interviewed about a complaint, or being a witness.

(6) The facility shall identify methods of preventing and responding to incidents such as injury, loss of property and abuse.

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(7) The facility shall exercise reasonable precautions against any condition which could threaten the health, safety or welfare of residents.

(8) The facility is responsible for the supervision, training and overall conduct of staff when acting within the scope of their employment duties.

(9) The facility shall develop and implement effective methods of resolving resident complaints.

(10) Resident Bill of Rights. The facility shall implement a residents' Bill of Rights. Each resident or resident's designated representative shall be given a copy of their rights and responsibilities. The Bill of Rights shall state that residents have the right:

(a) To be treated with dignity and respect;

(b) To be given informed choice and opportunity to select or refuse service and to accept responsibility for the consequences;

(c) To exercise individual rights that do not infringe upon the rights or safety of others;

(d) To be free from neglect, financial exploitation, verbal, mental, physical or sexual abuse;

(e) To receive services in a manner that protects privacy and dignity;

(f) To have access to his/her records;

(g) To have medical and other records kept confidential except as otherwise provided by law;

(h) To interact freely with others within their assisted living home and in the community;

(i) To be free from physical restraints and inappropriate use of psychoactive medications;

(j) To manage personal financial affairs unless legally restricted;

(k) To have access to and participate in social activities;

(l) To be encouraged and assisted to exercise rights as a citizen.

(m) To voice grievances, be informed of grievance procedures, and suggest changes in policies and services to either staff or outside representatives without fear of retaliation;

(n) To have a safe and homelike environment;

(o) To be free of discrimination in regard to race, color, national origin, gender, sexual orientation or religion; and

(p) To have proper notification if requested to move out of the facility, and to be required to move out only for reasons stated in OAR 411-056-0020, Involuntary Move-out Criteria, and have the opportunity for an informal conference and hearing.

Stat. Auth.: ORS 410 & ORS 443

Stats. Implemented: ORS 443.450

Hist.: SSD 14-1989, f. & cert. ef. 9-1-89; SDDS 3-1999, f. 3-1-99, cert. ef. 4-1-99; SDDS 7-2002, f. & cert. ef. 8-1-02; SPD 6-2004(Temp), f. & cert. ef. 3-23-04 thru 9-19-04

## 411-056-0018

### Direct Care Staff

(1) The facility shall have qualified staff sufficient in number, to meet the 24-hour scheduled and unscheduled needs of each resident, and respond in emergency situations.

(2) Staff or volunteers under 18 years of age shall not assist with medication administration or delegated nursing tasks. Staff or volunteers under the age of 18 must be supervised when providing bathing, toileting or transferring services.

(3) A staff member on each shift shall be trained in the use of the Heimlich Maneuver, CPR and First Aid.

(4) Staff shall have sufficient communication and language skills to enable them to perform their duties and interact effectively with residents and other staff.

(5) Prior to providing care, staff shall receive documented orientation and training as approved by the Department. Training topics shall include:

(a) Principles of assisted living;

(b) Changes associated with aging processes including dementia;

(c) Resident's rights, including confidentiality;

(d) How to perform direct ADL care;

(e) Location of resident service plans and how to implement;

(f) Fire safety/emergency procedures;

(g) Responding to behavior issues;

(h) Standard precautions for infection control;

(i) Food preparation, service and storage, if applicable; and

(j) Observation/reporting skills.

(6) Staff shall comply with OAR 410, division 007, Criminal History Clearance and OAR 333, division 019, Health Services, Tuberculosis testing.

Stat. Auth.: ORS 410 & ORS 443

Stats. Implemented: ORS 443.450

Hist.: SDDS 3-1999, f. 3-1-99, cert. ef. 4-1-99; SDDS 7-2002, f. & cert. ef. 8-1-02; SPD 6-2004(Temp), f. & cert. ef. 3-23-04 thru 9-19-04

## 411-056-0030

### Organization of Business

(1) Administrative Standards:

(a) Department of Human Services, Seniors and People with Disabilities' Salem central office must be notified within five working days of an administrator's departure or employment.

(b) The licensee shall be responsible for the operation of the facility.

(c) Each licensed assisted living facility shall employ a full-time (40 hours per week) administrator.

(d) The administrator is designated by the licensee as the person responsible for the daily operation of the facility and for the daily care provided in the facility.

(e) The administrator shall appoint a staff member as designee to oversee the operation of the facility in the administrator's absence. The administrator or designee shall be in charge on site, at all times and shall ensure there are sufficient, qualified staff and the care, health and safety needs of the residents are met at all times.

(f) The administrator shall maintain and post in public view the facility staffing plan and the name of the administrator or designee in charge shall be posted by shift.

(2) Administrator Qualifications:

(a) Facility administrators hired on or after August 1, 2002, must meet the following requirements:

(A) Be at least 21 years of age; and possess a high school diploma or equivalent and have at least two years professional or management experience that has occurred within the last five years in a health or social service related field or program, or have a combination of experience and education; or

(B) Possess an accredited Bachelors Degree in a health or social service related field.

(3) Administrator Requirements

(a) Prior to operating a facility, an administrator must complete a Department approved classroom administrator training program of at least 40 hours; or

(b) Complete a Department approved administrator training program that includes both a classroom training of less than 40 hours and a Department approved 40- hour internship with a Department approved administrator.

(c) Administrators must have 20 hours of documented continuing education credits each year.

(A) The approved administrator training fulfills the 20-hour continuing education requirement for the first year.

(B) Individuals who have met the Department's approved training requirements, but have been absent from an administrator position for five years or less, do not have to retake the administrator courses, but must complete and provide evidence of 20 hours of continuing education credits annually.

(d) Comply with OAR 410, division 007, Criminal History Clearance and OAR 333, division 019, Health Services, Tuberculosis testing.

(4) Administrator Training Course Standards:

(a) The Department shall approve, in writing, the training curriculum for the administrator training. The curriculum will be re-evaluated by the Department at periodic intervals.

(b) Individuals, companies or organizations providing the Administrator Training Course shall be approved by the Department. The Department may withdraw approval under the following conditions;

(A) Failure to follow the approved curriculum;

(B) The trainer demonstrates lack of competency in training;

(C) There is insufficient frequency of training to meet the need; or

(D) Facilities owned or operated by the training entity have a pattern of substantial non-compliance with these rules.

(c) Approved training shall be open and available to all applicants and shall not be used to orient trainees to a specific company's management or operating procedures.

(5) Financial Management. The assisted living facility shall have written policies, procedures, and accounting records for handling residents' personal incidental funds, which are managed in the resident's own best interest.

(a) The resident may manage his/her personal financial resources, or may authorize another person or the assisted living facility to manage personal incidental funds.

(b) Records shall include a statement as to whether or not the facility will handle the resident's money, if requested by the resident.

(c) Records shall include the Resident Account Record (SDS 713) or other comparable expenditure form if the facility manages or handles a res-

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ident's money. The resident account record shall show in detail with supporting documentation all monies received on behalf of the resident and the disposition of all funds received. Persons shopping for residents shall provide a list showing description and price of items purchased, along with payment receipts for these items.

(d) Funds containing more than \$150, shall be maintained in the resident's own interest-bearing account or in an interest bearing account with a system that credits the appropriate interest specifically to each resident.

(e) Upon the death of a Medicaid resident with no known surviving spouse, any personal incidental funds held by the facility for the resident must be forwarded to Department of Human Services, Estate Administration Unit, P.O. Box 14021, Salem, OR 97309, within ten (10) business days of the death of the resident. The facility must maintain documentation of the action taken and the amount of funds conveyed.

## (6) Disclosure — Residency Agreement

(a) The facility must provide a Department designated disclosure statement to each person who requests information about a facility. The residency agreement and the following disclosure information are required to be provided to all potential residents prior to move-in. All disclosure information and residency agreements must be written in compliance with these administrative rules. The residency agreement and disclosure statement must be reviewed by the Department prior to distribution and shall include the following:

(A) Terms of occupancy;

(B) Payment provisions, including the following:

(i) Basic rental rate, and what it includes;

(ii) Additional services costs;

(iii) Billing method, payment system and due dates;

(iv) Deposits/fees, if applicable;

(C) Policy for rate changes including:

(i) Thirty days prior written notice of any facility-wide increases, additions or changes;

(ii) Immediate written notice at the time the facility determines a resident's service rates will increase due to increased service provision as negotiated in a service plan;

(D) Refund/proration conditions;

(E) A description of the scope of services available according to OAR 411-056-0015;

(F) A description of the service planning process and the relationship between the service plan and cost of services;

(G) Additional available services;

(H) The philosophy of how health care and ADL services are provided to the resident;

(I) Resident rights and responsibilities;

(J) The facility system for packaging medications and the resident's right to choose a pharmacy;

(K) Criteria, actions, circumstances or conditions which may result in a move-out notification or intra-facility move and resident's rights pertaining to notification of move-out;

(L) Notice that the Department of Human Services has the authority to examine resident's records as part of the evaluation of the facility; and

(M) Staffing plan.

(b) The facility shall not include any provision in a residency agreement or disclosure statement that is in conflict with these rules and shall not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence.

(c) The facility shall retain a copy of the original and any subsequent signed and dated residency agreement(s) and provide copies to the resident or to their designated representative; and

(d) The facility shall give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement and disclosure information must be faxed or mailed to the Department, Salem central office.

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

Stat. Auth.: ORS 410 & ORS 443

Stats. Implemented: ORS 443.450

Hist.: SSD 14-1989, f. & cert. ef. 9-1-89; SSD 15-1991, f. & cert. ef. 7-1-91; SDSD 3-1999, f. 3-1-99, cert. ef. 4-1-99; SDSD 7-2002, f. & cert. ef. 8-1-02; SPD 6-2004(Temp), f. & cert. ef. 3-23-04 thru 9-19-04

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**Adm. Order No.:** SPD 7-2004

**Filed with Sec. of State:** 3-23-2004

**Certified to be Effective:** 3-24-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 411-200-0010

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

**Rules Coordinator:** Lynda Dyer—(503) 945-6398

## 411-200-0010

### General Policy

(1) The Department of Human Services, herein called the Department, does not have the authority to reimburse vendors for the cost of goods and services if the Department has not authorized payment prior to the provision of goods and services. The Department shall reject all charges without such prior authorization.

(2) Except as provided in subsection (3) of this rule and OAR 411-200-0030, the amount that the Department shall pay vendors for previously authorized medical or psychological services shall be the lesser of the following:

(a) The lowest fee that the vendor charges the general public or other state agencies for the service; or

(b) The maximum fee prescribed by the Oregon Medical Fee and Relative Value Schedule, OAR 436, division 009, effective July 1, 2004 and the Federal Register Volume 68, Number 216, effective November 2003.

(3) With prior written approval by the appropriate Disability Determination Services manager, the Department may exceed the fee prescribed by subsection (2) of this rule when financial or human considerations outweigh the difference in cost.

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.511 - ORS 344.690

Hist.: SDSD 4-2002, f. & cert. ef. 6-12-02; SPD 13-2003, f. & cert. ef. 7-1-03; SPD 7-2004, f. 3-23-04 cert. ef. 3-24-04

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

**Adm. Order No.:** VRS 4-2004

**Filed with Sec. of State:** 4-2-2004

**Certified to be Effective:** 4-2-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 582-090-0010, 582-090-0020, 582-090-0030

**Rules Repealed:** 582-090-0050

**Subject:** 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 Telecommunications Devices Access Program. Assistance with state employment is provided through the HIRE system.

**Rules Coordinator:** Robert Trachtenberg—(503) 945-6734

## 582-090-0010

### Certification of Disability Generally

(1) The Office of Vocational Rehabilitation Services (OVRS) will provide certification services on request for individuals with disabilities seeking employment under a governmental entity's special hiring practices if a certificate is required.

(2) OVRS will provide certification services on request for individuals with disabilities who require documentation of disability for specific programs such as Tri-Met Honored Citizen Cards and the Public Utility Commission Telecommunications Devices Access Program.

(3) Individuals seeking a certification of disability shall provide OVRS with the certification instructions and form of the governmental organization if requested, and provide documenting evidence of their disability.

(4) OVRS will provide certification of disability services regardless of whether individuals apply for OVRS services under 34 CFR 361.41, qualify for services under 34 CFR 361.42, or have an open case with OVRS for vocational rehabilitation services.

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.530

Hist.: VRD 1-1979, f. & ef. 10-1-79; VRD 5-1981, f. & ef. 12-1-81; VRD 1-1993, f. & cert. ef. 9-7-93; VRS 4-2004, f. & cert. ef. 4-2-04

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## 582-090-0020

### Certification of Disability for Federal Employment

(1) OVRS will provide certification services for federal job applicants under Schedule A hiring authorities (5 CFR 213.3101), including 5 CFR 213.3102(t) for hiring people with mental retardation, 5 CFR 213.3102(u) for hiring people with severe physical disabilities, and 5 CFR 213.3102(gg) for hiring people with psychiatric disabilities.

(2) A certification issued by an OVRS counselor for federal job applicants under Schedule A hiring authorities must verify that the applicant has a severe disability and is therefore eligible under a Schedule A appointment authority and that the applicant is able to perform the essential duties of the position. The certification must also describe any needed reasonable accommodation.

(3) An OVRS counselor may issue a certification for federal job applicants under Schedule A hiring authorities as follows:

(a) An OVRS counselor may first issue a letter certifying that the individual is disabled and eligible for appointment under a particular Schedule A appointment authority. This type of certification is sufficient for an applicant to be considered for any Schedule A job;

(b) If the individual with a disability is tentatively selected for the position, the OVRS counselor may issue a second letter, as merited, stating that the counselor has evaluated the job tasks and determined the applicant is able to perform the essential duties of the position. This second letter must also state what reasonable accommodations, if any, are sought.

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.530

Hist: VRD 1-1979, f. & ef. 10-1-79; VRD 5-1981, f. & ef. 12-1-81; VRS 4-2004, f. & cert. ef. 4-2-04

## 582-090-0030

### Assistance with State Employment

(1) OVRS will assist its job-ready clients to seek state employment through the HIRE (Hiring Individuals Ready for Employment) system. OVRS counselors will explain the HIRE system to interested clients, and assist clients in the preparation of client materials, if necessary.

(2) Once an OVRS client has filled out a state application form and other required paperwork, the OVRS counselor will submit to the Department of Administrative Services (DAS), Human Resource Services Division (HRSD) Recruitment the completed state application (PD 100), skill code documents (if applicable), and a completed and signed referral.

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.530

Hist: VRD 1-1979, f. & ef. 10-1-79; VRD 5-1981, f. & ef. 12-1-81; VRD 1-1988, f. & cert. ef. 3-4-88; VRD 1-1993, f. & cert. ef. 9-7-93; VRS 4-2004, f. & cert. ef. 4-2-04

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## Department of Justice

### Chapter 137

**Adm. Order No.:** DOJ 7-2004

**Filed with Sec. of State:** 3-30-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 137-055-1140, 137-055-1320, 137-055-1360, 137-055-1600, 137-055-2140, 137-055-3300, 137-055-3480

**Rules Repealed:** 137-055-1340

**Subject:** The amendment to 137-055-1140 is to reflect federal and state regulations on automated access to confidential child support information. The amendments to OAR 137-055-1320 and 137-055-1360 and repeal of OAR 137-055-1340 are to make the rules consistent with current regulations and policy direction from the Federal Office of Child Support Enforcement. The amendments to OAR 137-055-1600 are to expand the reasons a Child Support Program grievance may be found to be without merit to include actions taken according to written policy or procedure and complaints about actions which have not been taken when the case record reflects otherwise. The amendments to OAR 137-055-2140 are to clarify agency delegations of authority to the Office of Administrative Hearings. The amendments to OAR 137-055-3300 and 137-055-3480 are to clarify that provisions concerning modification because of incarceration do not apply if the reason for incarceration is failure to pay support.

**Rules Coordinator:** Shawn Irish—(503) 986-6240

## 137-055-1140

### Confidentiality of Records in the Child Support Program

(1)(a) As used in this rule, “employee” means a person employed by the Department of Justice (DOJ) or a district attorney office that provides Child Support Program (CSP) services;

(b) “Party” means any party to a support or paternity case or a party’s attorney.

(2) For purposes of this rule, and subject to the limitations set forth in section (3) of this rule, the contents of a case record include, but are not limited to:

(a) The names of the obligor, beneficiary and obligee or other payee;

(b) The addresses of the obligor, beneficiary and obligee or other payee;

(c) The address of record and address of service of the obligee, beneficiary or obligor;

(d) The name and address of the obligor’s employer;

(e) The social security numbers of the obligor, the obligee and beneficiaries;

(f) The record of all legal and collection actions taken on the case;

(g) The record of all accrual and billings, payments and distribution of payments;

(h) The narrative record; and

(i) The contents of any paper file maintained for purposes of establishment and/or enforcement of a child support order or for accounting purposes.

(3) Any data listed in section (2) of this rule or any other data that resides on the Child Support Enforcement Automated System (CSEAS) that is extracted from computer interfaces with other agencies’ computer systems is not considered to be child support information until or unless the data is used for child support purposes. Until such data is used for child support purposes it is not subject to any exceptions to confidentiality and it may not be released to any other person or agency in any circumstance, except as provided in ORS 25.260(5) and as may be provided in other agency rule.

(4) Child support case related records, files, papers and communications are confidential and may not be disclosed or used for purposes other than those directly connected to the administration of the CSP except:

(a) Information may be shared as provided in ORS 25.260(5), OAR 137-055-1320 and 137-055-1360 and as may be provided in other agency rule;

(b) Information may be shared for purposes of any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of:

(A) Title IV-D of the Social Security Act, child support programs in Oregon and other states;

(B) Title IV-A of the Social Security Act, Temporary Assistance to Needy Families; or

(C) Title XIX of the Social Security Act, Medicaid programs;

(c) Information may be shared as required by state or federal statute or rule;

(d)(A) Elected federal and state legislators and the Governor are considered to be within the chain of oversight of the CSP. Information about a child support case may be shared with these elected officials and their staff in response to issues brought by constituents who are parties to the case;

(B) County commissioners exercise a constituent representative function in county government for county administered programs. District attorney offices that operate child support programs may respond to constituent issues brought by county commissioners of the same county if the constituent is a party in a case administered by that office. District attorneys are DOJ sub-recipients. CSP Administration may also respond to constituent issues brought by county commissioners on district attorney administered child support cases where the constituent is a party;

(C) Information disclosed under paragraphs (A) and (B) of this subsection is subject to the restrictions in section (6) of this rule;

(e) When a party requires the use of an interpreter in communicating with the administrator, information given to such an interpreter is not a violation of any provision of this rule; and

(f) A person who is the executor of the estate or personal representative of a deceased party is entitled to receive any information that the deceased party would have been entitled to receive.

(5)(a) The CSP may release information to a private industry council as provided in 42 USC 654a(f)(5).

(b) The information released under subsection (a) of this section may be provided to a private industry council only for the purpose of identify-

## ADMINISTRATIVE RULES

ing and contacting noncustodial parents regarding participation of the non-custodial parents in welfare-to-work grants under 42 USC 603(a)(5).

(c) For the purposes of this section, "private industry council" means, with respect to a service delivery area, the private industry council or local workforce investment board established for the service delivery area pursuant to Title I of the Workforce Investment Act (29 USC 2801, et seq.). "Private industry council" includes workforce centers and one-stop career centers.

(6)(a) Information from a case record may be disclosed to a party in that case, except for the following personal information about the other party:

(A) The residence or mailing address of the other party if that other party is not the state;

(B) The social security number of the other party;

(C) The name, address and telephone number of the other party's employers;

(D) The telephone number of the other party;

(E) Income and asset information of the other party;

(F) Financial institution account information of the other party; and

(G) The driver's license number of the other party.

(b) Except for personal information described in subsection (a) of this section, information from a case record may be provided to a party via the CSP web page if appropriate personal identifiers, such as social security number, case number or date of birth are required to be provided in order to access such information.

(7) Notwithstanding the provisions of subsection (6)(a), an employee may disclose personal information described in paragraphs (6)(a)(A) through (6)(a)(G) to a party, if disclosure of the information is otherwise required by rule or statute.

(8) Any information from the case record, including any information derived from another agency, that was used for any calculations or determinations relevant to the legal action may be disclosed to a party. Where there is a finding of risk and order for nondisclosure of information pursuant to OAR 137-055-1160, all nondisclosable information must be redacted before documents are released.

(9) Requestors may be required to pay for the actual costs of staff time and materials to produce copies of case records before documents are released.

(10)(a) Information from case records may be disclosed to persons not a party to the child support case who are making contact with the CSP on behalf of a party, if the following conditions are met:

(A) The person who is not a party to the case provides the social security number of the party for whom they are making the inquiry or the child support case number;

(B) The person who is not a party to the case making the contact on behalf of the party is the current spouse or domestic partner of the party and residing with the party or

a parent or legal guardian of the party; and

(C) The CSP determines that the person is making case inquiries on behalf of the party and disclosure of such information would normally be made to the party in reply to such an inquiry.

(b) Disclosure of information is limited to the specific inquiries made on behalf of the party and is subject to the restrictions in section (6) of this rule.

(11) Except as provided in section (10) of this rule, information from a case record may not be disclosed to a person who is not a party to the case unless:

(a) The party has granted written consent to release the information to the person; or

(b) The person has power of attorney for the party, the duration and scope of which authorizes release of information from a case record at the time that the person requests such information. The power of attorney remains in effect until a written request to withdraw the power of attorney is submitted by the party or by the person, unless otherwise noted on the power of attorney.

(12) A child support case account balance is derived from the child support judgment, which is public information, and from the record of payments, which is not. Therefore, the case balance is not public information, is confidential and may not be released to persons not a party except as otherwise provided in this rule.

(13) Information obtained from the Internal Revenue Service and/or the Oregon Department of Revenue is subject to confidentiality rules imposed by those agencies even if those rules are more restrictive than the standards set in this rule, and may not be released for purposes other than those specified by those agencies.

(14) Criminal record information obtained from the Law Enforcement Data System or any other law enforcement source may be used for child support purposes only and may not be disclosed to parties or any other person or agency outside of the CSP. Information about the prosecution of child support related crimes initiated by the administrator may be released to parties in the child support case.

(15) Employees with access to computer records or records of any other nature available to them as employees may not access such records that pertain to their own child support case or the child support case of any relative or other person with whom the employee has a personal friendship or business association. No employee may perform casework on their own child support case or the case of any relative or other person with whom the employee has a personal friendship or business association.

(16) When an employee receives information that gives reasonable cause to believe that a child has suffered abuse as defined in ORS 419B.005(1) the employee must make a report to the Department of Human Services as the agency that provides child welfare services and, if appropriate, to a law enforcement agency if abuse is discovered while providing program services.

(17) Employees who are subject to the Disciplinary Rules of the Oregon Code of Professional Responsibility must comply with those rules regarding mandatory reporting of child abuse. To the extent that those rules mandate a stricter standard than required by this rule, the Disciplinary Rules also apply.

(18) If an employee discloses or uses the contents of any child support records, files, papers or communications in violation of this rule, the employee is subject to progressive discipline, up to and including dismissal from employment.

(19) To ensure knowledge of the requirements of this rule, employees with access to computer records, or records of any other nature available to them as employees, are required annually to:

(a) Review this rule and the CSP Director's automated tutorial on confidentiality;

(b) Complete with 100 percent success the CSP Director's automated examination on confidentiality; and

(c) Sign a certificate acknowledging confidentiality requirements. The certificate must be in the form prescribed by the CSP Director.

(20)(a) For DOJ employees, each signed certificate must be forwarded to DOJ Human Resources, with a copy kept in the employee's local office drop file;

(b) For district attorney employees, each signed certificate must be kept in accordance with county personnel practices.

Stat. Auth.: ORS 25.260, 180.320 - 360 & OL 2003, ch 450, § 1

Stats. Implemented: ORS 25.260, 127.005 & 411.320

Hist.: AFS 31-1995, f. & cert. ef. 11-8-95; AFS 19-1996, f. & cert. ef. 5-10-96; AFS 38-1996, f. & cert. ef. 11-20-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0290; AFS 5-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1140; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04

### 137-055-1320

#### Access to FPLS for Purposes of Parentage Establishment; Child Support Establishment, Modification or Enforcement; or Determining Who Has or May Have Parental Rights

(1) For the purposes of this rule and OAR 137-055-1360, the following definitions apply:

(a) "FPLS" means the Federal Parent Locator Service operated by the United States Department of Health and Human Services.

(b) "Original requestor" means a party to a paternity or child support case who is seeking FPLS information, directly, through an attorney, or through court request.

(c) "Reasonable evidence of possible domestic violence" means:

(A) A record on the Oregon Judicial Information Network or the Law Enforcement Data System that an order of protection has or had been issued against the original requestor in favor of the person being sought; or

(B) A record that the person being sought has or had been granted good cause pursuant to ORS 418.042 not to establish paternity or to establish or enforce a support order against the original requestor; and

(C) A record that the person being sought has or had been granted a claim of risk not to have personal information included in a paternity or support order pursuant to OAR 137-055-1160 and that the other party in the legal action is or was the original requestor.

(d) "Reasonable evidence of possible child abuse" means that there is a record with the Department of Human Services child welfare program that the original requestor has been investigated for alleged abuse of any child.

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(2) For the purposes of this rule, an authorized person is:

(a) A custodial parent, legal guardian, agent or attorney of a child, custodial parent or legal guardian (other than for a child who is receiving Temporary Assistance for Needy Families (TANF)) seeking to establish parentage or to establish, modify or enforce a support order.

(b) A court or agent of the court which has the authority to issue an order of paternity or support and maintenance of a child or to serve as the initiating court to seek such an order from another state; or

(c) A state agency responsible for administering an approved child welfare plan or an approved foster care and adoption assistance plan.

(3) An authorized person as defined in section (2) of this rule, may request information to facilitate the discovery or location of any individual:

(a) Who is under an obligation to pay child support;

(b) Against whom a child support obligation is sought;

(c) To whom a child support obligation is owed; or

(d) Who has or may have parental rights with respect to a child.

(4) If available from FPLS, the information that may be provided about an individual described in subsections (3)(a)-(d) of this rule includes:

(a) The address and verification of the social security number of the individual sought;

(b) The name, address and federal employer identification number of the employer of the individual sought; and

(c) Information about income from employment and benefits from employment, including health care coverage.

(5) A request pursuant to this rule must be made in writing directly to DCS and must contain:

(a) The purposes for which the information is requested;

(b) The full name, social security number (if known) and date of birth or approximate date of birth of the individual sought;

(c) The full name and date of birth and social security number of the person making the request;

(d) Whether the individual is or has been a member of the armed forces or if the individual is receiving federal compensation or benefits, if known; and

(e) If the request is from the court, the signature of the judge or agent of the court.

(6) The request may be made on a form adopted by the Child Support Program (CSP) and available from any CSP office.

(7) When DCS receives a request from an authorized person pursuant to subsections (2)(a) or (2)(b) of this rule, it shall determine if there is any record of possible domestic violence by the original requestor against the individual sought or any record of possible child abuse by the original requestor.

(8) If reasonable evidence of domestic violence or child abuse is found pursuant to section (7) or FPLS does not return information due to a family violence indicator, an authorized person may ask the court to determine, pursuant to 42 USC 653(b)(2)(B), whether disclosure of the information could be harmful to the parent or child sought.

(a) If the court concludes that disclosure of the information would not be harmful to the parent or child, DCS will submit the request along with the court's determination to FPLS.

(b) If the court concludes that disclosure of the information would be harmful to the parent or child, the request will be denied.

Stat. Auth.: ORS 25.265 & 180.345

Stats. Implemented: ORS 25.265 & 183.380

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0279; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1320; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1320; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04

## 137-055-1360

### Access to FPLS for Parental Kidnapping, Child Custody or Visitation Purposes

(1) For the purposes of this rule, an authorized person is:

(a) Any agent or attorney of any state who has the duty or authority under the law of that state to enforce a child custody or visitation order;

(b) Any court having jurisdiction to make or enforce a child custody or visitation determination, or any agent of such court;

(c) Any agent or attorney of the United States or of a state who has the duty or authority to investigate, enforce or bring a prosecution with respect to the unlawful taking or restraint of a child. The unlawful taking or restraint of a child includes:

(A) Custodial interference as provided in ORS 163.245 and ORS 163.257; or

(B) Any other State or Federal law with respect to the unlawful taking or restraint of a child.

(2) An authorized person as defined in section (1) of this rule, may request information to facilitate the discovery or location of a parent, legal guardian, or child. Information is limited to the most recent address and place of employment of the person sought.

(3) A request pursuant to this rule must be made in writing directly to Division of Child Support (DCS) and must contain:

(a) The purpose for which the information is requested;

(b) The full name, social security number (if known) and date of birth or approximate date of birth of the individual sought;

(c) The full name and date of birth and social security number of the person making the request;

(d) Whether the individual is or has been a member of the armed forces or is receiving any federal compensation or benefits, if known; and

(e) If the request is from the court, the signature of the judge or agent of the court.

(4) The request may be made on a form adopted by DCS and available from any DCS or District Attorney child support office.

(5) If FPLS does not return information due to a family violence indicator, as defined in OAR 137-055-1320, the authorized person may ask the court to determine, pursuant to 42 USC 653(b)(2)(B), whether disclosure of the information could be harmful to the parent, legal guardian or child sought.

(a) If the court concludes that disclosure of the information would not be harmful to the parent, legal guardian or child, DCS will re-submit the request along with the court's determination to FPLS.

(b) If the court concludes that disclosure of the information would be harmful to the parent, legal guardian or child, the request will be denied.

(6) The court may disclose FPLS information to the extent necessary to process and adjudicate an action for the establishment or enforcement of a child custody or visitation determination.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.265

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0281; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1360; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1360; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04

## 137-055-1600

### Child Support Program Participant Grievance

(1) For the purposes of this rule the following definitions shall apply.

(a) "Program participant" means any obligor, obligee or beneficiary in an Oregon child support case or any person denied services after submitting an application.;

(b) "Grievance" means a formal complaint filed against the administrator;

(c) "Grievant" means a program participant who has filed a grievance as set out in this rule.

(2) Program participants are entitled to fair, professional, courteous and accurate service. A grievance procedure has been established to enable program participants a means to formally express when they perceive that they have not received fair, professional, courteous or accurate service. This grievance procedure shall be handled by the Division of Child Support (DCS) under the oversight of the Oregon Child Support Program Director.

(3) Grievances may be filed by program participants or attorneys or other employees of law offices representing program participants.

(4) It is recognized that child support enforcement activities may create negative reactions among some program participants. It is further recognized that a high level of service may not result in desired support payments. Therefore, a grievance filed against the administrator must be investigated to determine if the grievance has merit. Grievances which will be considered to be without merit include:

(a) Grievances that protest actions that are prescribed or permitted by state administrative rule, state law, child support program approved written policy or procedure, federal law or federal regulation;

(b) Grievances that protest that support payments have not been made if the administrator has taken appropriate steps in accordance with state and federal rules to obtain payments;

(c) Grievances filed regarding actions taken by, or failure to take action by, another agency or a child support agency of another state;

(d) Grievances that protest that actions have not been taken but the case record reflects otherwise; or

(e) Grievances that do not constitute a complaint but merely convey information to, or request an action by the administrator.

(5) The decision to find the grievance to be without merit or send it to the appropriate office for resolution shall be made by the Child Support Program (CSP).

(6) Grievances shall be made on a form developed by the CSP.

# ADMINISTRATIVE RULES

(7) Nothing in this rule precludes any program participant or any other person or entity from expressing complaints to the administrator by any other method.

(8) Grievance forms shall be available to program participants through any CSP office. The address and telephone number where a grievance form can be obtained and information about the grievance process shall be:

- (a) Conspicuously posted in all CSP offices;
- (b) Included in the standard application for support enforcement services;
- (c) Included in initial letters sent to obligors and obligees by the CSP;
- (d) Included in the CSP's general information pamphlet;
- (e) Included in or with an annual notice mailed to obligors and obligees.

(9) Completed grievance forms must be filed by grievants with the CSP constituent desk. Completed grievance forms or photocopies of these forms filed with the administrator shall be immediately forwarded to the CSP's constituent desk. Upon receipt of the grievance, the CSP constituent desk shall:

- (a) Record receipt of the grievance;
- (b) Investigate the grievance to determine if the grievance is without merit per section (4) of this rule;
- (c) If the grievance is without merit per section (4) of this rule, the grievance shall be returned to the grievant with an explanation about why it has been returned;
- (d) If the grievance is not returned to the grievant it will be forwarded to the grievance coordinator(s) in the appropriate branch office for resolution.

(10) Upon receipt of the grievance, the office against whom the grievance has been filed shall investigate the grievance. That office will either take corrective action and notify the grievant or contact the grievant to explain why corrective action is not appropriate. The CSP constituent desk will set time limits for the administrator to address the grievance, not to exceed 90 days from the date the grievance is received at DCS. The date received by the CSP constituent desk shall be considered to be the date the grievance is screened and accepted.

(11) Upon completion of grievance processing the office against whom the grievance has been filed will send the grievance form to CSP constituent desk with a report of the grievance investigation and the disposition.

(12) Grievances that allege serious violations of personnel rules or standards of personal conduct, such as, but not limited to, allegations of racial or sexual discrimination or sexual harassment, in which allegations are substantiated, shall be removed from this grievance process and be part of the personnel process of the office against whom the grievance has been filed.

(13) A record of grievances and dispositions shall be maintained by the CSP for a period of three years.

(14) The administrator against whom a grievance has been filed shall not discriminate against the grievant because a grievance has been filed.

(15) Performance reviews shall include examination of the administrator's compliance with these grievance procedures and an examination of grievances filed against the administrator and resolution to such grievances for the previous calendar year.

Stat. Auth.: ORS 25.243 & 180.345

Stats. Implemented: ORS 25.080 & 25.243

Hist.: AFS 1-1995, f. 1-3-95, cert. ef. 5-2-95; AFS 32-1995, f. & cert. ef. 11-8-95; AFS 20-1997, f. & cert. ef. 11-7-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0010; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1600; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1600; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04

## 137-055-2140

### Delegations to Administrative Law Judge

Administrative law judges of the Office of Administrative Hearings are authorized to do the following:

- (1) Issue final orders without first issuing proposed orders.
- (2) Issue final orders by default in cases described in OAR 137-003-0670, except in a case authorized by ORS 416.415. An administrative law judge is authorized to issue a final order by default in a case authorized by ORS 416.425(2) but not in any other case authorized by ORS 416.425.
- (3) Determine whether a reschedule request should be granted pursuant to OAR 137-003-0670(1)(d), based on whether the requester's failure to appear for a scheduled hearing was beyond the reasonable control of the party.

(4) Issue final orders granting or denying late hearing requests pursuant to OAR 137-003-0528.

(5) Provide to each party the information required to be given under ORS 183.413(2) or OAR 137-003-0510(1).

(6) Order and control discovery.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 180.345

Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0801; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2140; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04

## 137-055-3300

### Special Circumstances Regarding Incarcerated Obligor

(1) For purposes of establishing or modifying a support order, the following definitions apply:

(a) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order, and includes but is not limited to a youth correction facility.

(A) "Correctional facility" applies to a state hospital only as to persons detained therein charged with or convicted of a crime, or detained therein after acquittal of a crime by reason of mental defect;

(B) "Correctional facility" includes alternative forms of confinement, such as house arrest or confinement, where an obligor is not permitted to seek or hold regular employment.

(b) "Incarcerated obligor" means a person who:

(A) Is or may become subject to an order establishing or modifying child support; and

(B) Is, or is expected to be, confined in a correctional facility for at least six consecutive months from the date of initiation of action to establish a support order, or from the date of a request to modify an existing order pursuant to this rule.

(2) For purposes of computing a monthly support obligation for an incarcerated obligor, all provisions of the Oregon child support guidelines, as set forth in OAR 137-050-0320 through 137-050-0490, shall apply except as otherwise specified in this rule.

(3) The administrator shall not initiate an action to modify a support obligation because of incarceration unless the obligor is an incarcerated obligor, as defined in subsection (1)(b) of this rule, and a party to the current order has requested a modification due to incarceration.

(4) The incarcerated obligor's income and assets are presumed available to the obligor, unless such income or assets are specifically restricted, assigned, or otherwise inaccessible pursuant to state or federal laws or rules regarding the income and assets of incarcerated obligors.

(5) If the incarcerated obligor has gross income less than \$200 per month, the administrator shall presume that the obligor has zero ability to pay support.

(6) An order entered pursuant to ORS 416.425 and this rule, that modifies a support order because of the incarceration of the obligor, is effective only during the period of the obligor's incarceration and for 60 days after the obligor's release from incarceration. The previous support order is reinstated by operation of law on the 61st day after the obligor's release from incarceration.

(a) An order that modifies a support order because of the obligor's incarceration must contain a notice that the previous order will be reinstated on the 61st day after the obligor's release from incarceration;

(b) Nothing in this rule precludes an obligor from requesting a modification based on a change of circumstances, pursuant to OAR 137-055-3420.

(7) The provisions of this rule do not apply to an obligor who is incarcerated because of nonpayment of support.

Stat. Auth.: ORS 416.455 & 180.345

Stats. Implemented: ORS 416.425(9)

Hist.: AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0078; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3300; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04

## 137-055-3480

### Modification of a Support Order to Zero

(1) The administrator may, upon its own initiative, or upon the request of a party, initiate the necessary action to modify a child support obligation to zero when one of the conditions listed in subsections (a), (b) and (c), of this section apply.

(a) The child or children for whose benefit the support was ordered no longer are in the physical custody of the obligee.



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(b) The family is reconciled (that is, the obligor, obligee and child or children live together as an intact family).

(c) The obligee or beneficiary of the obligee is not receiving TANF cash assistance, foster care or Oregon Youth Authority services and has requested that the administrator modify the support obligation to zero.

(2) No order modifying a support obligation to zero shall be taken ex parte.

(3) Nothing in this rule prohibits the suspension of support accrual under any order for the reason that the obligor receives certain cash assistance as provided in ORS 25.245.

Stat. Auth.: ORS 180.345 & 416.455

Stats. Implemented: ORS 25.287 & 416.425

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1070; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3480; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3480; DOJ 7-2004, f. 3-30-04, cert. ef. 4-1-04

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

**Adm. Order No.:** OSFM 4-2004

**Filed with Sec. of State:** 3-26-2004

**Certified to be Effective:** 10-1-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 837-040-0001, 837-040-0010, 837-040-0140

**Subject:** Changes references from the Uniform Fire Code to the International Fire Code and adopts the 2003 International Fire Code and Oregon amendments as the Oregon Fire Code, 2004 Edition. Also changes the references to the 1998 edition of the Oregon Structural Specialty Code to the 2004 edition and the 1999 edition of the Oregon Mechanical Specialty Code to the 2004 edition.

**Rules Coordinator:** Glen Andreassen—(503) 373-1540, ext. 210

### 837-040-0001

#### Scope

(1) The **International Fire Code** and these Oregon amendments represent a total scope of regulation.

(2) None of the individual chapters in the International Fire Code and Oregon amendments are stand alone requirements.

(3) The provisions of these chapters are not retroactive for existing facilities unless the chief determines that the condition presents a distinct hazard to life or property.

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

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476

Hist.: FM 6-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04

### 837-040-0010

#### Adoption of the International Fire Code

The 2003 edition of the **International Fire Code** as promulgated by the International Code Council is hereby adopted as the Oregon Fire Code, 2004 edition, subject to the exclusions there from and amendments thereto as hereafter set forth in these regulations.

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

Stat. Auth.: ORS 476.030, 479, 480

Stats. Implemented: ORS 476, 479, 480

Hist.: FM 3-1986, f. & ef. 3-11-86; FM 5-1986 (corrects FM 3-1986), f. & ef. 4-30-86 & Renumbered from 837-040-0005, Sec. (3) Uniform Fire Code; FM 3-1989, f. 6-30-89, cert. ef. 7-1-89; FM 6-1990, f. & cert. ef. 9-13-90; FM 6-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1996, f. 1-22-96, cert. ef. 4-1-96; OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 3-1998, f. & cert. ef. 9-30-98; OSFM 4-1999, f. 12-29-99, cert. ef. 1-1-00; OSFM 3-2000, f. 4-1-00, cert. ef. 5-1-00; OSFM 13-2000, f. 10-3-00, cert. ef. 11-1-00; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04

### 837-040-0140

#### Adoption of the Oregon Structural Specialty Code and Oregon Mechanical Specialty Code.

The fire and life safety provisions of the 2004 edition of the **Oregon Structural Specialty Code** and the **2004 edition of the Oregon Mechanical Specialty Code** is hereby adopted as a standard for the purpose of evaluation of existing buildings.

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

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04

## Department of Public Safety Standards and Training Chapter 259

**Adm. Order No.:** DPSST 3-2004(Temp)

**Filed with Sec. of State:** 4-9-2004

**Certified to be Effective:** 4-9-04 thru 10-1-04

**Notice Publication Date:**

**Rules Amended:** 259-009-0062

**Subject:** Establishes a historical recognition period expiring October 1, 2004, for fire service professionals to obtain Maritime Fire Service Operator certification without having to complete task book.

**Rules Coordinator:** Mary Gaines—(503) 378-2427

### 259-009-0062

#### Fire Service Personnel Certification

(1) A fire service professional affiliated with an Oregon fire department may be certified by satisfactorily completing the requirements specified in section (2) of this rule: through participation in a fire department training program accredited by the Department; or through a course certified by the Department; or by evaluation of experience as specified in OAR 259-009-0063. The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance evaluations if applicable.

(2) The following standards for fire service personnel are hereby adopted by reference:

(a) The provisions of the NFPA Standard No. 1001, Edition of 1997, entitled "Fire Fighter Professional Qualifications", including Tentative Interim Amendment 97-1 are adopted subject to the following definitions and modifications:

(A) "Authority having jurisdiction" shall mean the Department of Public Safety Standards and Training.

(B) Delete section 1-3 (Note: this references NFPA 1500)

(C) Delete section 2-1(c) (Note: this references NFPA 1582)

(D) Delete section 2-2 (Note: These are physical requirements for Fire Fighter)

(E) Entry Level Fire Fighter shall mean an individual trained to the requirements of Section 2-1 Student Prerequisites, NFPA Standard No. 1403, Edition of 1997, entitled "Live Fire Training Evolutions" and the applicable safety requirements adopted by OR-OSHA. An individual trained to this level and certified so by the agency head is qualified to perform live-fire training exercises and to perform on the emergency scene under close supervision. An Entry Level Fire Fighter should be encouraged to complete Fire Fighter I training within one year.

(F) All applicants for certification as a Fire Fighter I shall complete either the Task Performance Evaluation or a Department of Public Safety Standards and Training approved Task Book.

(b) The provisions of the NFPA Standard No. 1002, Edition of 1998, entitled "Fire Department Vehicle Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications hereinafter stated:

(A) Delete Section 1-3.2.

(B) 3-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 3-1 through 3-2, shall be met prior to certification as a fire department driver/operator-pumper.

(C) 4-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 4-1 through 4-2, shall be met prior to certification as a fire department driver/operator-aerial.

(D) 5-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Chapter 4 and Section 5-2, shall be met prior to certification as a fire department driver/operator-tiller.

(E) 6-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 6-1 through 6-2, shall be met prior to certification as a fire department driver/operator-wildland fire apparatus.

(F) 7-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance requirements defined in Sections 7-1 through 7-2, shall be met prior to certification as a fire department driver/operator-aircraft rescue and fire-fighting apparatus (ARFF).

(G) 8-1 General. The requirements of Fire Fighter I, as specified by the Board on Public Safety Standards and Training and the job performance

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requirements defined in Sections 8-1 through 8-2, shall be met prior to certification as a fire department driver/operator-mobile water supply apparatus.

(H) Delete "the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program, Section 4-2" from Sections 2-3.1, 3-1.3, 4-1.3, 5-2.2, 6-1.3, 6-1.4-1.3, and 8-1.3.

(I) Either a Task Performance Evaluation must be completed or a Task Book for Driver, Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Firefighting Apparatus Operator or Mobile Water Supply Apparatus Operator must be completed and signed off by the Agency head or Training Officer before an applicant can qualify for certification as a Pumper Operator, Aerial Operator, Tiller Operator, Wildland Fire Apparatus Operator, Aircraft Rescue and Firefighting Apparatus Operator or Mobile Water Supply Apparatus Operator.

(K) An individual who completes the requirements of Chapter 2 and meets the requirements of Entry Level Fire Fighter, may be certified as a Fire Driver.

(c) The provisions of the NFPA Standards No. 1003, Edition 1994, entitled Standard for Airport Fire Fighter Professional Qualifications, are adopted subject to the following definitions and modifications:

(A) Complete an approved Task Book.

(B) Amend section 1-3.1 by deleting "Airport fire fighters who drive aircraft rescue and fire fighting (ARFF) vehicles shall meet the requirements of Chapter 7 of NFPA 1002, Standard for Fire Department Vehicle Driver/Operator Professional Qualifications."

(d) The provisions of the NFPA Standard No. 1031, Edition of 1998, entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) November 1, 2000, all new certifications will be based on NFPA 1031.

(ii) November 1, 2000, through July 31, 2003, any certified Fire Prevention/Investigation Officer I may become certified at NFPA Fire Inspector I.

(iii) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer II will be certified as an NFPA Fire Inspector II.

(iv) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer III will be certified as an NFPA Fire Inspector III.

(v) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until July 31, 2003.

(B) All applicants for certification as a Fire Inspector shall successfully complete a Department of Public Safety Standards and Training approved Task Book.

(C) All applicants for certification as a Fire Inspector shall pass a written certification exam administered by the Department of Public Safety Standards and Training. The applicant shall have completed all required training before taking this exam.

(D) All applicants for certification as a Plan Examiner shall successfully complete a Department of Public Safety Standards and Training approved Task Book.

(E) All applicants for certification as a Plan Examiner shall successfully complete a written certification exam administered by the Department of Public Safety Standards and Training. The applicant shall have completed all required training before taking this exam.

(F) Tentative interim amendment 98-1(NFPA 1031).

(G) Task books shall be monitored by a Field Training Officer approved by the Department of Public Safety Standards and Training. The Field Training Officer should be certified at or above the level being monitored and have at least 5 years inspection experience. Exception: Any Deputy State Fire Marshal (not Entry) with 5 years experience as a deputy in inspections will be approved as a Field Training Officer for Fire Inspector I until July 31, 2003. The Department of Public Safety Standards and Training may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department of Public Safety Standards and Training Staff.

(e) The provisions of the NFPA Standard No. 1033, Edition of 1998, entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) Beginning November 1, 2000, all new certifications will be based on NFPA 1033

(ii) November 1, 2000, through July 31, 2003, any certified Fire Prevention/Investigation Officer I may become certified at NFPA Fire Investigator.

(iii) November 1, 2000, anyone certified as an Oregon Fire Investigator II will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator II. No new Oregon Fire Investigator II certificates will be issued after July 31, 2003.

(iv) November 1, 2000, anyone certified as an Oregon Fire Investigator III will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator III. No new Oregon Fire Investigator III certificates will be issued after July 31, 2003.

(v) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until July 31, 2003.

(B) All applicants for certification as a Fire Investigator shall successfully complete a Department of Public Safety Standards and Training approved Task Book.

(C) All applicants for certification as a Fire Investigator shall pass a written certification exam administered by the Department of Public Safety Standards and Training. The applicant shall have completed all required training before taking this exam. Exception: Anyone holding a valid IAAl Fire Investigator Certification may take the written certification exam and become certified after passing the written exam.

(D) Task books shall be monitored by a Field Training Officer approved by the Department of Public Safety Standards and Training. The Field Training Officer should be certified at or above the level being monitored and have at least 5 years fire investigation experience. Exception: Any Deputy State Fire Marshal (not Entry) with 5 years experience as a deputy in fire investigation will be approved as a Field Training Officer for Fire Investigator until July 31, 2003. The Department of Public Safety Standards and Training may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department of Public Safety Standards and Training Staff.

(f) The provisions of the NFPA Standard No. 1035, Edition of 2000, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) Chapter 6 (Six) "Juvenile Firesetter Intervention Specialist I" and Chapter 7 (Seven) "Juvenile Firesetter Intervention Specialist II", Oregon-amended, shall be adopted with the following changes:

(i) Change the following definitions:

(I) 1-4.4 Change the definition of "Assessment" to read: "A structured process by which relevant information is gathered for the purpose of determining specific child or family intervention needs conducted by a mental health professional."

(II) 1-4.11 Change the title and definition of "Fire Screener" to "Fire Screening" to read "The process by which we conduct an interview with a firesetter and his or her family using state approved forms and guidelines. Based on recommended practice, the process may determine the need for referral for counseling and/or implementation of educational intervention strategies to mitigate effects of firesetting behavior."

(III) 1-4.14 Include "insurance" in list of agencies.

(IV) 1-4.15 Change the definition to read: "...that may include screening, education and referral for assessment for counseling, medical services..."

(V) 1-4.16 Change "person" to "youth" and change age from 21 to 18.

(VI) 1-4.17 Add "...using state-approved prepared forms and guidelines..."

(VII) 1-4.22 Add "...or by authority having jurisdiction."

(VIII) 1-4.24 Add "...or as defined by the authority having jurisdiction"

(ii) Under 6-1 General Requirements, delete the statement, "In addition, the person shall meet the requirements for Public Fire and Life Safety Educator I prior to being certified as a Juvenile Firesetter Intervention Specialist I."

(iii) Bridging will be available for 12 months after adoption of the standard. To bridge to Juvenile Firesetter Intervention Specialist I, a person will be eligible to take an 8-hour update class if s/he documents all of the following:

(I) Involvement in three fire investigations

(II) Use of the 10-J and Oregon Screen Tool forms three times

(III) Five years experience in fire service or a related field

(IV) Attendance in the current Juvenile Firesetter Intervention class or show participation in the Juvenile Firesetter Network by having the application signed off by the local network.

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(B) A task book shall be completed prior to certification as a Public Fire and Life Safety Educator I, II or III.

(C) A task book shall be completed prior to certification as a Public Information Officer.

(D) A task book shall be completed prior to certification as a Juvenile Firesetter Intervention Specialist I and II.

(g) The provisions of the NFPA Standard No. 1041, Edition of 1996, entitled Standard for Fire Service Instructor Professional Qualifications, are adopted subject to the following definitions and modifications:

(A) "Fundamentals of Instruction" shall mean a 16-hour instructor training course for those instructors used for in-house training. This course includes a task book. This course does not lead to certification.

(B) Successfully complete an approved task book for each level of Fire Service Instructor certification.

(i) This requirement is effective for any application for certification after January 4, 2002.

(h) The provisions of the NFPA Standard No. 1021, Edition of 1997, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 2-1 General. For certification at the Fire Officer Level I, the candidate shall be certified at Fire Fighter II, as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Sections 2-2 through 2-7 of this standard.

(i) 2-1.1 General Co-requisite Knowledge: the organizational structure of the department, departmental operating procedures for administration, emergency operations, and safety; departmental budget process; information management and record keeping; the fire prevention and building safety codes and ordinances applicable to the jurisdiction; incident management system; socioeconomic and political factors that impact the fire service; cultural diversity; methods used by supervisors to obtain cooperation within a group of subordinates; the rights of management and members; agreements in force between the organization and members; policies and procedures regarding the operation of the department as they involve supervisors and members.

(ii) 2-1.2 General Prerequisite Skills: the ability to communicate verbally and in writing, to write reports, and to operate in the incident management system. These skills may be documented through the following course work: Advanced Writing (such as WR121 or equivalent); Advanced Speech (such as SP111 or equivalent); Technical Writing (such as WR227 or equivalent); Math (such as MTH 052 or equivalent); Physical Science (such as PH201 or equivalent). The following are recognized courses for portions of the training requirements 2-2 through 2-7: Fire Fighter Law; Managing Fire Personnel currently #39-13; Increasing Personal Effectiveness & Increasing Team Effectiveness or 3 or more credit college level course in principles of supervision or NFA Leadership I, II, and III; Fire Fighter Safety and Survival for Company Officers currently #61-01; MCTO-P, D & T; Instructor I or equivalent.

(iii) Successfully complete an approved task book for Fire Officer I.

(B) 3-1 General. For certification as Fire Officer Level II, the candidate shall be certified as Fire Officer I and Fire Instructor I, as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Section 3-2 through 3-7 of this standard.

(i) 3-2.3 Existing Curricula: Public Education, Relations, and Information; College Fire Codes and Ordinances; or National Fire Academy Fire Inspection Principles; or International Fire Codes Institute Uniform Fire Code Certificate; Fire Detection Systems & Alarms; College or State Major Emergency Strategy and Tactics; or National Fire Academy Command and Control of Fire Department Operations at Multi-Alarm Incidents; or National Fire Academy Command and Control of Fire Department Operations at Target Hazards; or National Fire Academy Hazardous Materials Incident Management; Incident Safety Officer; Department of Public Safety Standards and Training Fire Instructor II; or Department of Public Safety Standards and Training Instructor Development Course; National Fire Academy Initial Fire Investigation; or National Fire Academy Arson Detection for Fire Responders; or College Fire Investigation Course; or National Fire Academy Fire Cause Determination for Company Officers; or Fire Investigation #35-10; Washington Oregon Interface/National Wildfire Coordinating Group (WOI-NWCG) — S-205 (Wildland); College Strategy and Tactics; or National Fire Academy Managing Company Tactical Operations — Tactics and Decision Making; or National Fire Academy Incident Command System; or National Fire Academy Fire Command Operations.

(ii) Successfully complete an approved task book for Fire Officer II.

(C) 4-1 General. For certification at the Fire Officer III/Administrator Level, the candidate shall be certified as Fire Officer II as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Sections 4-2 through 4-7 of this standard; or, for certification at the Fire Protection Administrator Level, the candidate shall be certified as either Fire Officer II, Fire Prevention Officer III, Public Education Officer III, Instructor IV, or Fire Investigator III as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Sections 4-2 through 4-7 of this standard.

(i) 4-1.3 Existing Curricula — Basic Institute Classes which would meet Fire Protection Administrator Course Requirements: Inspection and investigation (new); Emergency Service Delivery (new); Principles of Fire Protection Management; Personnel Management; Organization for Fire Protection; Legal Aspects; Fiscal Management;

(D) 5-1 General. For certification at the Fire Officer IV/Executive Level, the candidate shall be certified as Fire Officer III as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Sections 5-2 through 5-7 of this standard, or, for certification at the Fire Protection Executive Level, the candidate shall be certified as either Fire Officer III Fire Protection Administrator as defined by the Department of Public Safety Standards and Training, and meet the job performance requirements defined in Sections 5-2 through 5-7 of this standard.

(i) 5-1.2 General Co-requisite Skill: the ability to effectively apply prerequisite knowledge.

(ii) 5-1.3 Existing Curricula — Advanced Institute Classes which would meet Fire Protection Executive Course Requirements: Master Planning; Advanced Legal Aspects; Advanced Fiscal Management; Local Government and Community Politics; Organizational Psychology; Management Information Systems; Labor Management Relations.

(i) Hazardous Materials Responder (DPSST-P-12 1/96).

(j) Fire Ground Leader, (DPSST, 2001)

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader shall first be certified as an NFPA Fire Fighter II.

(C) An applicant would need to document training in nine areas:

(i) Fire Resistive Building Construction

(ii) Ordinary Building Construction

(iii) Incident Safety Officer or Fire Fighter Safety

(iv) Water Supplies

(v) Strategy and Tactics I, II, and III

(vi) Incident Command System

(vii) Fire Investigation

(D) A task book shall be completed before certification is awarded. The task book has been made a part of the Fire Officer 1 Task Book.

(k) Wildland Interface Fire Fighter, Wildland Interface Engine Boss/Company Officer, Wildland Strike Team leader, Wildland Division/Group Supervisor (DPSST-P-20 2/99).

(l) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book.

(A) Historical Recognition:

(i) The application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.

(iii) All applications received after October 1, 2004, will need to show completion of the approved task book.

(m) Certification guide for Wildland Fire Investigator (August, 1999).

(n) The provisions of the NFPA Standard No. 1006, Edition of 2000, entitled, "Professional Qualifications for Rescue Technician" are adopted subject to the following modifications:

(A) The Authority Having Jurisdiction shall mean the local or regional fire department.

(B) Historical Recognition:

(i) The application shall be submitted with the Fire Chief or designee's signature attesting to the skill level and training of the applicant.

(ii) The application must be submitted to the Department no later than August 1, 2004.

(iii) Historical recognition will be valid for training completed prior to August 1, 2003.

(C) Instructors

(i) Curriculum must be certified by DPSST to meet NFPA 1006.

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(ii) An instructor delivering training under a department's accreditation agreement must be a certified technician in that specialty rescue area.

(D) Task Books

(i) Completion of a task book will be required for certification beginning August 1, 2003.

(ii) A task book must be completed for each of the six specialty rescue areas applied for.

(iii) Only a certified technician in that specialty rescue area can sign off the Task Book.

(iv) The requirements in Chapters 2 and 3 need to be met only one time for all six specialty rescue areas.

(3) Task performance evaluations, where prescribed, shall be required prior to certification. Such examinations shall be conducted in the following manner:

(a) Task performance competency shall be evaluated by three people nominated by the employing fire department's Chief Officer for approval by the Department or its designated representative.

(b) The employing department's equipment and operational procedures shall be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, shall be used for administration of the evaluation.

(d) The training officer for an accredited fire department training program must notify the Department or its designated representative prior to performing a Task Performance Evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire department whose training program is not accredited.

(4) The following are recommendations for skills maintenance training:

(a) Certified fire personnel should annually complete the following prescribed hours of accredited education and/or training in the area in which they are certified and performing as a primary duty:

Fire Fighter I and Driver — 30 hours/year

Fire Fighter II, Airport Fire Fighter, Pumper Operator, Aerial Operator, Tiller Operator, Aircraft Rescue and Firefighting Apparatus Operator, Wildland Fire Apparatus Operator and Mobile Water Supply Apparatus Operator — 60 hours/year  
Instructor personnel — 4 hours of accredited training per year or eight hours per year of successful teaching

All other levels(including Hazardous Materials Operations Level) — 12 hours/year

(b) An individual certified and performing duties in more than one area need only have training hours equal to the single highest requirement.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003 f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04

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## Department of Revenue Chapter 150

**Adm. Order No.:** REV 1-2004(Temp)

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04 thru 8-1-04

**Notice Publication Date:**

**Rules Adopted:** 150-180.455, 150-323.160(3)-(A), 150-323.480(1)-(B)

**Rules Ren. & Amended:** 150-323.480(1) to 150-323.480(1)-(A)

**Subject:** These temporary administrative rules relate to the enforcement of civil penalties and definition of "appropriate stamp" for cigarette and tobacco taxes.

**Rules Coordinator:** Xann-Marie Culver—(503) 947-2099

### 150-180.455

#### Civil Penalties for Non Participating Manufacturers of the Master Settlement Agreement

(1) The Department of Revenue may assess a civil penalty against any person who sells, holds or possesses cigarettes for sale in Oregon that are cigarettes of a tobacco product manufacturer or brand family that were acquired at a time that the particular tobacco product manufacturer or brand family was not included on the nonparticipating manufacturer directory developed by the Oregon Department of Justice.

(a) The department will apply the following guidelines to determine the amount of the penalty, including the factors described in subsection (3) of this rule:

Incident—Penalty Not to Exceed—Minimum Penalty

First—Warning notice

Second—\$100 per pack—\$1,000

Third—\$500 per pack—\$1,000

Fourth—\$1,000 per pack—\$1,000

Fifth and subsequent—\$5,000 per pack—\$1,000

(b) For any single incident, including each sale, possession for sale or offer to sell, the department will not impose a total penalty that exceeds the greater of \$5,000 or 500 percent of the retail value of the cigarettes.

(2) The Department of Revenue may assess a civil penalty against any person who affixes an Oregon tax stamp to a package of cigarettes produced by a tobacco product manufacturer or brand family that, at the time the stamp was affixed, was not included on the Dept. of Justice's directory of nonparticipating manufacturers. The department will apply the following guidelines to determine the amount of the penalty, including consideration of the factors described in subsection (3) of this rule:

Incident—Penalty Not to Exceed—Minimum Penalty

First—Warning notice

Second—\$100 per stamp affixed—\$1,000

Third—\$500 per stamp affixed—\$1,000

Fourth—\$1,000—per stamp affixed—\$1,000

Fifth and subsequent—\$5,000 per stamp affixed—\$1,000

(3) The department may consider the following factors when determining the civil penalty for the violations listed in subsection (1) and (2) of this rule:

(a) Number of previous inspections by the Department of Revenue held at the business;

(b) Number of previous violations of Chapter 323 provisions;

(c) Size of business; and

(d) Any other factors the department considers relevant to its determination.

Stat. Auth.: ORS 305.100, 323.440

Stats. Implemented: ORS 180.455

Hist. REV 1-2004(Temp), f. & cert. ef. 4-1-04 thru 8-1-04

### 150-323.160(3)-(A)

#### Definition of "Appropriate Stamp"

As required by ORS 323.160(3), an appropriate stamp must be affixed to each package of cigarettes prior to the distribution of the cigarette; for purposes of that requirement an "appropriate stamp" is considered to be more than 50 percent of a single required Oregon tax stamp.

Stat. Auth.: ORS 305.100, 323.440

Stats. Implemented: ORS 323.160

Hist.: REV 1-2004(Temp), f. & cert. ef. 4-1-04 thru 8-1-04

### 150-323.480(1)-(A)

#### Civil Penalties for Violation of Cigarette Tax Provisions

(1) The Department of Revenue may impose civil penalties on any person who violates any provision of cigarette tax law. The violations include, but are not limited to, those described under subsection (3) of this rule.

(2) The following civil penalties will be imposed on a per incident basis for the violations in subsection (3) of this rule:

Incident—Penalty not to exceed

First—Warning notice

Second—\$250

Third—\$500

Fourth and subsequent—\$1,000

(3) The civil penalties outlined in subsection (2) of this rule may be imposed for the following violations of ORS 323.005 to 323.482:

(a) ORS 323.060: Failure by a user or consumer to pay tax;

(b) ORS 323.105: Failure by a distributor to apply for and obtain a distributor's license;

(c) ORS 323.107: Failure by a wholesaler to apply for and obtain a wholesaler's license and make, preserve and supply records;

(d) ORS 323.130: Failure to display a license at the business location for which it was issued;

(e) ORS 323.165(1): Failure to obtain written approval from the Department of Revenue before selling, exchanging, or transferring unaffixed stamps to another person;

(f) ORS 323.170: Failure by a distributor to pay for stamps as provided in ORS 323.005 to 323.482 and failure by a distributor to notify the department of the number of packages of cigarettes to which the distributor affixes a stamp;

(g) ORS 323.185(1): Failure of the distributor to make payments of amounts owing for stamps purchased on the deferred-payment basis;

(h) ORS 323.205: Failure of manufacturers selling and shipping cigarettes into this state to other than a licensed distributor to:

(A) Deliver a written statement with each sale or consignment of cigarettes,

(B) Deliver a duplicate of that statement to the Department of Revenue, and

# ADMINISTRATIVE RULES

(C) File each cancellation or modification of the written statement and any other information necessary to the reconciliation of accounts with the Department of Revenue,

(i) ORS 323.211: Failure of distributors, dealers, and other persons engaging in the sale of cigarettes through the use of a vending machine(s) to affix the statutorily required card or decal in a conspicuous place on each machine;

(j) ORS 323.215: Failure of distributors, dealers, and other persons selling cigarettes through a vending machine(s) to keep detailed records of each machine showing the location of the machine and the date the machine was placed in that location;

(k) ORS 323.220: Failure of distributors and persons dealing in, transporting or storing cigarettes in this state to:

(A) Keep on premises records, receipts, invoices, and other pertinent papers, and

(B) Refrain from destroying records if so ordered by the Department of Revenue;

(l) ORS 323.225: Failure of transporters seeking to possess or acquire untaxed cigarettes for transportation or transport upon highways, roads, or streets of this state to:

(A) Obtain and keep a permit in the transporting vehicle during the transportation of the cigarettes, and

(B) Have the required invoices or bill of lading in the transporting vehicle;

(m) ORS 323.335: Failure of:

(A) Distributors to pay tax,

(B) Taxpayers other than licensed distributors to pay tax, and

(C) Common carriers and persons authorized to sell cigarettes on the facilities of common carriers to pay tax;

(n) ORS 323.340(1): Failure of licensed distributors to file reports;

(o) ORS 323.343: Failure of any person not a distributor, who had cigarette activity in this state, to file a report;

(p) ORS 323.355: Failure of common carriers and persons authorized to sell cigarettes on the facilities of common carriers to file reports and submit payment of tax due with the reports; and

(q) ORS 323.360: Failure of a consumer or user subject to the tax resulting from a distribution of cigarettes to file reports and submit payment of the tax due with the reports.

(4) The department may consider the following factors when deciding the civil penalty under this rule:

(a) Number of previous inspections held by the Department of Revenue at the place of business;

(b) Number of previous violations of Chapter 323 provisions;

(c) Size of business; and

(d) Any other factors or information the department considers relevant to its determination.

(5) A civil penalty authorized by ORS 323.480(1) and this rule may be imposed on any person, as defined in ORS 323.010, who is responsible for complying with ORS 323.005 to 323.482.

Stat. Auth.: ORS 305.100, 323.440

Stats. Implemented: ORS 323.480

Hist.: REV 3-2002, f. 6-26-02, cert. ef. 6-30-02; REV 1-2004(Temp), f. & cert. ef. 4-1-04 thru 8-1-04, Renumbered from 150.480(1)

## 150-323.480(1)-(B)

### Civil Penalties for Violation of Cigarette Tax Stamping Provisions

(1) The Department of Revenue may assess a civil penalty against any person who is required to comply with ORS 323.005 to 323.482 and who:

(a) Fails to prepay cigarette taxes by purchasing stamps from the department and affixing the stamps to unstamped packages of cigarettes prior to distributing those cigarettes, as required by Oregon Laws 2003, chapter 804, section 3; or

(b) Fails to affix an appropriate stamp to each package of cigarettes prior to distribution of the cigarettes, as required by ORS 323.160(3).

(2) For purposes of ORS 323.480 and this rule, each pack of cigarettes distributed in violation of ORS 323.005 to 323.482 constitutes a separate violation and is subject to penalty as follows:

Incident—Penalty not to exceed—Minimum Penalty

First—Warning notice

Second—\$10 per pack—\$1,000

Third—\$50 per pack—\$1,000

Fourth—\$100 per pack—\$1,000

Fifth and subsequent—\$1,000 per pack—\$1,000

NOTE: Distributors will be assessed a minimum penalty of \$1,000 for the second and any subsequent incidents.

(3) The department may consider the following factors when determining the civil penalty under this rule:

(a) Number of previous inspections by the Department of Revenue held at the business;

(b) Number of previous violations of chapter 323 provisions;

(c) Size of business; and

(d) Any other information the department considers relevant to its determination.

Stat. Auth.: ORS 305.100, 323.440

Stats. Implemented: ORS 323.480

Hist.: REV 1-2004(Temp), f. & cert. ef. 4-1-04 thru 8-1-04

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

**Adm. Order No.:** DMV 5-2004

**Filed with Sec. of State:** 3-25-2004

**Certified to be Effective:** 3-25-04

**Notice Publication Date:** 2-1-04

**Rules Amended:** 735-062-0020, 735-062-0030

**Rules Repealed:** 735-062-0020(T), 735-062-0030(T)

**Subject:** These rules outline acceptable proof of an applicant's identity, age and residence address when applying to DMV for an original, renewal or duplicate driver permit, driver license or identification card. Because of the tremendous problem identity theft and use of fraudulently obtained documents present nationwide, including a threat to the nation's security, and because a driver license or identification card are the primary forms of identification, these rule amendments are intended to provide DMV with the documentation necessary to verify the identity, age and residence address of a person issued a driver permit, driver license or identification card.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

### 735-062-0020

#### Proof of Age and Identity Requirements

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will require all applicants for driver permits, driver licenses and identification cards to present to DMV documentary proof of the applicant's age and identity prior to the issuance of such driver permit, driver license or identification card.

(2) Applicants for original driver permits, driver licenses and identification cards must present:

(a) Two of the primary proofs of age and identity listed in section (9) of this rule; or

(b) One of the primary proofs of age and identity listed in section (9) of this rule that contains a date of birth and at least two of the secondary proofs of age and identity listed in section (10) of this rule.

(3) Applicants for renewal of driver permits, driver licenses and identification cards must present:

(a) Two of the primary proofs of age and identity listed in section (9) of this rule;

(b) One of the primary proofs of age and identity listed in section (9) of this rule that contains a date of birth and at least two of the secondary proofs of age and identity listed in section (10) of this rule; or

(c) The renewal reminder notice mailed by DMV as required by ORS 807.140 and their current driver permit, driver license or identification card.

(4) Applicants for replacement driver permits, driver licenses and identification cards must comply with ORS 807.162 and also present:

(a) Two of the primary proofs of age and identity listed in section (9) of this rule; or

(b) One of the primary proofs of age and identity listed in section (9) of this rule that contains a date of birth and at least two of the secondary proofs of age and identity listed in section (10) of this rule.

(5) Documents must be original or certified copies.

(6) Foreign birth certificates, passports and driver licenses will not be accepted as primary proof of age and identity unless they are either in English or contain an English translation within the same document. No separate translation document(s) will be accepted.

(7) Documents must be of different types and no two documents can be issued by the same government agency, department or consulate. For example, a U.S. birth certificate issued by a state agency and a social security card issued by the Social Security Administration are acceptable. A passport and a consulate card issued by the same consulate will not be accepted. EXCEPTION: The Oregon digital photo on file and an Oregon

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driver permit, driver license or identification card will serve as two separate primary documents. For example, a person who has a valid Oregon driver permit and applies for an Oregon driver license could present the valid driver permit and the photo on file as sufficient proof of age and identity.

(8) If the document contains an expiration date, DMV will accept the document up to one year after the expiration date.

(9) Primary proofs of age and identity include, but are not limited to:

(a) A U.S., Canadian or U.S. Territorial government issued birth certificate. For purposes of this subsection, DMV will not accept a hospital issued birth certificate, hospital card, birth registration or baptismal certificate.

(b) A U.S. Consular Report of Birth Abroad (FS-240).

(c) A Certification of Birth (DS-1350 or FS-545).

(d) U.S. Military documents including:

(A) Military or Armed Forces ID card;

(B) Military Common Access Card;

(C) U.S. Uniform Services ID and Privileges card (DD1173 and DD1173-1); and

(D) Request for Verification of Birth (DD372).

(e) Passport.

(f) U.S. immigration or naturalization documents including:

(A) U.S. Citizen ID card (I-179 and I-197);

(B) Resident Alien card or Permanent Resident card (I-551);

(C) Temporary Resident ID card (I-688);

(D) Employment Authorization Document (I-688A, I-688B and I-766);

(E) Certificate of Citizenship (N560 and N561); or

(F) Certificate of Naturalization (N550, N570 and N578).

(g) A valid Oregon, other state, District of Columbia, U.S. Territorial government or Canadian driver license, instruction permit or identification card, unless hole-punched or marked as "Not Valid As ID".

(h) A digital photograph on file with Oregon DMV.

(i) Non-immigrant visa issued by the U.S. Department of State.

(j) U.S. Department of State driver license or Non-driver ID card.

(k) An Oregon Concealed Weapon Permit/Concealed Handgun License.

(l) A Confederated Tribes of Oregon Tribal ID card if:

(A) DMV determines the procedures used in issuing the card are reasonably equivalent to DMV standards for verification of a persons' age and identity; and

(B) The card contains sufficient security features to alleviate alteration or counterfeiting of the card.

(m) Social Security card.

(n) A Consulate ID card if:

(A) DMV determines the procedures used in issuing the card are reasonably equivalent to DMV standards for verification of a persons' age and identity; and

(B) The card contains sufficient security features to alleviate alteration or counterfeiting of the card.

(o) A letter verifying identity provided by an Oregon correction agency if:

(A) DMV determines the procedures used in issuing the letter are reasonably equivalent to DMV standards for verification of a persons' age and identity; and

(B) The letter contains sufficient security features to alleviate alteration or counterfeiting of the letter.

(10) Secondary proofs of age and identity include, but are not limited to:

(a) U.S. military discharge papers.

(b) An Oregon student body identification card, issued for the current school year or not more than one year old.

(c) W-2 tax forms for the current tax year.

(d) Court documents issued by a court in the United States that show the applicant is a party to the judicial proceeding and which contain court signatures and seals. Acceptable documents are:

(A) Gender and/or name change;

(B) Adoption, guardianship, custody or child support; and

(C) Marriage license or divorce decree.

(e) A Permit to Reenter the U.S. (I-327).

(f) Border Crossing cards (DSP-150, I-185, I-186 and I-586).

(g) A Refugee Travel Document (I-571).

(h) A birth certificate, driver license, military ID card, passport or voter card issued by a foreign government. A DMV employee may accept a foreign document that does not include English if the employee is able to

understand the information in the document that relates to the person's identity and is satisfied the document was validly issued.

(11) DMV will not accept a document as proof of identity or age if DMV has reason to believe the document is not valid. DMV may request an applicant for a driver permit, driver license, or identification card to present additional documentary proof of age or identity if the documents presented do not establish the applicant's age or identity to the satisfaction of DMV.

Stat. Auth.: ORS 184.616, 184.619, 807.050, 807.150 & 807.400

Stats. Implemented: ORS 807.050, 807.062, 807.150, 807.160, 807.220, 807.230 & 807.280

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0016;

MV 6-1990, f. & cert. ef. 4-2-90; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 7-2001, f. &

cert. ef. 3-7-01; DMV 34-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 5-

2004, f. & cert. ef. 3-25-04

## 735-062-0030

### Proof of Residence Address

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) requires all applicants for an original driver permit, driver license, or identification card to present to DMV at least one document showing the applicant's name and current residence address. Current residence address is the address where the applicant actually lives, and DMV will include this address on the permit, license, or identification card. Acceptable documents include any of the items listed in section (3) of this rule.

(2) DMV requires all applicants who apply for a renewal or duplicate driver permit, driver license, or identification card at a DMV field office to present to DMV at least one document showing the applicant's current residence address if the applicant is changing his or her address. Acceptable documents include any of the items listed in section (3) of this rule.

(3) Proof of residence address includes any of the following documents that show the applicant's current residence address:

(a) Any one of the proofs of identity listed in OAR 735-062-0020(9) or (10).

(b) Mortgage documents.

(c) A statement from the parent, step-parent, or guardian of an applicant under 18 years of age attesting to the applicant's residence address. The parent, step-parent or guardian must reside at the same address as the applicant and sign a statement attesting to the applicant's residence address. In addition, the parent, step-parent, or guardian must present one acceptable proof of address document as set forth in this rule that shows the current residence address of the applicant.

(d) A statement of the applicant's spouse. The spouse must reside at the same residence as applicant and sign a statement attesting to the applicant's residence address. In addition, the spouse must present one other acceptable proof of address document as set forth in this rule that shows the current residence address of the applicant.

(e) Rental or lease agreement signed by the landlord and applicant and dated within one year of the application for the license, permit or identification card.

(f) Utility hook-up order.

(g) Payment booklet.

(h) Canceled mail that is dated within 60 days of the application for the license, permit or identification card. The applicant must present both the envelope and the envelope's matching contents. DMV will accept canceled mail from the following sources:

(A) Credit card companies;

(B) U.S. Treasury;

(C) Social Security Administration;

(D) State or Federal Revenue Department;

(E) Oregon State government agencies;

(F) Utility companies;

(G) Financial institutions;

(H) Insurance companies; and

(I) Originators of out-of-state clearance letter.

(i) Oregon vehicle title or registration documents.

(j) Oregon voter registration card.

(k) Selective Service card.

(l) Medical or health card.

(m) Educational institution transcript forms for the current school year.

(n) An unexpired professional license issued by an agency in the United States.

(4) If the applicant does not have a residence address, DMV may accept a descriptive address with a mailing address. DMV may require the applicant to provide proof that no residence address has been assigned to the property. Such proof may include, but is not limit to, a statement from

# ADMINISTRATIVE RULES

the U.S. Postal Service or from the Assessor's office in the county in which the property is located.

(5) An applicant who is homeless may use a descriptive address of the location where he/she actually resides, e.g., "under the west end of Burnside Bridge." The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the descriptive address, the applicant also must provide a mailing address.

(6) An applicant who travels continuously may use a descriptive address of "continuous traveler". The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the descriptive address, the applicant also must provide a mailing address.

Stat. Auth.: ORS 184.616, 184.619, 807.050, 807.150 & 807.400  
Stats. Implemented: ORS 807.110, 807.160 & 807.400  
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0017; DMV 2-1995, f. & cert. ef. 2-10-95; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 34-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 5-2004, f. & cert. ef. 3-25-04

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

**Adm. Order No.:** MCTD 2-2004  
**Filed with Sec. of State:** 3-26-2004  
**Certified to be Effective:** 3-26-04  
**Notice Publication Date:** 1-1-04

**Rules Amended:** 740-110-0080, 740-110-0090

**Subject:** These rules establish requirements for inspection and notification for certain motor carrier radioactive material shipments. Previously, rules required ODOT to inspect every shipment, vehicle and driver transporting certain radioactive materials prior to allowing the shipment on Oregon highways. Amendments were made to provide the Department discretion in determining when a commercial vehicle, driver or shipment should be inspected. For example, it is not reasonable to require an inspection if the same shipment, vehicle and driver has been found defect-free by an authorized inspection in another jurisdiction shortly before the vehicle's entry into Oregon. Amendments were made now to manage an impending increase in the number of such shipments through Oregon resulting from a US Department of Energy (DOE) project. Most shipments originate at the DOE Hanford Site in Washington and have been inspected prior to their departure. The amendments will not limit the Department's authority to inspect any vehicle or shipment.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 740-110-0080

### Inspections

(1) The Oregon Department of Transportation, Motor Carrier Transportation Division, in its discretion, may require the inspection of any vehicle, driver and:

(a) Shipment of "irradiated reactor fuel" as defined in Title 10 Code of Federal Regulations (CFR), Part 73.37;

(b) "Highway route controlled shipment" as defined in Title 49 CFR Part 173.403;

(c) Any shipment transported under an Oregon Radioactive Materials Transport Permit; and

(d) Any other shipment of "radioactive material" as defined in Title 49 CFR Part 173.403.

(2) A determination of the need, and arrangements, for inspection will be made at the time of notice required in OAR 740-110-0090(2).

[Publications referenced are available from the agency.]  
Stat. Auth.: ORS 469.470, 823.011, 825.252 & 825.258  
Stats. Implemented: ORS 825.258  
Hist.: PUC 4-1991, f. & cert. ef. 3-14-91 (Order No. 91-310); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-066-0075; MTCB 3-2000, f. & cert. ef. 4-28-00; MCTD 2-2004, f. & cert. ef. 3-26-04

## 740-110-0090

### Notification of Inspection

A motor carrier engaged in the transportation of radioactive materials shall provide notification as follows:

(1) Notification pursuant to Nuclear Regulatory Commission rules found in Title 10, Code of Federal Regulations, Part 71.97 and Part 73.37(f) for irradiated reactor fuel and other materials shall be to: Administrator, Energy Resources Division, Oregon Office of Energy, 625 Marion St., NE, Salem, Oregon 97310, Telephone: (503) 378-4040.

(2) Notice for shipments described in OAR 740-110-0080(1) must be made by the carrier as follows:

(a) As soon as practicable, but no later than 48 hours before time of shipment in Oregon;

(b) When, as a result of conditions not subject to the control of the carrier, it is not possible to comply with the 48-hour minimum notification, then notice shall be made immediately by telephone, or in any event not later than on the next working day, and shall explain why the carrier could not comply with the 48-hour requirement;

(c) When an inspection has been scheduled, additional notice is required if the shipment is cancelled, or if carrier's arrival at the inspection location will miss the designated inspection time by two or more hours (early or late);

(d) All notices and inspection schedule changes shall be in writing or by telephone between 0800 and 1700 Pacific Time to: Oregon Department of Transportation, Motor Carrier Transportation Division (MCTD), 550 Capitol Street NE, Salem, Oregon 97310-2530, Telephone: (503) 378-5916, FAX (503) 378-8815; and

(e) Notice must include the following information:

(A) Carrier's name, address, telephone number and Oregon MCTD File Number;

(B) Shipper's and receiver's names, addresses and telephone numbers;

(C) A description of the material, which shall include proper shipping name, hazard class, hazardous material identification number, and total quantity by weight or volume, and number of curies;

(D) A description of the route and approximate schedule; and

(E) A description of the transport vehicle(s) and name of driver(s).

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

Stat. Auth.: ORS 469.470, 823.011, 825.252 & 825.258

Stats. Implemented: ORS 825.258

Hist.: PUC 4-1991, f. & cert. ef. 3-14-91 (Order No. 91-310); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-066-0077; MTCB 3-2000, f. & cert. ef. 4-28-00; MCTD 2-2004, f. & cert. ef. 3-26-04

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

**Adm. Order No.:** RD 1-2004  
**Filed with Sec. of State:** 3-24-2004  
**Certified to be Effective:** 3-24-04  
**Notice Publication Date:** 2-1-04

**Rules Repealed:** 741-050-0010, 741-050-0020, 741-050-0030, 741-050-0040, 741-050-0050, 741-050-0060, 741-050-0070, 741-050-0080, 741-050-0090, 741-050-0100, 741-050-0110, 741-050-0120, 741-050-0130, 741-050-0140, 741-050-0150, 741-050-0160, 741-050-0170, 741-050-0180, 741-050-0190, 741-050-0200, 741-050-0210, 741-050-0220, 741-050-0230, 741-050-0240, 741-050-0250, 741-050-0260, 741-050-0270, 741-055-0010

**Subject:** The Department is preempted under federal law from procedures for regulation of Intrastate Railroad Rates. This rulemaking repeals those rules.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

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**Adm. Order No.:** RD 2-2004  
**Filed with Sec. of State:** 3-24-2004  
**Certified to be Effective:** 3-24-04  
**Notice Publication Date:** 2-1-04  
**Rules Amended:** 741-520-0010

**Subject:** This rule covers the readoption of federal statutes relating to hazardous materials and wastes being transported by railroads in and through Oregon. The proposed amendments are necessary to ensure Oregon's railroad hazardous materials rule is current with national standards.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 741-520-0010

### Adoption of Federal Regulations

The Department of Transportation adopts the rules of the United States Department of Transportation, in effect on June 1, 2003, as set forth in **Title 49, Code of Federal Regulations, Parts 100 through 180, Hazardous Materials Regulations**, insofar as those rules apply to rail-

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roads and railroad shippers. These regulations are available from ODOT Rail Division.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 823.011, 823.061, 824.086, 824.090  
Stats. Imp.: ORS 824.061, 824.086, 824.090  
Hist.: PUC 8-1984, f. & ef. 4-12-84 (Order No. 84-272); PUC 6-1985, f. & ef. 6-5-85 (Order No. 85-496); PUC 20-1986, f. & ef. 12-30-86 (Order No. 86-1330); PUC 4-1989, f. & cert. ef. 4-11-89 (Order No. 89-444); PUC 1-1991, f. & cert. ef. 1-11-91, (and corrected 1-31-91) (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); RS 1-1996, f. 2-16-96, cert. ef. 4-1-96; Renumbered from 860-046-0920; RS 2-1996, f. & cert. ef. 3-14-96; RS 1-1997, f. & cert. ef. 6-27-97; RD 2-2004, f. & cert. ef. 3-24-04

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## Department of Veterans' Affairs Chapter 274

**Adm. Order No.:** DVA 4-2004

**Filed with Sec. of State:** 3-25-2004

**Certified to be Effective:** 3-26-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 274-020-0341

**Rules Repealed:** 274-020-0341(T)

**Subject:** 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 March 26, 2004, shall have the interest rate of 5.0 percent with an origination fee of 1.0 percent or an interest rate of 4.875 percent with an origination fee of 1.5 percent.

**PLEASE NOTE:** The interest rates on this Certificate and Order for Filing of the Permanent Administrative Rule are lower than those cited in the Notice of Proposed Rulemaking filed on February 13, 2004, due to changes in the market rate and is consistent with public comment.

**Rules Coordinator:** Herbert D. Riley—(503) 373-2055

### 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.



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(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.
- (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. (Temporary)

(aa) March 26, 2004, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

- (A) 5.0 percent with an origination fee of 1.0 percent; or
- (B) 4.875 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. 2-4-97, 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; DVA 4-2004, f. 3-25-04, cert. ef. 3-26-04

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**Adm. Order No.:** DVA 5-2004(Temp)

**Filed with Sec. of State:** 4-6-2004

**Certified to be Effective:** 4-8-04 thru 10-4-04

**Notice Publication Date:**

**Rules Amended:** 274-020-0341

**Subject:** This Temporary rule amends and supersedes the Permanent OAR filed on March 25, 2004 and effective March 26, 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 April 8, 2004 shall have the interest rate of 5.25 percent with an origination fee of 1.0 percent or 5.125 percent with an origination fee of 1.5 percent.

**Rules Coordinator:** Herbert D. Riley—(503) 373-2055

**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;

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(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.

(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)

(w) 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)

(x) 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)

(y) 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.

(z) 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:

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Stat. Auth.: ORS 657.610  
Stats. Implemented: ORS 657.176  
Hist.: ED 1-2004(Temp), f. 4-9-04, cert. ef. 4-11-04 thru 10-8-04

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**Employment Department,  
Child Care Division  
Chapter 414**

(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. (Temporary)  
(aa) March 26, 2004, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.0 percent with an origination fee of 1.0 percent; or  
(B) 4.875 percent with an origination fee of 1.5 percent.

(bb) April 08, 2004, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.25 percent with an origination fee of 1.0 percent; or  
(B) 5.125 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. 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. 2-4-97, 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; DVA 4-2004, f. 3-25-04, cert. ef. 3-26-04; DVA 5-2004(Temp), f. 4-6-04, cert. ef. 4-8-04 thru 10-4-04

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**Employment Department  
Chapter 471**

**Adm. Order No.:** ED 1-2004(Temp)  
**Filed with Sec. of State:** 4-9-2004  
**Certified to be Effective:** 4-11-04 thru 10-8-04  
**Notice Publication Date:**  
**Rules Adopted:** 471-030-0126  
**Subject:** The Employment Department is temporarily adopting this rule in order to define terms in ORS 657.176 as they relate to absences due to alcohol or drug use.  
**Rules Coordinator:** Richard L. Luthe—(503) 947-1724

**471-030-0126**

**Absence Due to Alcohol or Drug Use**

For purposes of ORS 657.176(2)(f) and (g):

- (1) "Drug" has the meaning given in ORS 475.005(6);
- (2) "Documentation of program participation" means a signed statement by an authorized representative of the recognized program that the individual is engaged in a course of treatment;
- (3) "Participation" means to be engaged in a course of treatment through a recognized drug or alcohol rehabilitation program;
- (4) "Recognized alcohol rehabilitation program" means a program authorized and licensed under the provisions of OAR c126hapter 415;
- (5) "Recognized drug rehabilitation program" means a program authorized and licensed under the provisions of OAR Chapter 415.

**Adm. Order No.:** CCD 1-2004  
**Filed with Sec. of State:** 3-26-2004  
**Certified to be Effective:** 3-28-04  
**Notice Publication Date:** 2-1-04  
**Rules Repealed:** 414-600-0000, 414-600-0010, 414-600-0020, 414-600-0030, 414-600-0040, 414-600-0050, 414-600-0060, 414-600-0070, 414-600-0080, 414-600-0090, 414-600-0100  
**Subject:** The Employment Department 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).  
**Rules Coordinator:** Richard L. Luthe—(503) 947-1724

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**Adm. Order No.:** CCD 2-2004  
**Filed with Sec. of State:** 3-26-2004  
**Certified to be Effective:** 3-28-04  
**Notice Publication Date:** 2-1-04  
**Rules Adopted:** 414-050-0010  
**Rules Repealed:** 414-050-0010(T)  
**Subject:** 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.  
**Rules Coordinator:** Richard L. Luthe—(503) 947-1724

**414-050-0010**

**Social Security Numbers**

- (1) The Child Care Division (CCD) will not issue or renew a registration, certification or enrollment unless an applicant provides his or her social security number on 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 agency 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 CCD will accept a written statement from the applicant to fulfill the requirements of section (1). The applicant may submit the written statement on the "CCD Statement of No Social Security Number" form. Any written statement submitted 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 \$6250.
- (3) Any written statement submitted to the CCD under section (2) of this rule or the identity of any person making such a statement will not be released by the CCD to any person or entity.

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

Stats. Implemented: ORS 25.785

Hist. CCD 5-2003(Temp), f. 12-23-03, cert. ef. 12-28-03 thru 6-25-04; CCD 2-2004, f. 3-26-04, cert. ef. 3-28-04

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**Oregon Department of Education  
Chapter 581**

**Adm. Order No.:** ODE 7-2004  
**Filed with Sec. of State:** 4-15-2004  
**Certified to be Effective:** 4-15-04  
**Notice Publication Date:** 1-1-04  
**Rules Repealed:** 581-023-0103  
**Subject:** Senate Bill 550 abolishes the Out-of-State Disabilities Placement Education Fund and repeals ORS 327.047 and 327.051 effective January 4, 2004. The repeal of OAR 581-023-0103 that is

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proposed here would eliminate the administrative rule implementing this program.

For questions regarding this rule, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail [suzy.harris@state.or.us](mailto:suzy.harris@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)

**Rules Coordinator:** Debby Ryan—(503) 378-3600, ext. 2348

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## Oregon Economic and Community Development Department Chapter 123

**Adm. Order No.:** EDD 9-2004

**Filed with Sec. of State:** 3-22-2004

**Certified to be Effective:** 3-22-04

**Notice Publication Date:** 11-1-03

**Rules Amended:** 123-043-0035, 123-043-0045, 123-043-0055, 123-043-0075

**Subject:** The administrative rules for the Water Fund are being revised to describe the maximum amount of grant funds available under the program and the requirements for qualifying for those grants under the program.

**Rules Coordinator:** Philip A. Johnson, II—(503) 986-0159

### 123-043-0035

#### Criteria and Limitations for Funding — Non-Technical Assistance Projects

(1) The intent of the Legislature was to provide funding to municipalities to assist in compliance with the **Safe Drinking Water Act** and the **Clean Water Act**. Therefore, priority is given to projects necessary to ensure that municipal water and wastewater systems comply with the requirements of:

(a) Current drinking water quality standards administered by the Oregon Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by the Oregon Department of Environmental Quality (DEQ) or the Environmental Quality Commission.

(2) In cases where a municipal water or wastewater system has not been issued a Notice of Non-Compliance with the **Safe Drinking Water Act** or the **Clean Water Act**, the Department may determine that a proposed project is eligible for assistance upon a finding that the following have been met:

(a) A recent letter from the appropriate regulatory authority, typically the Department of Human Services Drinking Water Program Health Services, the Department of Environmental Quality, or their contracted agent, which indicates a high probability that the system owner will soon be notified of non-compliance with either the **Safe Drinking Water Act** or the **Clean Water Act**; or

(b) The Department staff deems it reasonable and prudent that program funding will assist in bringing the drinking water or wastewater system into compliance with the requirements of the **Safe Drinking Water Act**, the **Clean Water Act**, or those requirements proposed to take effect within the next two years, or the requirements of other regulatory agencies recognized by the Department with a vested interest in the protection and supply of clean water.

(3) The Department generally will not award funds to applications for wastewater treatment facilities if the facilities will discharge into water quality limited streams for which the Department of Environmental Quality has not yet established Total Maximum Daily Loads (TMDLs). Consultation with the Department of Environmental Quality will be required to determine if the project can be designed and constructed without establishment of Total Maximum Daily Loads. Water quality limited streams are designated by the Oregon Environmental Quality Commission.

(4) The project must be consistent with the acknowledged local comprehensive plan.

(5) The Department encourages regionalization whenever feasible.

All Publications referenced are available from the agency.

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

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04

### 123-043-0045

#### Criteria and Limitations for Funding — Technical Assistance Projects

(1) Technical Assistance awards are available to municipalities with a population less than 15,000 for Technical Assistance planning activities in preparation for a project that is eligible under these rules.

(2) Technical Assistance grants and loans are subject to the following limitations.

(a) Grants up to \$20,000, may be awarded per project.

(b) Loans up to \$20,000 may be awarded per project. Interest shall be at 75 percent of the rate for other Direct Loans consistent with these rules. The Loan term shall not exceed seven years.

(c) No more than \$600,000 shall be expended from the Fund on Technical Assistance in any biennium. When awarding grants under this rule the Department will not first consider a municipalities' ability to repay a Loan. The Department will determine the need for a grant in this case due to the "special circumstances" of technical assistance. The Department's determination of repayment ability will be based on the applicant's certification of the ability to repay a loan; and 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.

(d) The application must meet the requirements listed in 123-043-0075(2). All Publications referenced are available from the agency.

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

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04

### 123-043-0055

#### Loan and Grant Information

(1) 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. Projects that are not financially feasible shall not be funded.

(2) If the Project includes a recoverable asset, the Department may require that upon sale of such asset by the Recipient, the grant award or the percentage of total project costs paid with a grant award, whichever is less, shall be repaid to the Fund or be retained by the Recipient in a special fund.

(3) The Department may expend moneys from the Fund for the payment of all costs associated with the issuance of a State Revenue Bond. The Department, in cooperation with the State Treasurer, may issue State Revenue Bonds to fund qualifying Projects in accordance with the limitation on state revenue bond issuance established by the Legislature. The Department may expend moneys from the Fund to establish a debt service reserve to support the credit pledge of a Recipient.

(4) Grants: For non-Technical Assistance Projects the Department shall consider awarding a Grant only after an analysis determines the Applicant's borrowing capacity is insufficient to finance the project and the projected annual residential rate for the system is at least equivalent to a minimum rate as determined by Department policy. The policy shall incorporate the most recent U.S. Census data on median household income and annual adjustments for inflation since the most recent census. A maximum of \$10,000 per hookup per project, inclusive of all Department programs, shall be awarded as grant, subject to the following limitations. Applicants that meet these thresholds shall be eligible for grant awards as follows:

(a) If the median annual household income of the applicant is equal to or less than 70% of the state average median annual household income for the same year: Eligible for a grant up to \$750,000.

(b) If the median annual household income of the applicant is greater than 70% but less than or equal to 80% of the state average median annual household income for the same year: Eligible for a grant up to \$500,000.

(c) If the median annual household income of the applicant is greater than 80% but less than 100% of the state average median annual household income for the same year: Eligible for a grant up to \$250,000.

(d) If the median annual household income of the applicant is equal to or greater than 100% of the state average median annual household income for the same year: Not eligible for a grant.

(5) For Technical Assistance Projects, the Department will consider awarding a Grant without first considering a Loan.

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(6) Non-cash Grants in the form of Issuance Costs and a Debt Service Reserve for bond bank funded projects may be paid with available and unobligated balances of the Fund.

(7) Loans: Projects are eligible for loans of up to \$15,000,000 per project through a combination of direct and/or bond funded loans. The term of a construction loan is typically 25 years but 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.

(8) 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.

(9) The Loan 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 and all legally available revenues and other funds of the Borrower. A pledge of specific revenues of the Borrower may be pledged in addition to the forgoing.

Stat. Auth.: ORS 285B.563  
Stats. Implemented: ORS 285B.560 - 285B.599  
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04

## 123-043-0075

### Application Review and Approval

(1) To award assistance from the fund for construction projects the Department must make the determinations as follows:

(a) The proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term.

(b) 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 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;

(c) The municipality will require the installation of meters on all new service connections to any distribution lines that may be included in the project.

(d) Projects for water supply, storage and/or treatment facility improvements will be considered only if the service connections are metered or if the project will include installation of meters. Projects including the installation of new water lines must also include installation of water meters at all service connections to those lines. The water meter requirement provides the applicant or system-operating entity a useful tool for operating and maintaining the community water system. Meters are to be used for fair and accurate billing, water-use monitoring, conservation purposes, and as a means of problem detection.

(e) Moneys in the appropriate accounts of the Fund are or will be available for the project;

(f) The municipality is willing and able to enter into a contract with the Department for repayment as provided in this chapter of administrative rules;

(g) 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 rule, the Department may reject an application or require further documentation from the applicant; and

(h) 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 Technical Assistance projects the Department must make the determinations as follows:

(a) The Technical Assistance planning activities must be in preparation for a Project that is eligible under OAR chapter 123-043 and meets the criteria listed in 123-043-0045.

(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 Department and the Applicant.

Stat. Auth.: ORS 285B.563  
Stats. Implemented: ORS 285B.560 - 285B.599  
Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04

## Oregon Housing and Community Services Chapter 813

**Adm. Order No.:** OHCS 1-2004

**Filed with Sec. of State:** 4-8-2004

**Certified to be Effective:** 4-8-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 813-350-0030

**Rules Repealed:** 813-350-0030(T)

**Subject:** The rule establishes the eligibility for guarantees under the General Guarantee Program. Amendments to the rule adjust the guarantee limits to meet programmatic needs.

**Rules Coordinator:** Sandy McDonnell—(503) 986-2012

### 813-350-0030

#### Eligibility for Guarantees

(1) The Department may provide guarantees for the partial repayment of loans made by lenders to finance the construction, development, acquisition, and/or rehabilitation of, and/or for the partial repayment of leases made by sponsors or leasing companies to facilitate the equipping, development or operation of:

(a) Suitable housing for low and/or very-low income persons and households including, but not limited to, suitable housing for disabled persons, farmworkers, and suitable transitional housing for ex-offenders;

(b) The commercial component of a structure that contains both commercial property and suitable housing for low and/or very-low income individuals and households; or

(c) Both (a) and (b).

(2) The Department may not:

(a) Issue any loan guarantee under this Division that guarantees the repayment of more than 25 percent of any qualifying loan obligation;

(b) Issue any loan or lease guarantee under this Division equal to or in excess of \$100,000 without obtaining the prior approval of the Housing Council;

(c) Issue any single loan or lease guarantee under this Division in excess of \$1,000,000;

(d) Issue loan and lease guarantees under this Division in an aggregate outstanding amount in excess of \$4,000,000; and

(3) The Department may choose at any time not to maximize its loan and/or lease guarantee authority under this Division.

Stat. Auth.: ORS 183, ORS 456.555(2) & 456.625(12)(16)  
Stats. Implemented: ORS 456.515 - 456.725  
Hist.: OHCS 2-2003, f. & cert. ef. 5-1-03; OHCS 8-2003(Temp), f. & cert. ef. 10-13-03 thru 4-9-04; OHCS 1-2004, f. & cert. ef. 4-8-04

## Oregon Liquor Control Commission Chapter 845

**Adm. Order No.:** OLCC 3-2004

**Filed with Sec. of State:** 3-17-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 12-1-03

**Rules Amended:** 845-006-0430

**Subject:** This rule sets minimum standards to help licensees manage large public events, ensuring that minors and visibly intoxicated persons do not get or consume alcohol.

The Commission received a request from the Mt. Angel Oktoberfest to amend section (5) of the rule to allow a six ounce serving of wine. Old rule language limited the size of a serving of wine to four ounces. The Commission amended the rule to allow a six ounce serving of wine.

**Rules Coordinator:** Katie Hilton—(503) 872-5004

### 845-006-0430

#### Alcohol Management in Public Venues

(1) Purpose. The Commission is charged with regulating the sale and service of alcoholic beverages in a way which protects the safety and welfare of the citizens, and helps ensure that alcohol is used legally. The purpose of this rule is to set minimum standards to help licensees manage large public events, ensuring that minors and visibly intoxicated persons do not get or consume alcohol. The Commission may place additional requirements on individual events to help ensure legal, well-managed events.

(2) Definitions.

(a) "Attendance" means reasonably projected attendance.

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(b) "Confined area" means an area within the event to which alcohol sales and consumption are restricted and where minors are prohibited. Alcohol Monitors are required if 2000 or more people are allowed in the confined area at any one time.

(c) "Alcohol Monitor" means a licensee's employee or agent who monitors the sale and consumption of alcoholic beverages, supplementing alcohol servers and security staff.

(d) "Walk around" means an event where people are allowed to walk around the entire event or some defined part of the event while consuming alcohol, and minors are allowed. Alcohol Monitors are required if there will be a daily attendance at the event of 2000 or more.

(3) This rule applies to:

(a) All annually licensed premises that do not have a Commission-approved operating plan and have any event with a daily attendance of 2000 or more. Annual licensees with a Commission-approved operating plan are exempt from this rule no matter what size events are held at the premises;

(b) All off premises events held by a regular or temporary licensee with a daily attendance of 2000 or more. If such licensee holds an event at another regular licensed premises that has a Commission-approved operating plan, the event holder must comply with the operating plan that is approved for the subject premises;

(c) To determine if this rule applies to an event, the licensee counts the total daily attendance (It does not matter how many people may consume alcohol or how many people are allowed in a confined area; what matters is the total daily attendance.) To determine if an event needs Alcohol Monitors, see Section (2), Definitions, and Section (5), Assignment of Alcohol Monitors.

(4) Responsibilities and Requirements for Alcohol Monitors:

(a) Alcohol Monitors are responsible for ensuring that unlawful sales, service and consumption of alcoholic beverages do not occur on the licensed premises. Alcohol Monitors duties include observing people, monitoring their alcohol consumption, looking for minors who are consuming alcoholic beverages, and preventing visibly intoxicated persons and minors from consuming alcoholic beverages;

(b) Alcohol Monitors must wear clothing or other designation, such as a button, which readily identifies them to the public as Alcohol Monitors;

(c) Alcohol Monitors must have completed Alcohol Server Education and hold a valid service permit. For annual licensees, this requirement applies to volunteer Alcohol Monitors and to compensated Alcohol Monitors;

(d) Despite Section (4)(c), Alcohol Monitors do not need to hold a service permit if they are uncompensated volunteers for a Temporary Sales licensee and are directly supervised on premises by an individual who has completed Server Education successfully within the last five years.

(5) Assignment of Alcohol Monitors. When determining the required number of Alcohol Monitors, licensees must use the total daily attendance if all or part of the event is a walk around event. See Section (2)(d) for a definition of walk around event. However, if alcohol sales and consumption will be limited to a confined area, the licensee uses the number of people allowed in the confined area at any one time to determine how many Alcohol Monitors are required. See Section (2)(b) for a definition of confined area. Alcohol Monitors must be on duty at all times of alcohol service as follows:

(a) For 2000 to 7500 people, at least three Alcohol Monitors;

(b) For each additional one to 2,500 people, at least one more Alcohol Monitor. For example, 7,501 to 10,000 people require at least four Alcohol Monitors; 10,001 to 12,500 people require at least five Alcohol Monitors; and

(c) One additional Alcohol Monitor for each point of sale that is not readily visible to the minimum number of Alcohol Monitors required in Section (5)(a) and (b). Point of sale means each stand, booth or other concession area where alcoholic beverages are sold and served.

(6) Approved Containers for On-Premises Consumption.

(a) Container sizes. Alcoholic beverages for consumption on the premises must be served as follows:

(A) Malt beverages:

(i) In a container no larger than 16 ounces;

(ii) For tastings, no more than 3 ounces of product.

(B) Wine:

(i) By the glass, a standard pour of no more than 6 ounces of product in a container no larger than 24 ounces;

(ii) For tastings, no more than 1 1/2 ounces of product in a container no larger than 24 ounces;

(iii) A bottle of wine no larger than 750 ml sold for more than one person and for on-premises consumption only, with containers no larger than 24 ounces.

(C) Distilled Spirits:

(i) Up to 1 ounce of distilled spirits without mixer in a container no larger than 4 ounces;

(ii) Up to 1 ounce of distilled spirits with mixer served in a container no larger than 9 ounces.

(D) Cider:

(i) In a container no larger than 16 ounces;

(ii) For tastings, not more than 3 ounces of product;

(iii) A bottle of cider no larger than 750 ml sold for more than one person and for on-premises consumption only.

(b) Container color or type. Containers used to serve alcoholic beverages must be of a visibly and distinctively different color or type when compared to containers used to serve nonalcoholic beverages.

(7) Limits on Alcohol Sales.

(a) Each purchaser of alcoholic beverages may buy no more than two drinks at any one time, or one bottle of wine or cider for consumption on the premises that is no larger than 750 ml at any one time.

(b) Alcoholic beverages must be sold and served consistent with Section (6).

(c) If it is reasonably projected that 30 percent or more of the people at the event will be between 15 and 20 years of age, the licensee must limit the sale of alcoholic beverages to a confined area where minors are prohibited unless the licensee gets a variance under Section (9).

(d) Walk around events must have sufficient lighting to ensure that Alcohol Monitors, alcohol servers, security staff, OLCC staff, and law enforcement staff can observe and monitor for over consumption, minors consuming or in possession, and other liquor law violations.

(8) Transportation. The Commission encourages messages before and at events reminding people of the risks of drinking and driving, and encourages alternatives such as designated drivers and, when possible, offering alternate transportation.

(9) Request for Variance. The Commission may grant a variance to part or all of this rule if the request is consistent with the intent of the rule. Any licensee or applicant who requests a variance from any of the criteria stated above must submit the request along with a detailed security plan at least 30 days prior to the event. The Commission will discuss requests for variances with the recommending authority when appropriate. When the Commission grants a variance, the Commission may add other requirements to ensure that the event operates in a way consistent with the intent of the rule. For example, if the Commission were to allow the sale of bottles of wine larger than 750 ml, the Commission might require that the licensee increase the number of Alcohol Monitors to help ensure that the larger bottles did not result in over consumption or in alcohol getting to minors. Other examples of when the Commission will consider granting a variance include events where minors are not permitted to attend and family events (events where minors are accompanied by adults).

(10) Sanction for Violation.

(a) A licensee who violates this rule with respect to the proper training, assignment and use of Alcohol Monitors or by failing to comply with Section (6) related to containers commits a Category IV violation under the Commissions sanction schedule (OAR 845-006-0500).

(b) If a licensee holds a walk around event and violations related to the sale or service of alcoholic beverages to minors or visibly intoxicated persons occur, or a violation of Section (7)(d) occurs, the next time this event or similar event is held alcohol must be limited to a confined area unless the licensee get a variance under Section (9).

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.030, 471.040, 471.115, 471.360, 471.410, 471.412, 471.430 & 471.730(1)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thur 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 3-2004, f. 3-17-04, cert. ef. 4-1-04

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**Adm. Order No.:** OLCC 4-2004

**Filed with Sec. of State:** 4-9-2004

**Certified to be Effective:** 4-9-04

**Notice Publication Date:** 11-1-03

**Rules Amended:** 845-006-0335

**Subject:** This rule regulates the activities of minors on licensed premises.

In August 2002, the Commission adopted amendments to the rule which would largely bar minor entertainers from areas posted to pro-

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hibit minor patrons. Those amendments were not timely filed with legislative counsel. The Commission began rulemaking anew in September 2003, adopting temporary amendments (the same as were filed in August 2002), which were effective September 22, 2003 - March 20, 2004. At their March 15, 2004 meeting, the Commission acted to let the temporary amendments lapse, and return to rule language in effect before August 2002. Before the temporary amendments, and again effective March 21, 2004., the rule contained language which allowed minors to entertain in licensed premises, and laid out requirements for where minor entertainers could be when not performing. In addition, rule language regarding minor vendors/contractors will again permit these persons to work in prohibited areas.  
**Rules Coordinator:** Katie Hilton—(503) 872-5004

## 845-006-0335

### Age Verification; Minors on Licensed Premises

#### (1) Age Verification:

(a) ORS 471.130 requires a licensee or permittee to verify the age of a person who wants to buy or be served alcoholic beverages when there is "any reasonable doubt" that the person is at least 21 years old. The Commission requires a licensee or permittee to verify the age of anyone who wants to drink alcoholic beverages or is in an area prohibited to minors if there is reasonable doubt that the person is at least 21 years old. "Reasonable doubt" exists if the person appears to be under the age of 26;

(b) Whenever a licensee or permittee verifies age, he/she must verify it as ORS 471.130 requires (statement of age card or the specified items of identification) and must reject any obviously altered document or one which obviously does not identify the person offering it;

(c) Licensees must require all their employees who sell, serve, oversee or control the sale or service of alcoholic beverages to verify age as subsection (a) of this section requires.

#### (2) Sanctions for Failure to Verify Age:

(a) The Commission will sanction a licensee or permittee who does not verify the age of a person who appears to be under the age of 26 only if the person:

(A) Actually is a minor who buys, is served or drinks an alcoholic beverage at the licensed premises (Category III violation); or

(B) Actually is a minor who is in an area of the licensed premises prohibited to minors (Category IV violation).

(b) If the Commission sanctions a licensee or permittee for selling to or serving a minor, allowing a minor to drink or allowing a minor in an area prohibited to minors, the Commission will not also sanction the licensee or permittee for failure to verify age;

(c) Failure to verify age as ORS 471.130 requires or to reject obviously altered or false identification is a Category III violation.

(3) Minors on Premises: General Prohibitions. No licensee, permittee, or licensee's employee will permit a minor:

(a) To buy, be served or drink any alcoholic beverage on licensed premises;

(b) To be on licensed premises or an area of the licensed premises prohibited to minors, except as provided in ORS 471.430, 471.480, 471.482, and this rule. (The assigned minor posting(s) describes where on the premises minors are allowed or prohibited. See OAR 845-006-0340, Minor Postings.)

#### (4) Minor Employee and Service Permittee:

(a) A minor employee may be in a Number II, III-A after 9 p.m., IV or V posted area only to restock supplies and do food service related activities such as setting and clearing tables and delivering food. In addition, a minor employee may be in a Number IV posted area to take orders for and serve food during the specified meal periods;

(b) A minor service permittee may do the duties described in subsection (a) of this section as well as the alcohol-related duties ORS 471.482 allow.

(5) Minor Vendor or Contractor. A minor, other than a licensee's employee, who has a legitimate business purpose may be in the area of the licensed premises normally prohibited to minors (For example, a minor who is a plumber may repair the plumbing in a prohibited area).

#### (6) Minor Entertainer:

(a) A minor entertainer may perform on licensed premises. If the minor entertainer stays on the premises when not performing, he/she must stay in an area where minors are permitted. If there is no break room, dressing room or patron area where minors are permitted, the licensee may, with prior Commission approval, designate space for minor entertainers in an area normally prohibited to them. At a minimum, the place must be within

the bartender's sight but not at the bar and there must be no alcoholic beverages in this place;

(b) If the minor is under 18 years old, the licensee and minor must make sure the minor has the written permission of the appropriate juvenile court judge as required by ORS 167.840(2). Minors under 14 must also get a work permit if one is required by the Oregon Bureau of Labor and Industries.

(7) Minor Patron: A minor patron may be in areas of licensed premises normally prohibited to minors in the following circumstances:

(a) If the licensee permits it, a minor may be in the immediate company of his/her spouse who is at least 21 years old except as prohibited in OAR 845-006-0340(3). The minor must not buy, possess or drink alcoholic beverages;

(b) A minor may order and eat a meal in a Number IV posted area during the specified meal periods. This meal must at least meet the minimum food service requirements of OAR 845-006-0460.

(8) Sanctions: A violation of subsection (3)(a) of this rule is a Category III violation. A violation of subsection (3)(b) through section (7) of this rule is a Category IV violation.

Stat. Auth.: ORS 471, including ORS 471.030 & ORS 471.730

Stats. Implemented: ORS 471.430

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 12-2002, f. 8-29-02, cert. ef. 1-2-03; OLCC 13-2003(Temp), f. & cert. ef. 9-23-03 thru 3-20-04; OLCC 4-2004, f. & cert. ef. 4-9-04

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## Oregon Public Employees Retirement System Chapter 459

**Adm. Order No.:** PERS 8-2004

**Filed with Sec. of State:** 4-15-2004

**Certified to be Effective:** 4-15-04

**Notice Publication Date:** 10-1-03

**Rules Adopted:** 459-007-0005

**Rules Amended:** 459-007-0300, 459-007-0510

**Rules Repealed:** 459-007-0030, 459-007-0210, 459-007-0520

**Subject:** These new and amended rules under Division 007, Earnings and Interest Distribution, are necessary to conform with the provisions of HB 2001, as amended by HB 2003, effective on July 1, 2003. OAR 459-007-0005 describes the process for crediting earnings annually based on current statute and new legislation. The modifications to OAR 459-007-0300 amend language that previously guaranteed earnings to Tier One member's P&F Unit accounts based on the assumed interest rate. OAR 459-007-0510 amends language describing the process for crediting earnings to Employer Contribution Accounts. OAR 459-007-0030 and 459-007-0210 are no longer necessary due to the adoption of OAR 459-007-0005 and are being repealed. OAR 459-007-0520, pertaining to the distribution of earnings or losses to Employer Contribution Accounts, is being repealed due to the repeal of ORS 238.667 (Employers participating in the Variable Account).

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

### 459-007-0005

#### Annual Earnings Crediting

(1) For purposes of this rule, "remaining earnings" means earnings available for distribution to a particular account or reserve after deduction of amounts required or authorized by law for other purposes.

(2) Except as otherwise specified in this division, earnings on all accounts and reserves in the Fund shall be credited as of December 31 of each calendar year in the manner specified in this rule.

(3) **Health insurance accounts.** All earnings attributable to the Standard Retiree Health Insurance Account (SRHIA), the Retiree Health Insurance Account (RHIA) or the Retirement Health Insurance Premium Account (RHIPA) shall be credited to the account from which they were derived, less administrative expenses incurred by each account, as provided in ORS 238.410, 238.415 and 238.420, respectively.

(4) **Employer lump sum payments.** All earnings or losses attributable to the employer lump sum payment accounts established under ORS 238.225(9) shall be credited to the accounts from which they were derived.

#### (5) Administrative expenses.

(a) Earnings on the Variable Annuity Account shall first be used to pay a pro rata share of administrative expenses in accordance with ORS 238.260(6). If the Variable Annuity Account experiences a loss, the loss shall be increased to pay a pro rata share of administrative expenses.

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(b) Earnings attributable to Tier One regular accounts, the Rate Guarantee Reserve, Tier Two regular accounts, employer contribution accounts, the Contingency Reserve, the Benefits-in-Force Reserve and the Capital Preservation Reserve shall first be used to pay the system's remaining administrative expenses under ORS 238.610.

(6) **Member variable accounts.** All remaining earnings or losses attributable to the variable annuity account shall be credited to the participants of that account, as provided under ORS 238.260(6) and (7)(b).

(7) **Contingency Reserve.**

(a) In any year in which total earnings on the Fund equal or exceed the assumed rate, an amount not exceeding seven and one-half percent of remaining earnings attributable to Tier One regular accounts, the Rate Guarantee Reserve, Tier Two regular accounts, employer contribution accounts, the Capital Preservation Reserve and the Contingency Reserve shall be credited to the Contingency Reserve to the level at which the Board determines it is adequately funded for the purposes specified in ORS 238.670(1).

(b) The portion of the Contingency Reserve allowed under ORS 238.670(1)(a) for use in preventing a deficit in the fund due to employer insolvency may only be credited using earnings attributable to employer contribution accounts.

(8) **Tier One Member Deficit Reserve.**

(a) All remaining earnings attributable to Tier One regular accounts and the Rate Guarantee Reserve shall be credited to the Tier One Member Deficit Reserve established in ORS 238.255(1) until the deficit is eliminated.

(b) Any losses attributable to Tier One regular accounts shall be charged to the Tier One Member Deficit Reserve in accordance with ORS 238.255(1).

(9) **Capital Preservation Reserve.** Remaining earnings attributable to the Tier Two regular accounts, employer contribution accounts, the Benefits-in-Force Reserve, the Contingency Reserve and the Capital Preservation Reserve may be credited from those sources to one or more reserve accounts that may be established under ORS 238.670(3) to offset gains and losses of invested capital.

(10) **Tier One regular accounts.** All remaining earnings attributable to Tier One regular accounts and the Rate Guarantee Reserve shall be credited to Tier One member regular accounts in accordance with the following:

(a) No earnings shall be credited in any year in which there is a balance other than zero in the Tier One Member Deficit Reserve, in accordance with ORS 238.255(2).

(b) Earnings shall be credited to the greatest level possible without exceeding the assumed rate in any year in which there is a zero balance in the Deficit Reserve and the conditions set out in ORS 238.255(3) have not been met. Crediting under this subsection shall be funded first by all remaining earnings attributable to Tier One regular accounts and the Rate Guarantee Reserve, then moneys in the Rate Guarantee Reserve.

(c) In any year in which remaining earnings attributable to Tier One regular accounts and the Rate Guarantee Reserve exceed the assumed rate, and the conditions set out in ORS 238.255(3) have been met, earnings in excess of the assumed rate may be credited to Tier One regular accounts.

(11) **Tier One Member Rate Guarantee Reserve.** In any year in which the Deficit Reserve has a zero balance, remaining earnings attributable to Tier One regular accounts, the Tier One Member Rate Guarantee Reserve, the Benefits-in-Force Reserve, and the Contingency Reserve may be credited to the Tier One member Rate Guarantee Reserve established under ORS 238.255(1).

(12) **Tier Two member regular accounts.** All remaining earnings or losses attributable to Tier Two member regular accounts shall be credited to all active and inactive Tier Two member regular accounts under ORS 238.250.

(13) **Benefits-in-Force Reserve.** Remaining earnings attributable to the Benefits-in-Force Reserve, the Contingency Reserve, the Capital Preservation Reserve and employer contribution accounts, in that order, shall be used, to the extent available, to credit the Benefits-in-Force Reserve with earnings up to the assumed rate for that calendar year in accordance with ORS 238.670(2).

(14) **Employer contribution accounts.** All remaining earnings attributable to employer contribution accounts shall be credited to employer contribution accounts.

(15) **Remaining earnings.** Any remaining earnings shall be credited to accounts and reserves in the Fund at the Board's discretion.

Stat. Auth.: ORS 238.650  
Stats. Implemented: ORS 238  
Hist.: PERS 8-2004, f. & cert. ef. 4-15-04

## 459-007-0300

### Crediting Earnings to Police Officer and Firefighter Unit Accounts in the Fund.

(1) **Definitions.** For the purpose of this rule:

(a) "Effective date of unit benefits" means the date the member elects to begin receiving unit benefits.

(b) "End date" means the date after which earnings are no longer credited to the unit account and is the later of:

(A) The first of the calendar month following the date the member reaches age 65; or

(B) The first of the calendar month following the date the member separates from the service of all participating employers.

(c) "Unit" means a unit of additional benefits purchased under ORS 238.440.

(d) "Unit account" means the member's account in the Fund that is used to purchase unit benefits, which includes actuarially determined member additional contributions (ORS 238.440(1)) and earnings or losses.

(e) "Unit benefits" means the increased benefits a police officer or firefighter may purchase under ORS 238.440.

(2) **Crediting annual earnings or losses.** Annual earnings or losses will be credited to the unit account as follows:

(a) For a Tier One member, in the same manner as provided for Tier One member regular accounts in OAR 459-007-0005.

(b) For a Tier Two member, in the same manner as provided for Tier Two member regular accounts in OAR 459-007-0005.

(3) **Crediting earnings or losses to a withdrawal.** If the unit account is withdrawn under ORS 238.440(4) or (5), earnings or losses will be credited to the unit account as follows:

(a) For a Tier One member, in the same manner as provided in OAR 459-007-0040(1).

(b) For a Tier Two member, in the same manner as provided in OAR 459-007-0220(1).

(4) **Crediting earnings or losses on a lump sum purchase.**

(a) If a member makes a lump sum purchase under ORS 238.440(2) and elects an effective date of unit benefits that is the same date as the member's effective retirement date, earnings or losses will not be credited on the lump sum purchase.

(b) If a member makes a lump sum purchase under ORS 238.440(2) and elects an effective date of unit benefits that is later than the member's effective retirement date, earnings or losses on the member's lump sum purchase from the date of receipt to the effective date of unit benefits shall be credited to the unit account in the same manner as provided in OAR 459-007-0025(2).

(5) **Crediting earnings or losses to effective date of unit benefits.**

When a retired member elects to begin receiving unit benefits under ORS 238.440(1) or (2), earnings or losses will be credited to the member's unit account as of the effective date of unit benefits as follows:

(a) For a Tier One member, in the same manner as provided in the version of OAR 459-007-0070(1) in effect on the effective date of unit benefits.

(b) For a Tier Two member, in the same manner as provided in OAR 459-007-0250(1).

(6) If, after the crediting of earnings under section (5) of this rule, the amount in the unit account is greater than the actuarially determined amount required at the time of retirement to purchase the number of units elected, the difference will be returned to the member in a lump sum. The lump sum shall be credited with earnings from the effective date of unit benefits to the date of distribution based on the average annualized rate.

(7) **Crediting earnings to end date.** If a member's effective date of unit benefits does not occur prior to the end date, earnings from the last annual earnings crediting to the end date shall be credited to the unit account as follows:

(a) If earnings for the calendar year prior to the end date have not yet been credited to the member's unit account, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of the end date shall be credited to the unit account based on the latest year-to-date calculation as of the end date.

Stat. Auth.: ORS 238.650  
Stats. Implemented: ORS 238.440  
Hist.: PERS 8-2000, f. & cert. ef. 12-5-00; PERS 8-2004, f. & cert. ef. 4-15-04

## 459-007-0510

### Crediting Earnings to Employer Contribution Accounts

When funds are transferred from an employer contribution account to the Benefits-In-Force Reserve due to a member's death, disability retire-



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ment, service retirement or other purpose, earnings shall be credited to the employer contribution account in the manner specified in this rule.

(1) Earnings shall be credited based on the same method used to determine the rate of earnings to be credited to member accounts upon a member's death or retirement.

(2) Earnings shall be credited at year-end closing on a retroactive basis, effective as of the first of the calendar month following the date of the transfer.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 3-1999, f. & cert. ef. 7-27-99; PERS 8-2004, f. & cert. ef. 4-15-04

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**Adm. Order No.:** PERS 9-2004(Temp)

**Filed with Sec. of State:** 4-15-2004

**Certified to be Effective:** 5-21-04 thru 7-1-04

**Notice Publication Date:**

**Rules Amended:** 459-005-0001

**Subject:** This proposed rule modification clarifies that a casual, emergency, or seasonal worker is not an eligible employee. To be considered an eligible employee, a person must be performing service in a position other than as a casual, emergency, or seasonal worker, as defined in OAR 459-005-0001, and be employed for more than 599 hours in a calendar year. This rule modification is necessary to clarify current statute and will resolve the issue facing those retirees who selected the total lump sum retirement option, which first became available for retirements on January 1, 2003, and who returned to PERS-covered employment. This amendment clarifies who is a 'non-eligible employee' and would allow more retirees to qualify to return to work on a limited basis.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-005-0001

### Definitions, Generally

The words and phrases used in chapter 459, Oregon Administrative Rules, have the same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used in chapter 459 generally are defined as follows unless context of a particular division or rule within this chapter requires otherwise:

(1) "Ad hoc" means one-time for a specific purpose, case, or situation without consideration of a broader application.

(2) "After-tax" contributions means:

(a) Member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has not elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "After-tax" contributions are included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "After-tax" contributions are included in computing FAS and in computing the employer's contributions paid to PERS.

(b) Payments made by a member to PERS for the purchase of additional benefits.

(3) "Before-tax" contributions means member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "Before-tax" contributions are not included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "Before-tax" contributions are included in:

(a) Computing final average salary; and

(b) Computing the employer's contributions paid to PERS if the employer has elected to "pick up" the member contributions.

(4) "Calendar month" means the Julian Calendar beginning with the first calendar day of a month through the last calendar day of that month.

(5) "Casual worker" means an individual engaged for incidental, occasional, irregular, or unscheduled intervals or for a period of less than six consecutive calendar months.

(6) "Contributions" means any contributions required or permitted pursuant to ORS 238.200 or 238.515.

(7) "Effective date of withdrawal" is the later of:

(a) The first day of the calendar month in which PERS receives the completed documents required of the member who is requesting a withdrawal of the member's regular account and variable account, if any; or

(b) The first day of the calendar month in which PERS receives the required notice of separation from the member's former employer(s).

(8) "Effective retirement date" means:

(a) For service retirements, the date described in OAR 459-013-0260; or

(b) For disability retirements, the date described in OAR 459-015-0015.

(9) "Elected official" means an individual who is a public official holding an elective office or an appointive office with a fixed term for the state or for a political subdivision of the state who has elected to participate in PERS pursuant to ORS 238.015(6).

(10) "Emergency worker" means an individual engaged in case of emergency, including fire, storm, earthquake, or flood.

(11) "Employee" has the same meaning as provided in ORS 238.005(7) and shall be determined in accordance with OAR 459-010-0030.

(a) For the purposes of ORS 238.005 to 238.750 the term "employee" includes public officers whether elected or appointed for a fixed term.

(b) The term "employee" does not include:

(A) A member of the governing board of a political subdivision unless the individual qualifies for membership under ORS 238.015.

(B) An individual who performs services for a public employer as a contractor in an independently established business or as an employee of that contractor in accordance with OAR 459-010-0030.

(C) An individual providing volunteer service to a public employer without compensation for hours of service as a volunteer, except for volunteer firefighters who establish membership in accordance with ORS 238.015(7).

(12) "Employer contribution account" means a record of employer contributions to the Fund, as required by ORS 238.225(1), and investment earnings attributable to those contributions, that the Board has credited to the account after deducting amounts required or permitted by ORS Chapter 238.

(13) "Employment" is compensated service to a participating employer as an employee whose:

(a) Period or periods of employment includes only the actual hours of compensated service with a participating employer as an employee, and

(b) Compensated service includes, but is not limited to, paid vacation, paid sick leave, or other paid leave.

(14) "Estimate" means a projection of benefits prepared by staff of a service or disability retirement allowance, a death or a refund payment. An estimate is not a guarantee or promise of actual benefits that eventually may become due and payable, and PERS is not bound by any estimates it provides. (ORS 238.455(6))

(15) "FAS" and "final average salary" have the same meaning as provided in:

(a) ORS 238.005(8) for all PERS Tier One members;

(b) ORS 238.435(2) for all PERS Tier Two members; or

(c) ORS 238.535(2) for judge members of PERS for service as a judge.

(16) "General service member" means membership in PERS as other than a judge member, a police officer, a firefighter, or a legislator.

(17) "Good cause" means a cause beyond the reasonable control of an individual. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent individual of normal sensitivity, exercising ordinary common sense.

(18) "Independent contractor" means an individual or business entity that is not subject to the direction and control of the employing entity as determined in accordance with OAR 459-010-0032.

(19) "Judge member" has the same meaning as provided in 238.500(3). For purposes of this chapter, active, inactive, and retired membership of a judge member shall have the same meaning as ORS 238.005(12) (b), (c), and (d), respectively.

(20) "Legislator" means an individual elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS pursuant to ORS 238.015(6) as a member of the Oregon Legislative Assembly as provided in ORS 238.068.

(21) "Member cost" means after-tax member contributions and payments made by or on behalf of a member to purchase additional benefits.

(22) "Participating employer" means a public employer who has one or more employees who are active members of PERS.

(23) "PERS" and "system" have the same meaning as the Public Employees Retirement System in ORS 238.600.

(24) "Regular account" means the account established under ORS 238.250 for each active and inactive member who has made contributions to the Fund or the account of an alternate payee of such a member.

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(25) "Salary," "remuneration" and "compensation" have the same meanings as provided in ORS 238.005(20).

(a) For a Tier One member, the lump sum payment for accrued vacation pay is considered salary:

(A) In determining employee and employer contributions.

(B) In determining final average salary for the purpose of calculating PERS benefits.

(b) For a Tier Two member, the lump sum payment for accrued vacation payment:

(A) Is considered salary in determining employee and employer contributions.

(B) Is not considered salary in determining final average salary for the purpose of calculating PERS benefits.

(26) "Seasonal worker" means an individual whose engagement is characterized as recurring for defined periods that are natural divisions of the employer's business cycle or services.

(27) "Staff" means the employees of the Public Employees Retirement System as provided for in ORS 238.645.

(28) "Tier One member" means a member who established membership in the system before January 1, 1996, as defined in ORS 238.430(2).

(29) "Tier Two member" means a member who established membership in the system on or after January 1, 1996, in accordance with ORS 238.430.

(30) "Vacation pay" means a lump sum payment for accrued leave in a Vacation Leave Program provided by a public employer which grants a period of exemption from work for rest and relaxation with pay, and does not include:

(a) Sick leave programs;

(b) Programs allowing the accumulation of compensatory time, holiday pay or other special leaves unless the public employer's governing body indicates by resolution, ordinance, or other legislative process, that such leave is intended to serve as additional vacation leave; and

(c) Other programs, such as a Personal Time Off (PTO) plan, which are a combination of vacation, sick, bereavement, personal and other leaves of pay as defined and described by a public employer unless the employer has a written policy that clearly indicates the percentage of the plan that represents vacation leave. If the employer's PTO has a cash option, the employer shall report to PERS the amount of any lump sum pay-off for the percentage that represents vacation leave.

(31) "Variable account" and "member variable account" mean the account in the Variable Annuity Account established under ORS 238.260(2) for each active and inactive member who has elected to have amounts paid or transferred into the Variable Annuity Account.

(32) "Variable Annuity Account" means the account established in ORS 238.260(2).

(33)(a) "Volunteer" means an individual who performs a service for a public employer, and who receives no compensation for the service performed.

(b) The term "volunteer" does not include an individual whose compensation received from the same public employer for similar service within the same calendar year exceeds the reasonable market value for such service.

(34) "Year" means any period of 12 consecutive calendar months.

(35) The provisions of this rule are effective January 1, 2004.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005-238.715

Hist.: PERS 2-1998, f. & cert. ef. 3-16-98; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 12-2003, f. & cert. ef. 11-14-03; PERS 14-2003, f. & cert. ef. 11-20-03; PERS 15-2003, f. & cert. ef. 12-15-03; PERS 9-2004(Temp), f. 4-15-04 cert. ef. 5-21-04 thru 7-1-04

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**Certified to be Effective:** 7-1-04 thru 10-31-04

**Notice Publication Date:**

**Rules Adopted:** 459-013-0280

**Subject:** The PERS Board approved the settlement agreement in the City of Eugene v. PERS case. One of the provisions of that agreement requires the Board to adopt a rule governing the calculation of money match benefits for members with accounts in variable account program (paragraph 1.1 of the settlement agreement). The rule provides that the member's annuity and pension will be calculated first as if the member's variable contributions had been invested in the regular account. Then, that allowance (pension and annuity) will be adjusted up or down depending on whether the member's variable

account out- or under-performed the regular. The terms of the settlement agreement require the agency to adopt this new methodology to be effective no later than July 1, 2004.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-013-0280

### Calculation of Variable Match

This rule will be used to determine the member's retirement allowance under the Money Match method provided for in ORS 238.300(2)(b)(A) for members that are subject to the variable annuity adjustment provided under ORS 238.260(12). To calculate these members' retirement allowance, the following process will be used:

(1) Annuity Calculation. The balance in the member's regular account will be combined with a projected balance based on what the member's variable account balance would have been had the member's contributions to the variable account been made to the regular account instead. If the member chooses a retirement allowance that includes an annuity, this combined balance will be converted to an allowance using the appropriate actuarial equivalency factor to determine that annuity.

(2) Pension Calculation. The pension provided for in ORS 238.300(2)(b)(A) will be determined by applying an actuarial equivalency factor to the combined balance determined in accordance with section (1). [Calculation not printed. See ED. NOTE.]

(3) Variable Adjustment. The retirement allowance calculated under sections (1) and (2), as applicable, will be increased or decreased by applying an actuarial equivalency factor to the difference between the actual balance in the member's variable account on their effective retirement date and the projected balance determined under section (1) above.

(4) The provisions of this rule only apply to members who participated in the variable account program by making contributions to their variable account on or after January 1, 1982. The adjustment provided for by ORS 238.260(12) and this rule will apply only to those contributions and associated earnings after that date.

(5) In determining "the portion of the annuity payable from the Variable Annuity Account" as required by ORS 238.260(10) and (11), all of the member's variable account will be included, including the portion that is included in calculating the variable adjustment at retirement specified in ORS 238.260(12).

(6) The method described in this rule to calculate a member's allowance will also be followed to calculate the "look-back" benefit as described in section 4 of chapter 68, Oregon Laws 2003 (HB 2004). The difference in value between the member's variable and what those contributions would have earned in the regular account as of June 30, 2003 will be used as the basis for the "look-back" comparison.

(7) The provisions of this rule are effective July 1, 2004.

[ED. NOTE: Calculation referenced is available from the agency.]

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.260(12); 238.300(1) and (2)

Hist.: PERS 10-2004(Temp), f. 4-15-04 cert. ef. 7-1-04 thru 10-31-04

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## Oregon State Lottery Chapter 177

**Adm. Order No.:** LOTT 3-2004(Temp)

**Filed with Sec. of State:** 4-6-2004

**Certified to be Effective:** 4-6-04 thru 10-1-04

**Notice Publication Date:**

**Rules Amended:** 177-010-0003, 177-040-0000, 177-040-0003, 177-040-0025, 177-040-0050, 177-040-0052

**Subject:** The proposed amendments define the terms "Business Day," "Business Week," "Business Year," and "Traditional Lottery Games"; revise the definition for "Premises"; delete the specific reference to the time that the Lottery Business Week ends in OAR 177-040-0003 and OAR 177-040-0050; revise OAR 177-040-0025 by revising section (1)(b) to clarify when tickets and shares are sold for purposes of calculating weekly sales, revising section (2) on compensation for Breakopen shares, and adding section (4) which provides for a one percent bonus paid to retailers for validating and paying a prize of \$600 or less for a winning Scratch-it or On-Line ticket; and revise OAR 177-040-0052 to reduce the number of non-sufficient funds transactions from four to three per year per retailer; relieve the retailer from responsibility for bank errors that cause an NSF as long as the bank verifies and corrects the error; and address temporary bank closures and allow a grace period for funds to be

# ADMINISTRATIVE RULES

deposited. The remaining amendments are for grammatical and housekeeping purposes.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-010-0003

### Definitions

(1) "Business day" means the period beginning at 5 a.m. of a calendar day and ending at 4:59 a.m. on the morning of the next calendar day.

(2) "Business week" means the period beginning at 5 a.m. on a Sunday and ending at 4:59 a.m. the following Sunday morning.

(3) "Business year" means the period beginning at 5 a.m. on the Sunday immediately following the last Saturday in June, and ending at the end of the business day of the last Saturday of the following June.

(4) "Commissioner" has that definition as defined in ORS 461.010(2).

(5) "Director" has that definition as defined in ORS 461.010(3).

(6) "Drawing coordinator" means the Lottery employee designated by the Assistant Director for Security, subject to the approval of the Director, to develop and implement procedures for conducting drawings.

(7) "Immediate family" and "family member" mean a natural person's spouse, child, brother, sister, or parent by blood or adoption.

(8) "Lottery" or "State Lottery" has that definition as defined in ORS 461.010(1).

(9) "Lottery Commission" or "Commission" has that definition as defined in ORS 461.010(4).

(10) "Lottery contract" means any contract entered into by the Lottery for the purchase, lease, or sale of goods or services.

(11) "Lottery contractor" or "contractor" has that definition as defined in ORS 461.010(9).

(12) "Lottery game" or "game" has that definition as defined in ORS 461.010(5).

(13) "Lottery game retailer" or "retailer" has that definition as defined in ORS 461.010(7).

(14) "Lottery vendor" or "vendor" has that definition as defined in ORS 461.010(8).

(15) "Person" has that definition as defined in ORS 461.010(6).

(16) "Prize" means any award of economic value, monetary or otherwise, that may be distributed to a Lottery player for submitting a valid claim based on a winning Lottery ticket or share.

(17) "Retailer contract" means any written contract entered into by the Lottery with a retailer for selling Lottery tickets or shares to the public.

(18) "Share" means an opportunity to win a prize in a Lottery game that does not use certificates or tokens, such as in video lottery games.

(19) "Ticket" means a certificate or token of the opportunity to win a prize in a Lottery game.

(20) "Traditional lottery games" means all lottery games offered by the Oregon Lottery, other than video lottery games, and includes Breakopen, Scratch-it, and On-Line games.

(21) "Unclaimed prize" means any prize offered in a Lottery game which has not been submitted to the Lottery for validation and prize payment within the specified prize claim period and for which the Lottery has data or evidence that the ticket or share was sold or distributed to the public.

(22) "Video lottery terminal" means an electrical, electronic, or electro-mechanical device, component, or terminal, which may display a game or other graphics through the use of a video display screen, which is available for consumer play upon payment of the necessary or appropriate consideration, with winners determined by the application of the element of chance and the possible prizes displayed on the device.

(23) "Winner claim form" means a form provided by the Lottery to a player for the purpose of claiming a prize.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 192.440, 461.020, 461.100, 461.120, 461.170, 461.213, 461.215, 461.230, 461.240, 461.250, 461.260, 461.300, 461.310, 461.500 & 461.510

Hist.: LOTT 10-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 21-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04

## 177-040-0000

### Definitions

For purposes of OAR chapter 177 division 40, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) "Age-controlled area" means an area where natural persons who are under 21 years of age are prohibited from entering or remaining as posted by either the Lottery or the Oregon Liquor Control Commission.

(2) "Applicant" means a person applying for a contract with the Lottery for the purpose of selling Lottery tickets or shares to the public, and any key person.

(3) "Application" means the forms, documents, or other information that the Lottery requires an applicant to submit to the Lottery in order to apply for or maintain a retailer contract.

(4) "Business" includes:

(a) A commercial activity engaged in for profit or gain; or

(b) The activity engaged in by a nonprofit organization; or

(c) The activity engaged in by a private club as defined in ORS 471.175(8).

(5) "Complete application" means an application that is completely filled out, and when required, is signed by the applicant, and includes all the documentation and information requested by the Lottery.

(6) "Premises" means the building and grounds occupied by a business, (including those areas not normally open to the public), where traditional lottery game tickets and shares, video lottery game shares, or both, are sold. Premises includes an area designated by the Lottery at any single location identified in an application as a proposed site for Oregon video lottery terminals.

(7) "Key person" means:

(a) All officers, directors and stockholders of a privately held corporation including the officers, directors and stockholders of any parent company;

(b) All officers, directors and those stockholders who own 5% or more of a publicly traded corporation including the officers, directors and those stockholders who own five percent or more of any parent company;

(c) For a private club as defined in ORS 471.175(8), the president or equivalent position, the treasurer or equivalent position, and officers, directors, trustees, and managers who oversee or direct the operation of the food, beverage, lottery, or other gambling related activities of the private club. The definitions in subsection (7)(a) and (b) do not apply to private clubs.

(d) In a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(e) In an association, the members, officers, and directors;

(f) In a partnership or joint venture, the general partners, limited partners, or joint venturers;

(g) In a limited liability company all the members and managers;

(h) If any parent company, partner, member, manager of a limited liability company, shareholder or joint venturer is itself a corporation, association, trust, limited liability company, partnership, or joint venture, then the applicant shall provide disclosure for such entity as if it were a key person;

(i) Immediate family members as required in ORS 461.300;

(j) The sole proprietor, if the retailer is a sole proprietor;

(k) Any person who acts or who has the authority to act on behalf of the owner in all matters concerning the operation of the owner's business during all business hours. This definition does not include a "shift manager" or a "store manager" unless qualified under this rule. The following are examples of managers who are key persons under this definition:

(A) A person who operates the business for a corporation or absentee owner, such as a general manager;

(B) A person who operates multiple locations or supervises multiple store managers, such as an area manager; or

(C) Any person who, acting on behalf of the owner, performs duties that amount to full responsibility for the daily operation of the business. Full responsibility means the person has the authority to perform and routinely performs all of the following duties: the hiring and firing of employees, making purchasing decisions relating to the buying of supplies and inventory; and conducting banking functions for the business;

(l) A landlord who receives 40% or more of the retailer's Lottery commissions as a part of lease payments and/or rent, or any landlord who the Director finds, based on reasonably reliable information, exerts influence over the operation of the retailer's business;

(m) Any person who has a lease, contract, or other agreement with the applicant or retailer or anyone else, to provide food service or to manage or operate any part of the business in a video lottery retailer's premises other than as an employee.

(n) Notwithstanding the information each person is required to disclose described in ORS Chapter 461, the Director may waive disclosure requirements for the persons in (a) through (m) of this section when the Director concludes it is reasonable and prudent to do so and will not jeopardize the fairness, integrity, security, or honesty of the Lottery.

(o) Any reference to a "control person" of a retailer in OAR chapter 177, a Lottery retailer contract, or Lottery form in effect or in use on the effective date of this rule shall be deemed to refer to a "key person" as defined in this section.

(8) "Personal disclosure" means that part of the application which relates to a natural person's personal, criminal, and financial background.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

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Stats. Implemented: ORS 461.300  
Hist.: SLC 3-1985(Temp), f. & ef. 1-15-85; SLC 8-1985, f. & ef. 6-21-85; LC 11-1987, f. 6-22-87, ef. 7-1-87; LOTT 2-1998, f. & cert. ef. 5-28-98; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04

## 177-040-0003

### Application for Temporary Lottery Retailer Contract

(1) For the purposes of this rule, temporary retailer contract means a contract issued to a retailer for a temporary period. A temporary contract may be formed subject to such special terms, conditions, or limitations as the Director may deem prudent.

(2)(a) To apply for a temporary retailer contract, an applicant must submit a complete application for a retailer contract.

(b) When an applicant intends to apply for a temporary contract for a business which the applicant is purchasing from an existing Lottery retailer, the applicant may submit to the Lottery a complete application with a copy of the purchase agreement and other relevant sales documents prior to the date the applicant takes possession of the premises pursuant to the purchase agreement. Notwithstanding submission of the application prior to the date of possession, the Lottery shall not enter into a temporary contract with the applicant until on or after the date the applicant takes legal possession of the business.

(3) When the Lottery accepts the complete application for a temporary retailer contract, the Director will conduct an abbreviated investigation of the applicant and the business. That investigation includes, but is not limited to:

(a) A computerized background check for criminal arrests and convictions;

(b) A credit check using the services of a commercial credit reporting company; and

(c) An inspection of the business for which the applicant seeks a temporary retailer contract.

(4) An applicant may qualify for a temporary retailer contract if, based on the abbreviated investigation and on the application, all of the following criteria are met:

(a) The applicant is applying for a retailer contract at a specific location;

(b) The "Criteria Precluding Entering Into A Contract" described in OAR 177-040-0005 do not apply to the applicant;

(c) The applicant has no criminal convictions of any kind within five years of the date application is made;

(d) The applicant has no convictions as described in the "Personal Criteria Which May Be Grounds for Denial", OAR 177-040-0010 sections (3), (6), and (7);

(e) The applicant has no Class "A" misdemeanor or felony charges pending against the applicant;

(f) The applicant has no outstanding judgments, liens, or collections, except those judgments which the applicant is disputing through a legal process;

(g) The applicant is in compliance with all tax laws;

(h) The applicant has certified that their location is in compliance with the "Retailer Wheelchair Accessibility Program" criteria described in OAR 177-040-0070;

(i) The applicant has the appropriate Oregon Liquor Control Commission license, as defined in ORS Chapter 461, if applying for a contract to offer video Lottery games; and

(j) There are no apparent factors regarding the applicant to cause the Director to reasonably conclude that the applicant poses an actual or apparent threat to the fairness, honesty, integrity or security of the Lottery and its games. Factors that may pose a threat include, but are not limited to, any of the following examples:

(A) the applicant or key person has one or more criminal arrests or convictions, depending on the nature and severity of the crimes involved; or

(B) the applicant or key person has been involved in any civil action in which the final judgment indicates that the applicant or key person is not financially responsible, depending on the nature, severity, and recency of the action.

(5) Prior to the effective date of the temporary retailer contract, the Director may require the applicant to:

(a) Receive training from the Lottery;

(b) Establish an electronic funds transfer (EFT) bank account for Lottery funds;

(c) Pay all necessary fees associated with the installation of telephone lines and telephone service;

(d) Agree to pay all necessary fees associated with amusement device taxes prior to the effective date of a temporary retailer contract; and

(e) Agree to be responsible for and to pay all fees in connection with the application, including any cancellation fees for telephone lines and service.

(6) The applicant and the applicant's business must qualify for the type of Lottery sales sought by the applicant. For example, if the applicant seeks a contract to offer video Lottery games, the business must have an appropriate liquor license and an age controlled area that meets the Lottery's requirements. The business must have been open to the public and operating as required in OAR 177-040-0017, and the applicant must submit sales figures showing that Lottery revenue will be less than 60 percent of the business's total revenue as defined herein.

(7) If the applicant is an entity other than either a sole proprietor who is a natural person or a private club as defined in ORS 471.175(8), at least one natural person who is a principal of the applicant entity and who is a key person may be required to personally guarantee all monies owed to the Lottery.

(8) The Director may require the applicant to post a bond, letter of credit, or cash deposit in the form of certified funds prior to the effective date of a temporary retailer contract.

(9) If the Lottery enters into a temporary retailer contract with the applicant, the terms of that contract will require that the applicant agree to pay the amount due to the Lottery for the sale of Lottery tickets or shares by the use of an electronic funds transfer (EFT). In most instances, amounts due the Lottery will be collected via EFT at the end of the fourth day after the close of the Lottery business week. When an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites. The applicant shall establish an account for deposit of money from the sale of Lottery tickets and shares with a financial institution that has the capability of making EFT draws.

(10) The burden for establishing that an applicant qualifies for a temporary retailer contract is on the applicant.

(11) The Director, at the Director's sole discretion, may immediately terminate a temporary retailer contract if the Director determines that continuing to contract with the applicant is not in the best interest of the Lottery including, but not limited to, when:

(a) The applicant provided material false or misleading information, or the applicant made a material omission in the application for a retailer contract;

(b) The applicant or any key person is arrested or convicted of a Class "A" misdemeanor or felony during the term of the temporary retailer contract;

(c) An EFT payment is rejected for non-sufficient funds (NSF), or the applicant fails to provide timely information to the Lottery regarding any change of the applicant's EFT bank account;

(d) Any other reason contained in the contract or administrative rules that provides a basis for termination of a retailer contract; and

(e) When the Director concludes that continuing to contract with the applicant may pose a threat to the fairness, honesty, integrity, or security of the Lottery and its games.

(12) A temporary retailer contract shall be valid for a specific time period for up to 120 days. A temporary retailer contract may, in the Director's discretion, be extended for up to 120 additional days.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 5-2000, f. 7-26-00, cert. ef. 11-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04

## 177-040-0025

### Retailer Compensation

(1)(a) Traditional Sales Compensation: The Lottery shall pay a retailer the following compensation rates for the weekly sales of traditional lottery game tickets or shares offered by the Lottery and sold by the retailer as set forth below: [Table not included. See ED. NOTE.]

(b) Calculation of Sales: A retailer's weekly sales shall be calculated on the combined weekly gross sales of On-Line tickets, Scratch-it tickets, and Breakopen shares made from the retailer's premises during a business week, less Scratch-it ticket and Breakopen share returns recorded by the Lottery and other sales related adjustments made during the week. For the purpose of calculating weekly sales, Breakopen shares are sold when the Breakopen shares are shipped by the Lottery to a retailer, Scratch-it tickets are sold when the tickets are activated by the retailer, and On-Line tickets

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or shares are sold when the request for the On-Line ticket or share is electronically received and verified by the Lottery's central computer system.

(2) Breakopen Compensation: Notwithstanding the compensation structure established in section (1) of this rule, the minimum compensation rate paid to a Lottery retailer for the sale of Breakopen shares shall be eight percent (8.00%). For example: If a retailer's weekly sales of traditional Lottery game tickets and shares equals \$2,620 with \$1,620 representing Breakopen sales, then the compensation rate for On-Line and Scratch-it sales of \$1,000 is 7.50% and the compensation rate for Breakopen sales of \$1,620 is 8.00%. If a retailer's total weekly sales of traditional Lottery game tickets and shares total \$5,500, with Breakopen sales of \$1,620, then the compensation rate for On-Line ticket and Scratch-it ticket sales, and for Breakopen sales, is 9.00%.

(3)(a) One Percent Selling Bonus: For selling any winning and validated Scratch-it or On-Line ticket or share with a prize of \$10,000 or more, a Lottery retailer shall receive a bonus equal to one percent (1.00%) of the offered or advertised prize won by the player up to a maximum bonus of \$100,000 rounded to the nearest dollar. For example: For selling a winning and validated annuitized prize of \$8,000,000, the selling Lottery retailer shall receive a bonus of \$80,000 regardless of the payment option chosen by the winner; for selling a winning and validated Scratch-it prize of \$25,000, the selling Lottery retailer shall receive \$250.

(b) Bonus for Variable Prizes: Prior to the implementation of a traditional lottery game that includes one or more prizes with a value that is, in the opinion of the Director, variable or in some other way ambiguous including, but not limited to, circumstances such as non-monetary prizes or annuities of unspecified duration, the Director shall assign a prize value to any such prize for the purposes of determining the retailer selling bonus pursuant to subsection (a) of this section. The Director's determination of the prize value is final.

(4) One Percent Prize Payment Bonus: For paying a winning and validated Scratch-it or On-Line ticket or share with a prize of \$600 or less, a Lottery retailer shall receive a bonus from the Lottery equal to one percent (1.00%) of the prize won by the player.

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

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.010

Hist.: LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 12-1996, f. & cert. ef. 12-27-96; LOTT 9-1999, f. 5-27-99, cert. ef. 6-27-99; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04

## 177-040-0050 Retailer Duties

(1) This rule contains duties to be performed by a Lottery retailer beyond those duties described in the Lottery retailer contract. The duties listed herein are not meant to be exclusive. Other duties and requirements for retailers may be contained elsewhere in the OAR division 177, ORS Chapter 461, or in the retailer contract as negotiated individually with each Lottery retailer.

(2) All Lottery retailers shall:

(a) Replace ribbons, ticket stock and clear paper jams as may be required for any of the equipment provided by the Lottery for the sale of Lottery tickets or shares.

(b) Install and use only approved Lottery paper stock which has been specifically assigned to the selling retailer when selling Lottery tickets and shares.

(c) Be required to arrange for and obtain all necessary permits required by state and local governments for electrical installation, electrical power, telephone service, fiber optic lines and connections, and coaxial cable and connections required to sell Lottery tickets or shares at the retail site.

(d) Pay the amount due to the Lottery for the sale of Lottery tickets or shares by the use of an electronic funds transfer (EFT). In most instances, this EFT shall occur at the end of the fourth day after the close of each the Lottery business week. When an applicant operates multiple Lottery retail sites before the effective date of this rule, the routine date of the EFT collection may be set beyond the fourth day after the close of the business week in order to accommodate the needs of the combined sites.

(3) A traditional game Lottery retailer shall:

(a) Validate a Scratch-It ticket prize through the Instant Ticket System (ITS) and destroy it after validation and payment of the prize. Any traditional Lottery retailer who does not destroy the ticket after validation and payment of a winning ticket shall be liable for a prize paid by another Lottery retailer who subsequently sight validates the ticket.

(b) Validate On-Line game prizes through the On-Line terminal before paying an On-Line prize.

(4) A Breakopen game Lottery retailer shall, after validation and payment of the prize, destroy the Breakopen share.

(5) A video Lottery game retailer shall:

(a) Validate cash slips through the video management terminal (VMT) before paying a prize.

(b) Restrict video lottery terminals from visibility from areas outside of the business and from view of dining areas or other areas where minors are permitted to linger.

(c) Maintain video lottery terminals in an area of the business that is prohibited to minors. The area must be posted as such by the Oregon Lottery or the Oregon Liquor Control Commission. This restriction against minors shall not apply to minors who qualify under the exceptions permitted by the Oregon Liquor Control Commission for access to areas normally prohibited to minors.

(6) The Director may sanction a Lottery retailer for the loss, damage, or destruction of any winning game ticket or share including, but not limited to, imposing a requirement for remedial training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract or OAR chapter 177.

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LOTT 5-1999(Temp), f. & cert. ef. 5-26-99 thru 6-26-99, Administrative correction 11-17-99; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04

## 177-040-0052

### Non-Sufficient Funds Policy

(1) Definitions: For purposes of this rule:

(a) "Working day" means a weekday (Monday through Friday) from 8 a.m. to 5 p.m. when the Lottery Headquarters in Salem is open for business.

(2) Retailers with Temporary Contract or Letter of Authority: If an electronic funds transfer (EFT) from a retailer with a temporary contract or a letter of authority issued under ORS 461.335, is not made due to non-sufficient funds (NSF) in the retailer's EFT account, and non-payment is not excused under this rule, the Lottery shall terminate the retailer's temporary contract or letter of authority, and disable or remove Lottery equipment from the retailer's premises. Processing of the retailer's application for a retailer contract otherwise may proceed.

(3) First NSF: The first time that a Lottery retailer's EFT payment to the Lottery is not made due to non-sufficient funds in the retailer's EFT account, the Lottery shall:

(a) Notify the Retailer: Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) Disable Equipment: Disable the Lottery's equipment on the retailer's premises for up to five working days, in which time the retailer must pay by certified funds, the EFT transfer amount plus an additional \$50 fee for the Lottery's administrative expenses in processing the NSF.

(c) Withhold Bonus: Withhold any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs. If the retailer does not make the required payments within five working days of the date the equipment was disabled, the retailer shall forfeit the bonus and incentive payments.

(d) Terminate Contract: Terminate the retailer's contract and remove the Lottery's equipment if the retailer fails to pay by certified funds, the EFT transfer amount plus the \$50 fee within five working days of the date the equipment was disabled.

(4) Second NSF: When a retailer's EFT payment is not made to the Lottery due to non-sufficient funds in the retailer's EFT account for a second time within one year of the retailer's first NSF, the Lottery shall:

(a) Notify the Retailer: Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) Disable Equipment: Disable the Lottery's equipment on the retailer's premises for up to five working days, in which time the retailer must pay by certified funds, the EFT transfer amount plus an additional \$50 fee for the Lottery's administrative expenses in processing the NSF and post a bond or make a cash deposit if allowed by the Director under paragraph (A) of subsection (d) of this section.

(c) Withhold Bonus: Withhold any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs. If the retailer does not make the required payments within five working days of the date the equipment was disabled, the retailer shall forfeit the bonus and incentive payments.

(d) Terminate Contract: The Lottery shall terminate the retailer's contract and remove the Lottery's equipment:

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(A) Unless the Director allows the retailer to post a bond, or make a cash deposit by certified funds with the Lottery. The Director shall determine the amount, the term, and any other applicable conditions. The amount of the bond or cash deposit will be no less than twice the retailer's weekly average EFT transfers, calculated using the immediately preceding three calendar months; or

(B) If the retailer fails to pay, by certified funds, the EFT transfer amount plus the \$50 fee within five working days of the date the equipment was disabled, or fails to post a bond or make a cash deposit within five working days of the date the equipment was disabled when allowed under paragraph (A) of this subsection.

(5) Third NSF: When a Lottery retailer's EFT payment is not made to the Lottery due to non-sufficient funds in the retailer's EFT account for a third time within one year of the retailer's first NSF, the Lottery shall:

(a) Notify the Retailer: Make a reasonable effort to notify the Lottery retailer of the NSF.

(b) Disable Equipment: Disable the Lottery's equipment on the retailer's premises until the contract is terminated and the equipment is removed.

(c) Payment: Require the retailer to pay, by certified funds, the amount of money that was to be paid by EFT plus the \$50 fee within five working days of the date the Lottery equipment on the retailer's premises was disabled.

(d) Forfeit Bonus: Require the retailer to forfeit any bonus and incentive payments the retailer may have earned for the business week in which the NSF occurs.

(e) Terminate Contract: Terminate the retailer's lottery contract and remove the Lottery's equipment.

(6) NSF Due to Financial Institution Error: Any NSF that is due to an error committed by the retailer's financial institution does not count toward the three NSF limit in this rule as long as the error is corrected and Lottery receives documentation from the retailer's financial institution. The financial institution must substantiate to the Director's satisfaction the financial institution's responsibility for causing the NSF, and that but for the financial institution's error, sufficient funds would have been available in the retailer's account to cover the EFT payment.

(7) Financial Institution Closures: Any NSF that is due to an unexpected temporary closure of the retailer's financial institution does not count toward the three NSF limit in this rule as long as the NSF is corrected and Lottery receives documentation from the retailer's financial institution that substantiates to the Director's satisfaction the reason for the financial institution's unexpected closure. The retailer shall make the deposit before 5 p.m. of the next day the financial institution is open or available for deposits to be made. If the deposit is not made as described, the Lottery shall treat it as an NSF under these rules.

(8) Retailer's Obligations Survive Contract Termination: Termination of the retailer's contract does not release the retailer from any obligation to pay all amounts due the Lottery under this rule and the retailer's Lottery contract. The Lottery may make a claim upon any bond, or cash deposit posted under this rule, and apply the money to any of the retailer's obligations owed to the Lottery. The Lottery may initiate collection action on behalf of the State to collect all amounts due.

(9) Director's Discretion: The Director may make exceptions to these requirements based upon the facts and circumstances of any particular payment by a retailer which is rejected for non-sufficient funds.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461

Hist.: LOTT 11-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 22-2002, f. & cert.. ef. 11-25-02; LOTT 3-2004(Temp), f. & cert. ef. 4-6-04 thru 10-1-04

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**Adm. Order No.:** LOTT 4-2004(Temp)

**Filed with Sec. of State:** 4-6-2004

**Certified to be Effective:** 6-27-04 thru 12-23-04

**Notice Publication Date:**

**Rules Adopted:** 177-040-0026

**Subject:** The proposed new rule sets forth a new compensation system and new compensation rates for video lottery retailers effective June 27, 2004. The new system and new rates were approved for rulemaking by the Lottery Commission at the March 31, 2004 Commission meeting.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-040-0026

### Retailer Compensation — Video Lottery Games

(1) The compensation amount the Lottery shall pay a retailer for the sale of video lottery game shares is calculated on a percentage of net

receipts during a business year. "Net receipts" means the amount of money that is received at a retailer's premises from the sale of video lottery game shares after the payment of prizes. At the time a retailer signs a Retailer Contract, the retailer must choose in writing to receive compensation in accordance with either subsection (a) or subsection (b) of this section. If the retailer fails to choose as required, the Lottery shall compensate the retailer pursuant to subsection (a) of this section for the first business year the contract is in effect. For each subsequent business year the contract is in effect, no less than 60 days before the beginning of the upcoming business year, the retailer may submit a written notice to the Lottery that the retailer chooses to be compensated under the alternative compensation method for the upcoming business year. If the retailer does not submit or fails to timely submit a written notice, the Lottery shall compensate the retailer using the retailer's current compensation method for the next business year.

(a) 3-Tier Option: [Table not included. See ED. NOTE.]

(b) 2-Tier Option; [Table not included. See ED. NOTE.]

(2) The compensation rates for the sale of video lottery game shares set forth in this rule are limited to compensation for the sale of shares for video poker games as described in OAR 177-200-0070.

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

Stat. Auth.: Or. Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.010

Hist.: LOTT 4-2004(Temp), f. 4-6-04, cert. ef. 6-27-04 thru 12-23-04

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**Adm. Order No.:** LOTT 5-2004(Temp)

**Filed with Sec. of State:** 4-6-2004

**Certified to be Effective:** 4-6-04 thru 6-25-04

**Notice Publication Date:**

**Rules Adopted:** 177-045-0060, 177-045-0080

**Rules Suspended:** 177-045-0050(T), 177-045-0060(T), 177-045-0070(T), 177-045-0080(T)

**Subject:** The proposed rules define a Lottery retailer's responsibilities for loss of or damage to Lottery equipment and distinguish the liability between losses \$2,500 and over, and under \$2,500. Claims for loss or damages under \$2,500 will be processed by the Oregon Lottery. Claims for losses of \$2,500 or more will be reported to the Department of Administrative Services Risk Management Division in accordance with Oregon Revised Statutes Chapter 278.

The four temporary rules noted above, which were adopted January 5, 2004, are being suspended. The two new rules, OAR 177-045-0060 and OAR 177-045-0080, replace the two previous temporary rules numbered the same.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-045-0050

### Insurance Coverage

(1) Requirements: Each Lottery retailer must obtain and carry an insurance policy providing coverage for each item of Lottery equipment located on the retailer's premises against any claim, demand, suit, or action for property damage resulting in connection with installation, repair, removal, or use of the equipment. The Lottery shall determine a reasonable coverage amount that shall not be less than the replacement value of the equipment as determined by the Lottery. The State of Oregon, the Oregon State Lottery Commission, and the members, officers, employees, and agents of each shall be named as additional insureds on the insurance policy. The insurance policy shall be with an insurance company duly authorized and licensed to do business in Oregon.

(2) Notice of Required Coverage: The Lottery shall notify a retailer of the required coverage amount. A retailer must obtain an insurance policy for the required coverage amount within thirty days of issuance of the notice. Any retailer who enters into a retailer contract after the effective date of this rule must obtain an insurance policy for the required coverage amount before any equipment will be placed on the retailer's premises.

(3) Increase in Coverage: The Lottery may adjust the required dollar amount of insurance coverage to reflect the increased value of the lottery equipment as needed. The Lottery will notify Lottery retailers if an increase in coverage is needed. A retailer has thirty days from the date that notice of the increase is issued to obtain a policy that provides the increased amount of coverage.

(4) Proof of Coverage: A retailer that is required to maintain insurance coverage must supply proof of the insurance policy to the Lottery upon request of the Lottery.

(5) Audits: The Director may audit any Lottery retailer for compliance with this rule at any time including random compliance audits. The Lottery

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will conduct the audit during the retailer's regular business hours or at such other time as agreed upon by the retailer and the Lottery. The burden of proof to establish that a retailer complies with this rule is on the retailer.

(6) Termination: The Director may terminate the contract of a retailer who fails to comply with the provisions of this rule.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.200, 461.217, 461.300  
Hist.: LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; Suspended by LOTT 5-2004(Temp), f. & cert. ef. 4-6-04 thru 6-25-04

## 177-045-0060

### Equipment Loss or Damage

(1) Loss Claim Under \$2,500:

(a) A retailer is responsible for the actual cost of replacing, repairing, or removing lost, damaged, or destroyed Lottery equipment when the loss per occurrence is under \$2,500 and the retailer:

(A) Failed to exercise reasonable care to protect the equipment from damage, destruction, or theft;

(B) Intentionally damaged, destroyed, or stole the equipment, or allowed others to damage, destroy, or steal Lottery equipment; or

(C) Unless waived by the Director, previously had a loss claim (whether charged to the retailer or not) within the preceding twelve months.

(b) The Lottery will investigate whether a retailer failed to exercise reasonable care to prevent loss, damage, or destruction of Lottery equipment in the possession of the retailer, or whether the retailer intentionally damaged, destroyed, or stole, or allowed others to damage, destroy, or steal Lottery equipment. The Lottery Director shall determine if the retailer is responsible for the actual costs of replacing, repairing, or removing the Lottery equipment under subsection (a) of this section. If the retailer is determined to be responsible, the Lottery will bill the retailer and may electronically debit the retailer's account for the amount billed.

(2) Ordinary Wear and Tear Excepted: A retailer is not responsible for costs of replacing, repairing, or removing Lottery equipment resulting from ordinary wear and tear due to normal use of the equipment.

(3) Loss Claim of \$2,500 or More: Notwithstanding section (1) of this rule, a Lottery retailer is responsible for any loss, damage, or destruction to Lottery equipment when the loss is \$2,500 or more per occurrence. In the event of such loss, damage, or destruction, the Lottery will report it to the State of Oregon Department of Administrative Services Risk Management Division in accordance with ORS Chapter 278. Any claim that the Lottery may have against a retailer arising from the loss, damage, or destruction of such property is subrogated to the Risk Management Division upon payment of the claim by Risk Management to the Lottery. When requested, the retailer must reimburse Risk Management the amount paid to the Lottery for replacement or repair of the lost, damaged, or destroyed equipment.

(4) Loss Management: At its option, the Lottery may repair, replace, or remove any lost, damaged, or destroyed Lottery equipment, none of which has any effect on a retailer's liability to the State of Oregon, if any, for the loss, damage, or destruction of such equipment.

(5) Contract Termination: In addition to requiring payment for the loss, damage, or destruction of Lottery equipment, the Director may terminate the retailer contract of any Lottery retailer who failed to exercise reasonable care to protect Lottery's equipment. The Director shall terminate the retailer contract of any Lottery retailer who intentionally damages, destroys, or steals, or allows others to damage, destroy, or steal Lottery equipment.

(6) Threats: The Director may terminate the retailer contract of any Lottery retailer who threatens to damage or destroy Lottery equipment.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.200, 461.217, 461.300  
Hist.: LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 5-2004(Temp), f. & cert. ef. 4-6-04 thru 6-25-04

## 177-045-0070

### Determination of Liability

(1) Investigation: The State of Oregon or the Lottery may initiate an investigation to determine whether a retailer failed to exercise reasonable care to protect the Lottery's equipment, or whether the retailer intentionally damaged, destroyed, or stole, or allowed others to damage, destroy, or steal Lottery equipment.

(2) Determination: If the State or the Lottery determines that the retailer failed to exercise reasonable care, acted intentionally, or allowed others to damage, destroy, or steal Lottery equipment, the retailer will be charged for the equipment loss pursuant to OAR 177-045-0060.

(3) Contract Termination: In addition to requiring payment for the loss, damage, or destruction of Lottery equipment, the Director may terminate the retailer contract of any Lottery retailer who failed to exercise rea-

sonable care to protect the Lottery's equipment. The Director shall terminate the retailer contract of any Lottery retailer who intentionally damages, destroys, or steals or allows others to damage, destroy, or steal Lottery equipment.

(4) Threats: The Director may terminate the retailer contract of any Lottery retailer who threatens to damage or destroy Lottery equipment.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.200, 461.217, 461.300  
Hist.: LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; Suspended by LOTT 5-2004(Temp), f. & cert. ef. 4-6-04 thru 6-25-04

## 177-045-0080

### Finality of Decisions

The decisions and determinations of the Director under this Division are final.

Stat. Auth.: ORS 461 & Or. Const. Art. XV, Sec. 4(4)  
Stats. Implemented: ORS 461.200, 461.217, 461.300  
Hist.: LOTT 1-2004(Temp), f. & cert. ef. 1-5-04 thru 6-25-04; LOTT 5-2004(Temp), f. & cert. ef. 4-6-04 thru 6-25-04

## Oregon University System Chapter 580

**Adm. Order No.:** OSSHE 1-2004(Temp)

**Filed with Sec. of State:** 4-6-2004

**Certified to be Effective:** 4-6-04 thru 10-2-04

**Notice Publication Date:**

**Rules Adopted:** 580-021-0041

**Subject:** OAR 580-021-0041 permits employees of the Oregon University System (OUS) transfer accumulated, unused sick leave balances to other state agencies, provided the hire date is within two years of separation of service from one of the institutions of the OUS. Hiring entities considered to be "state agencies" for purpose of this rule are defined.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

## 580-021-0041

### Transfer of Accumulated, Unused Sick Leave

(1) OUS academic and administrative unclassified staff may transfer unused accumulated leave balances between the OUS and state agencies, subject to sick leave transfer provisions in (3) and (4), and applicable collective bargaining agreements.

(2) For purposes of this rule, a "state agency" includes all state agencies in the executive, judicial, or legislative departments of the State of Oregon. Special government bodies, including community colleges, school districts, education service districts, are not considered state agencies for purposes of this rule. Local government public employers other than state agencies are likewise ineligible to transfer unused leave to or from the OUS.

(3) Assumption of Funding Liability. Hiring agencies and departments assume funding liability for sick leave transferred under the provisions of this rule.

(4) Sick Leave. The full amount of accumulated, unused sick leave available at the time an employee separates from service may be transferred to an OUS institution or state agency when the employee is hired. Unearned, advanced sick leave that results in a negative sick leave balance is neither transferred nor accepted by OUS institutions.

(a) Accumulated, unused state agency sick leave earned during employment with a state agency, including leave earned in classified service, may be transferred to the hiring OUS institution if the break in service does not exceed two years, subject to approval of the hiring institution.

(b) Accumulated, unused sick leave earned during employment with an OUS institution shall be transferred to the hiring state agency if the break in service does not exceed two years, subject to the rules of the state agency.

Stat Auth: ORS 351.070  
Stats. Implemented:  
Hist.: OSSHE 1-2004(Temp), f. & cert. ef. 4-6-04 thru 10-2-04

**Adm. Order No.:** OSSHE 2-2004

**Filed with Sec. of State:** 4-8-2004

**Certified to be Effective:** 4-8-04

**Notice Publication Date:** 3-1-04

**Rules Adopted:** 580-020-0006

**Subject:** The proposed OAR distinguishes positions in unclassified service. These positions do not meet the criteria for academic fac-

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ulty but which, based on professional job requirements and responsibilities:

- (1) are exempt from the provisions of the Public Employee Collective Bargaining Act (PECBA), ORS 243.650-243.782; however not all positions in unclassified service are exempt from PECBA, or
- (2) share a community of interest with academic faculty, and
  - (a) include academic research, public service, or instruction, or
  - (b) exercise discretion in establishing policy, or
  - (c) require education and training comparable to academic faculty, or
- (d) have administrative decision-making responsibilities beyond office clerical duties.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5795

## 580-020-0006

### Definition of Unclassified Service

Unclassified service includes positions that do not meet the criteria for academic faculty but which, based on professional job requirements and responsibilities:

- (1) Are exempt from the provisions of the Public Employee Collective Bargaining Act (PECBA), ORS 243.650-243.782; however, not all positions in unclassified service are exempt from PECBA, or
  - (2) Share a community of interest with academic faculty, and
  - (a) Include academic research, public service, or instruction, or
  - (b) Exercise discretion in establishing policy, or
  - (c) Require education and training comparable to academic faculty, or
  - (d) Have administrative decision-making responsibilities beyond office clerical duties. Examples of positions that may meet the criteria listed above include, but are not limited to:
    - (1) Chancellor, Chancellor's cabinet;
    - (2) Presidents, president's cabinet;
    - (3) Provosts, vice provosts, associate vice provosts, and assistant vice provosts;
    - (4) Vice presidents and associate vice presidents;
    - (5) Deans and associate deans;
    - (6) Directors and associate directors of academic, administrative, and service units;
    - (7) Controllers and budget officers;
    - (8) Registrars and associate registrars;
    - (9) Legal counsel and attorneys;
    - (10) Athletic directors and associate athletic directors;
    - (11) Executive and other special assistants to each of the positions listed in numbers one through ten (above), providing that the executive or other special assistant positions otherwise meet the criteria for unclassified service (stated above);
    - (12) Assistant vice presidents, assistant deans, department heads/chairs, assistant directors, managers, and assistant registrars where positions require specialized/degree education and training;
    - (13) Librarians, archivists, and museum or collection curators where positions require specialized/degree education and training or where responsibilities include academic research or instruction but does not include positions having primarily clerical responsibilities;
    - (14) Advisors and counselors, including academic, financial aid, admissions, career, residential life, and athletic, where positions require specialized/degree education and training;
    - (15) Assistant athletic directors, athletic coaches, assistant athletic coaches, athletic trainers, assistant athletic trainers, and athletic eligibility and compliance officers where positions require specialized/degree education and training;
    - (16) Interpreters;
    - (17) Development and advancement officers where positions require specialized/ degree education and training;
    - (18) Physicians, psychologists, and clinical counselors where positions require specialized/degree education and training;
    - (19) General managers, directors, producers, and announcers of state radio and television service;
    - (20) Managers, directors and administrators of student affairs functions, where positions require specialized/degree education and training.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSSHE 3-2003(Temp), f. & cert. ef. 12-1-03 thru 5-21-04; OSSHE 2-2004, f. & cert. ef. 4-8-04

**Adm. Order No.:** OSSHE 3-2004

**Filed with Sec. of State:** 4-8-2004

**Certified to be Effective:** 4-8-04

**Notice Publication Date:** 2-1-04

**Rules Adopted:** 580-021-0044

**Subject:** This rule provides authority for the Oregon University System (OUS) and institutions of higher education that comprise the OUS to request use of employees' Social Security numbers for uses not deemed mandatory under the Privacy act of 1974. The rule describes mandatory and voluntary uses of Social Security numbers for employees, their spouses, dependents, and partners who participate in or receive OUS benefits, programs, or services. The rule describes information that must be provided when an institution requests voluntary use of a Social Security number, including protections that apply if use is denied.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5795

## 580-021-0044

### Use of Employees' Social Security Numbers

(1) The Oregon University System and each institution within the system shall comply with the requirements of Section 7 of the Privacy Act of 1974 when requesting disclosure of an employee's Social Security Number. Pursuant to the authority of the Oregon University System to implement personnel systems and exercise payroll authority, the Chancellor's Office and each institution within the Oregon University System may request that employees furnish valid Social Security Numbers for mandatory and voluntary uses, subject to the use and disclosure provisions of the Privacy Act.

(2)(a) An institution may require disclosure of an employee's Social Security Number for mandatory uses as provided for under Section 7(a)(2) of the Privacy Act, including:

(A) Use and disclosure for certain program purposes, including disclosure to the Internal Revenue Service, the Social Security Administration, the Federal Parent Locator Service, the Department of Veterans Affairs, the Bureau of Citizenship and Immigration Services, Aid to Families with Dependent Children, Medicare and Medicaid, Unemployment Insurance, Workers Compensation, and, in appropriate cases, epidemiological research.

(B) Administration and accounting purposes including the payment of state, federal and local payroll taxes; withholdings for FUTA and FICA; calculation and applicable reporting of pre-tax salary deductions for benefits including, but not limited to, IRC 117 and IRC 127 scholarship and educational assistance programs; IRC 457 deferred compensation and IRC 403(b) tax-sheltered annuity plans; IRC 401(a) retirement plans; IRC 132 pre-tax parking and transit plans, IRC 125 flexible spending account or cafeteria plans; or IRC 105 or 106 health reimbursement arrangements.

(C) To the extent required by federal law, an employee's Social Security Number may be provided to a foreign, federal, state, or local law enforcement agency for investigation of a violation or potential violation of a law for which that entity has jurisdiction for investigation or prosecution.

(b) An institution may request voluntary disclosure and consent to use an employee's Social Security Number for the following purposes: internal verification and identification for personnel administration, employment-related background checks, payroll records, enrollments or elections for participation in campus programs and services provided by the public universities.

(c) An institution may request voluntary disclosure and consent to use the Social Security Number of an employee or the spouse, partner or dependent of the person requesting participation, as required by the administrator of each record-keeping system, benefit, program or service.

(3) A request for disclosure of an employees' Social Security Number will notify the employee:

(a) Whether disclosure is mandatory or voluntary;

(b) Under what statutory or other authority the social security number is requested;

(c) What specific use or uses will be made of the number; and

(d) What effect, if any, refusal to provide the number or to grant consent for a voluntary use as described above in (2)(b) and (c) will have on an individual.

(4) An employee's Social Security Number may not be put to a voluntary use as described above in (2)(b) and (c) unless the employee has granted consent for that use. If, after having provided notice and received consent to use an employee's Social Security Number for specified purposes, an institution wishes to use the Social Security Number for additional purposes not included in the original notice and consent, the requesting



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entity must provide the employee notice and receive the employee's consent to use the number for those additional purposes.

(5) An employee's refusal to permit a voluntary use of his or her Social Security Number will not be used as a basis to deny the employee a right, benefit, or privilege provided by law.

(6) The Office of the Chancellor will develop a model disclosure and consent form for use by institutions in the Oregon University System. An institution may use a disclosure and consent form that differs from the model form only if:

(a) The differences are required to satisfy specific programmatic requirements or the entity's particular administrative needs, and

(b) The form complies with all requirements of the Privacy Act of 1974 and this rule.

Stat. Auth.: ORS 351.070; 292.043-292.180; 192.502(3)(a)

Stats. Implemented:

Hist.: OSSHE 4-2003(Temp), f. & cert. ef. 12-1-03 thru 5-21-04; OSSHE 3-2004, f. & cert. ef. 4-8-04

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**Oregon University System,  
Southern Oregon University  
Chapter 573**

**Adm. Order No.:** SOU 1-2004

**Filed with Sec. of State:** 4-5-2004

**Certified to be Effective:** 4-5-04

**Notice Publication Date:** 2-1-04

**Rules Adopted:** 573-075-0000, 573-075-0010, 573-075-0020, 573-075-0030, 573-075-0040, 573-075-0050, 573-075-0060, 573-075-0070, 573-075-0080, 573-075-0090, 573-075-0100, 573-075-0110, 573-075-0120, 573-075-0130, 573-075-0140, 573-075-0150, 573-075-0160, 573-075-0170, 573-075-0180, 573-075-0190, 573-075-0200, 573-075-0210, 573-075-0220, 573-075-0230, 573-075-0240, 573-075-0250, 573-075-0260, 573-075-0270

**Rules Amended:** 573-001-0000, 573-001-0015, 573-040-0005, 573-042-0005, 573-050-0005, 573-050-0010, 573-050-0020, 573-050-0025, 573-050-0030, 573-050-0035, 573-050-0040, 573-050-0045, 573-070-0001, 573-070-0004, 573-070-0011, 573-070-0067, 573-070-0068, 573-080-0005, 573-080-0025

**Rules Repealed:** 573-020-0000, 573-020-0005, 573-020-0010, 573-020-0015, 573-020-0021, 573-020-0024, 573-020-0025, 573-020-0030, 573-020-0035, 573-020-0037, 573-020-0049, 573-020-0052, 573-020-0060, 573-020-0065, 573-020-0070, 573-020-0075, 573-020-0080, 573-020-0085, 573-020-0090, 573-020-0095, 573-020-0100, 573-020-0105, 573-020-0110, 573-020-0115, 573-020-0120, 573-020-0125, 573-020-0130, 573-090-0000, 573-090-0005, 573-090-0010

**Subject:** Division 20 repealed due to extensive amendments, issued as new rule 573-075; Division 90 is obsolete; All other amendments are for language consistency, title changes, department name changes, or changes in fees.

**Rules Coordinator:** Deborah S. Drost—(541) 552-8550

## 573-001-0000

### Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any rule, other than a temporary rule which shall be adopted in accordance with ORS 183.335(5), Southern Oregon University shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin at least 21 days prior to the effective date.

(2) By mailing a copy of the Notice to certain legislators at least 49 days before the effective date of the rule. ORS 183.335(1)(d) and

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

(a) The Medford Mail Tribune;

(b) The Ashland Daily Tidings;

(c) The Siskiyou;

(d) SOU News Groups;

(e) ASSOU President;

(f) Legislator(s) sponsoring legislation per HB 2799

Stat. Auth.: ORS 183.335 & 729, OL

Stats. Implemented: ORS 183, 351.070 & OAR 580-001-0005

Hist.: SOSC 1, f. & ef. 4-1-76; SOSC 6-1985, f. & ef. 6-12-85; SOSC 1-1994, f. & cert. ef. 5-11-94; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-001-0015

### Contents of Notice When a Public Hearing Is Not Contemplated

When the University does not plan to hold a public hearing, the notice referred to above shall include the following:

(1) A description of the University's proposed action (adoption, amendment, or repeal of rule) and where practicable and appropriate, setting forth verbatim any rule proposed to be adopted, amended, or repealed.

(2) The subject matter and purpose of the proposed action in sufficient detail to inform a person that his or her interest may be affected.

(3) The time and place at which data or views may be submitted in writing to the University.

(4) A statement that any interested person desiring to express or submit his or her data or views at a public hearing must request the opportunity to do so.

(5) A designation of the person to whom a request for public hearing must be submitted and the time and place therefore.

(6) A statement that a public hearing will be held after University notice from 10 or more persons or an association having not less than 10 members if the University receives a request for public hearing before the earliest date that the rule could become effective.

(7) If the proposed rule, amendment, or repeal thereof is not set forth verbatim in the notice, the notice shall state the time, place, and manner in which the rule or amendment may be obtained.

(8) If 10 persons or an association having more than 10 members request a public hearing, the University shall give notice of the hearing at least 21 days before the hearing to the person who has requested the hearing and to persons who have requested notice pursuant to ORS 183.335(7), and shall publish notice of the hearing in the bulletin referred to in ORS 183.360.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341

Hist.: SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-040-0005

### Special Fees

The Special Fees for certain courses and general services approved by Southern Oregon University are hereby adopted by reference.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 580-040-0010

Hist.: SOSC 4, f. & ef. 9-2-76; SOSC 10, f. & ef. 5-9-77; SOSC 6-1978, f. & ef. 6-2-77; SOSC 8-1978, f. & ef. 12-15-78; SOSC 2-1979, f. & ef. 6-20-79; SOSC 4-1980, f. & ef. 5-20-80; SOSC 4-1980, f. & ef. 5-20-80; SOSC 2-1981, f. & ef. 6-2-81; SOSC 3-1982, f. & ef. 7-1-82; SOSC 4-1983, f. & ef. 5-26-83; SOSC 1-1984, f. & ef. 6-20-84; SOSC 4-1985, f. & ef. 6-3-85; SOSC 9-1985, f. & ef. 12-17-85; SOSC 2-1986, f. & ef. 5-30-86; SOSC 1-1987, f. & ef. 6-5-87; SOSC 4-1987, f. & ef. 9-4-87; SOSC 1-1988, f. & cert. ef. 5-19-88; SOSC 2-1988(Temp), f. & cert. ef. 9-2-88; SOSC 4-1988, f. & cert. ef. 11-23-88; SOSC 3-1989, f. & cert. ef. 6-1-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 3-1991, f. & cert. ef. 5-30-91; SOSC 1-1992, f. & cert. ef. 6-3-92; SOSC 3-1993, f. & cert. ef. 5-21-93; SOSC 2-1994, f. & cert. ef. 6-10-94; SOSC 1-1995, f. & cert. ef. 6-7-95; SOSC 1-1996, f. & cert. ef. 6-5-96; SOU 1-1997, f. & cert. ef. 5-20-97; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 2-1999, f. & cert. ef. 5-7-99; SOU 1-2000, f. & cert. ef. 4-10-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2002, f. & cert. ef. 4-11-02; SOU 1-2003, f. & cert. ef. 4-16-03; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-042-0005

### College Community Recreation Program Policies and Fees

(1) Physical education facilities at Southern Oregon University may be used for the College Community Recreation Program. Such usage is on a space-available basis after the needs of academic programs and student activities have been met. Questions regarding scheduling of the facilities shall be directed to the Community Recreation Director. The following fees pertain to usage by employees and students and their family members and guests as well as the general public.

(2) Policies Governing Facilities Use:

(a) Community Memberships:

(A) Memberships may be used by paying members only and are not transfer-able;

(B) Membership identification cards are required for the use of all facilities;

(C) Memberships entitle the members to the use of all facilities when they are scheduled for Community Recreation use. Facilities include pool, racquetball courts, track, gym, lockers and showers, fields, and sauna.

(b) All individuals using Health/PE facilities will be required to show identification:

(A) SOU student body card;

(B) Faculty/staff card;

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(C) Community Recreation pass.

(c) Student, faculty, and staff passes will be honored through summer session. Community recreation passes will be honored through the term of purchase, or for the year of purchase;

(d) The facility schedule is subject to change;

(e) Facilities users will be responsible for payment of costs for repair or replacement due to damage of facility or equipment during rental time beyond normal wear and tear.

(3) Fee Schedule:

(a) SOU Students:

(A) Facilities for which there is no charge include gyms, lockers and showers, track, fields;

(B) \$20.00 fee per term per person or \$35.00 fee per year per person for the pool and racquetball courts;

(C) \$3.00 fee per visit per person for the pool;

(D) \$3.00 fee per visit per person for the racquetball courts.

(b) SOU Faculty and Staff:

(A) Facilities for which there is no charge include gyms, lockers and showers, track, fields;

(B) Emeritus and adjunct faculty receive faculty/staff rates. Part-time faculty below .50 FTE do not receive faculty/staff rates;

(C) \$25.00 fee per term per person to use the pool and racquetball courts

(D) \$65.00 fee per year per person to use the pool and racquetball courts;

(E) \$3.00 fee per visit per person for the pool and \$3.00 fee per visit per person for the racquetball courts.

(c) Immediate family members of SOU students, faculty, and staff (i.e., spouse, son, or daughter) will pay same fees as the students, faculty, and staff;

(d) Community Members:

(A) Facilities include gyms, lockers and showers, track, fields, racquetball courts, pool;

(B) \$35.00 fee per term per person for use of swimming pool and all community recreation facilities except racquetball courts;

(C) \$35.00 fee per term per person for use of racquetball courts and all community recreation facilities except swimming pool.

(D) \$3.00 fee per visit per person for use of swimming pool and all community recreation facilities except racquetball courts.

(E) Charges for group use for extended periods will be negotiated considering the number of participants, equipment used, frequency of use, and any lifeguard requirement;

(F) \$3.00 fee per visit per person for use of racquetball courts and all community recreation facilities except swimming pool;

(G) You must sign up and make a reservation to play racquetball.

(e) Alumni (must be active member of SOU Alumni Association):

(A) \$30.00 fee per term per person for use of swimming pool and all community recreation facilities except racquetball courts;

(B) \$30.00 fee per term per person for use of racquetball courts and all community recreation facilities except swimming pool.

(C) \$3.00 fee per visit per person for use of swimming pool and all community recreation facilities except racquetball courts;

(D) \$3.00 fee per visit per person for use of racquetball courts and all community recreation facilities except swimming pool.

(f) For rental of activity areas, refer to "Basic Rental Rates" available from Community Recreation Director at 552-6273.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist: SOCS 1-1985, f. & ef. 1-16-85; SOCS 1-1991, f. & cert. ef. 1-25-91; SOCS 5-1991, f. & cert. ef. 9-20-91; SOCS 4-1993, f. & cert. ef. 6-22-93; SOCS 3-1994, f. & cert. ef. 7-29-94; SOCS 1-1995, f. & cert. ef. 6-7-95; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-050-0005

### Authority to Establish Motor Vehicle Regulations

Authority to establish regulations governing the use of motor vehicles on the Southern Oregon University campus for visitors, faculty, staff, and students is derived from ORS 352.360 and action of the Oregon University System pursuant to such statute. The regulations as herein published have been approved by the Office of the Chancellor and filed with the Secretary of State in accordance with provisions of ORS 183.310 to 183.500. Strict enforcement of these regulations is necessary to minimize congestion, maintain safety on campus streets, enhance security, and maximize the use of existing parking facilities.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOCS 5, f. & ef. 9-2-76; SOCS 4-1979, f. 8-8-79, ef. 9-1-79; SOCS 5-1980, f. & ef. 8-19-80; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-050-0010

### Application of Motor Vehicle Laws of the State of Oregon and the City of Ashland

All motor vehicle laws of the State of Oregon and City of Ashland, including specifically, but not by way of limitation, ORS chapters 810, 811, 814, 815, and 816, together with amendments hereafter adopted, are applicable and enforceable on the campus of Southern Oregon University to the same extent as if this campus and its streets were public highways.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOCS 5, f. & ef. 9-2-76; SOCS 4-1979, f. 8-8-79, ef. 9-1-79; SOCS 5-1980, f. & ef. 8-19-80; SOCS 3-1990, f. & cert. ef. 5-31-90; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-050-0020

### Driver Responsibility

(1) All persons operating vehicles on campus are responsible for knowing and adhering to the regulations herein. The regulations are enforced 24 hours per day unless posted otherwise.

(2) The responsibility for locating a legal parking space rests with the operator of the vehicle. Lack of parking space or an overabundance of parking space is not a valid excuse for violating any University parking regulation.

(3) Persons whose vehicles have broken down on the campus must immediately notify Parking Services. Major mechanical repairs to vehicles on the campus are prohibited. Abandoned or junked vehicles remaining on the campus more than 72 hours will be removed at the owner's expense. Unlicensed vehicles parked on the campus will be considered abandoned and subject to removal at the owner's expense. Unlicensed vehicles include those with expired vehicle registration.

(4) Southern Oregon University assumes no liability for personal injuries or for the care and/or protection of any vehicle or its contents while the vehicle is operated or parked on campus.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOCS 5, f. & ef. 9-2-76; SOCS 4-1979, f. 8-8-79, ef. 9-1-79; SOCS 5-1980, f. & ef. 8-19-80; SOCS 6-1983, f. & ef. 8-23-83; SOCS 2-1984, f. & ef. 8-14-84; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-050-0025

### Vehicle Permits and Parking Areas

(1) All vehicles operated on the University campus are required to display a permit when the posted signs require a permit. Faculty/Staff lots are posted yellow; Student Commuter lots are posted green; Resident Student lots are posted red. Parking Services can be contacted for the location where other types of permits may be obtained. Failure to display a permit may result in the issuance of a parking citation. Decals may be purchased during normal registration or at the Business Services office located in Churchill Hall.

(2) *Parking decals are serialized for use on a specific vehicle with a license plate designated by the purchaser at the time of purchase. The decal must be affixed outside to left-rear bumper, left-rear body, left-rear window, or rear side window behind driver of the vehicle where visible. The adhesive on the back of the decal must be the attaching mechanism. If a vehicle is disposed of, the decal must be removed and returned to Parking Services.*

(3) Parking decals may be purchased for the remainder of the academic year or for each quarter. The academic year begins and ends in September. Parking decals purchased during the winter, spring, or summer quarters are at a proportionately reduced rate.

(4) Faculty/Staff parking decals will be sold to classified employees, graduate assistants, temporary employees who are half-time or more, and faculty. Vehicles displaying Faculty/Staff decals are authorized to park in designated Faculty/Staff (yellow), Student Commuter (green), and Residence Hall (red) parking areas.

(5) Student Commuter parking decals will be sold to students who live off campus and wish to bring vehicles on campus. Vehicles displaying Student Commuter decals will park in Student Commuter (green) parking lots only.

(6) Residence Hall parking decals will be sold to students living in campus residence halls. Vehicles displaying a Residence Hall decal may park in any Residence Hall (red) parking lot only.

(7) Second parking decals may be purchased for an additional vehicle if more than one vehicle will be brought to campus. The purchaser must also be the registered owner of the vehicle. Only one decal (the original or second decal) is valid on permit-required lots at a time. If both first and second permits of one person are parked in permit-required lots at the same time, both vehicles will be cited for improper permits. A second decal may

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not be purchased for a car if the first decal is for a vehicle used in a Residence Hall Parking area, motorcycle, moped, or scooter.

(8) Replacement decals may be obtained for a damaged, unreadable decal or for a replacement vehicle. The replacement vehicle must be registered to the same owner as the original vehicle. **The decal which is being replaced will be considered void and should be returned to Business Services or Parking Services upon purchase of a replacement decal.**

(9) Guest permits are available at Parking Services, Business Services, departmental offices, school offices, and/or the Campus Information office. Guest permits are issued for one day only. Guest permits may not be used in timed lots. Buses will be expected to have a Guest permit and park where directed by Parking Services. If a citation is issued to a vehicle while the driver is obtaining a Guest permit, it will be waived if Parking Services is notified in a timely manner as stated in the Guest parking permit policy. Guest permits will not be valid if issued to University employees, faculty, students, or vehicles displaying a valid parking permit. Guest permits will not be valid and may be cited for failure to display permit if any of the following information is illegible or omitted:

- (a) Both license number and make or color;
- (b) Date that permit is valid;
- (c) Name and telephone extension of departmental personnel issuing the permit.

(10) Carpool parking decals will be sold for entire school year only if the carpool meets the following criteria:

- (a) The carpool must contain at least two individuals with cars, but no more than six.
- (b) No more than one vehicle from the carpool is allowed on campus at a particular time. No second decals will be sold. However, replacement decals are available if requirements as stated in regulations for replacement decals are met.

(11) Substitute vehicles for a vehicle having a decal may be brought on campus after obtaining a Substitute Vehicle parking permit from Parking Services. This permit is used for temporary situations of short duration.

(12) Special permits may be approved by Parking Services on an as-needed basis.

(13) Weekly or Daily permits for those persons who use the campus parking facilities only intermittently may be purchased at Business Services or Parking Services.

(14) Courtesy parking permits are available to personnel retiring with ten years of service or more, volunteer board members, designated governmental officials, media representatives, and such others as deemed necessary by the President to facilitate their interaction with the institution.

(15) Vendor or Volunteer permits may be obtained through Parking Services. Commercial permits will be sold to commercial vendors, including vending machine, video game, outside maintenance, travel, office supply, and food vendor companies, and contractors' employees. Companies or departments can purchase a long-term permit for six months or a year. Short-term permits are available for one day or one month. Companies or departments will be billed for the permits by Parking Services. Volunteer parking permits will be sold to departments for use of volunteers. Departments can purchase long-term permits for one year or short-term permits for less than one month. Permits will be billed by Parking Services.

- (a) Volunteer, each vehicle, long-term, one year: \$5.
- (b) Short-term, less than one month: \$1.

(16) Disabled parking: In accordance with ORS 811.602, 811.605, 811.606, 811.607, and 811.615, only vehicles displaying a disabled placard or license plate issued and registered at the Motor Vehicles Division and an SOU decal (as designated in Rule 573-050-0020) will be allowed to park in spaces posted for use by disabled persons. These vehicles must also display an SOU permit or meter permit unless otherwise posted.

(a) Temporary placards are issued by the Motor Vehicle Division for persons with qualifying temporary disabilities upon submission of a certificate and fee (as provided by ORS 811.606 and ORS 811.640).

(b) Vehicles with appropriate disabled placard or license plate and SOU permit may park in any lot or space without incurring citations, except where the lot or space is designated for parking limited to 60 minutes or less or in a parking space reserved for other vehicles.

(17) Refunds for a parking decal will be made only for whole year (fall, winter, and spring) remaining and upon return of the decal or fragments thereof showing the decal number. Refund schedules are on file in Parking Services.

(18) Faculty/Staff, Residence Hall, and Commuter decals may be purchased for a single term. There is no refund on single-term decals. Rules regarding use of decals shall apply to single-term and yearly decals.

(19) Vehicles displaying valid decals or parking permits are not guaranteed a parking space on the campus.

(20) Vehicles displaying valid decals or parking permits are not exempt from timed parking restrictions. Timed parking restrictions apply to all vehicles on the University campus regardless of decals or permits displayed.

(21) Mopeds, scooters, and motorcycles must be parked in parking spaces designated and posted for "Motorcycles Only". Mopeds, scooters, and motorcycles parked in bicycle racks and on the campus grounds will be cited for improper parking. Vehicles parked inside University buildings will be towed at the owner's expense.

(22) If, during the process of issuing a parking citation, the driver of the violating vehicle drives away from the scene, thus preventing the issuing agent from placing the citation on the vehicle, the citation will be entered into the parking system as if it had been placed on the vehicle. When a driver leaves the scene during the issuing process, this will be considered "constructive notice" of the citation.

(23) Vehicles parked facing in the direction against one-way arrows will be cited for improper parking. Vehicles parked on the side of street opposing direction of usual traffic flow will be cited for improper parking.

(24) Vehicles using parking lots marked "Visitor Pay Parking" are required to display the serialized meter permit purchased at each lot of this type. Failure to display the meter permit on the dashboard of the vehicle will result in a citation for failure to display a permit. There is no grace period to obtain change for the permit machine. Signs in the lots will instruct users to immediately purchase a meter permit and place it on the left side of the dashboard of the vehicle and that there is no grace period for obtaining change for the permit machine.

(25) Loading Zone spaces are provided for loading and unloading purposes not to exceed 30 minutes unless by prior approval through Parking Services.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOSC 5, f. & ef. 9-2-76; SOSC 4-1979, f. 8-8-79, ef. 9-1-79; SOSC 5-1980, f. & ef. 8-19-80; SOSC 3-1981, f. & ef. 9-9-81; SOSC 4-1982, f. & ef. 7-28-82; SOSC 1-1983, f. & ef. 1-3-83; SOSC 6-1983, f. & ef. 8-23-83; SOSC 2-1984, f. & ef. 8-14-84; SOSC 8-1985, f. & ef. 8-12-85; SOSC 3-1986, f. & ef. 7-22-86; SOSC 5-1987, f. & ef. 9-8-87; SOSC 4-1989, f. & cert. ef. 9-19-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 4-1991, f. & cert. ef. 6-11-91; SOSC 2-1994, f. & cert. ef. 6-10-94; SOSC 2-1996, f. & cert. ef. 8-2-96; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 2-1998, f. & cert. ef. 7-16-98; SOU 1-1999, f. & cert. ef. 5-7-99; SOU 2-2000, f. & cert. ef. 6-9-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 2-2002, f. & cert. ef. 6-28-02; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-050-0030

### Driving and Parking Regulations on Campus

The Vice President for Administration and Finance, in consultation with the Transportation Planning and Parking Committee, will designate parking areas on campus:

(1) Anyone operating a vehicle on campus will observe posted speed limits, barricades, bicycle lanes, crosswalks, and stop signs and will drive in a safe and prudent manner. The **speed limit on campus is 15 MPH**. Driving or parking vehicles, bicycles, motorcycles, mopeds, scooters, or motorized bicycles on sidewalks, lawns, and **other areas not designated for driving**, parking, or public thoroughfare is prohibited.

(2) Regulations may change from time to time. In the event of conflict between traffic signs or markings and printed regulations, the signs or markings will prevail.

(3) Vehicles shall be parked within indicated parking areas only. All lots will have permit requirements suspended during institution holidays except disabled, yellow zones, pay lots, reserved parking spaces, and restricted areas, which are enforced at all times. "Holidays" refers to the following observed state holidays: New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the Friday following Thanksgiving, and Christmas Day.

(4) Residence Hall (red) parking areas and pay lots are enforced 24 hours a day except for holidays as specified in the previous paragraph.

(5) Persons, departments, or schools sponsoring university-hosted events must contact Parking Services to arrange for parking and fee payment as appropriate. Unless otherwise arranged, participants will be restricted to Lot 1 or Lot 41 during the academic school year.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOSC 5, f. & ef. 9-2-76; SOSC 4-1979, f. 8-8-79, ef. 9-1-79; SOSC 5-1980, f. & ef. 8-19-80; SOSC 3-1981, f. & ef. 9-9-81; SOSC 6-1983, f. & ef. 8-23-83; SOSC 2-1984, f. & ef. 8-14-84; SOSC 3-1986, f. & ef. 7-22-86; SOSC 5-1987, f. & ef. 9-8-87; SOSC 4-1989, f. & cert. ef. 9-19-89; SOSC 2-1994, f. & cert. ef. 6-10-94; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 2-1998, f. & cert. ef. 7-16-98; SOU 1-1999, f. & cert. ef. 5-7-99; SOU 2-2002, f. & cert. ef. 6-28-02; SOU 1-2004, f. & cert. ef. 4-5-04

# ADMINISTRATIVE RULES

## 573-050-0035

### Transportation Planning and Parking Committee and Traffic Appeals Board

(1) The Transportation Planning and Parking Committee is established to advise on policies, procedures, and programs which address the transportation needs of students, faculty, staff, and visitors who access the Ashland campus, including routes and parking within the campus. Further, the committee makes recommendations creating or modifying traffic and parking policies and assists in the equitable, effective, and economic regulation of vehicle use on campus. Included in these duties is the adjudication of second appeals for parking citations and consideration of petitions for reserved parking. The committee will be convened as necessary to serve as the institution's Vehicle Accident Review Board.

(2) The Transportation Planning and Parking Committee will include three faculty or unclassified members identified through the Administrative Committee appointment procedure, three student members recommended by the Student Senate, and three classified staff members identified through the Administrative Committee appointment procedure. All members are subject to final confirmation by the President or the President's designee. A minimum of three members at a meeting shall constitute a quorum. Final authority for traffic parking policies will rest with the President or the President's designee.

(3) Each member of the Transportation Planning and Parking Committee will be appointed for the period of three years. Terms of office will be staggered to provide continuity.

(4) The Director of Business Services, being responsible for the enforcement of these regulations, will be an ex officio (nonvoting) member of the Transportation Planning and Parking Committee. In this capacity, the Director of Business Services will serve as an advisor concerning traffic problems on the campus and the fiscal impact of present and proposed parking policies. The Director will make recommendations on needed improvement or changes required in this program to ensure the parking program maintains its mandated self-supporting fiscal status.

(5) The Traffic Appeals Board (TAB) is established to provide an expedient method of handling appeals for citations issued by Southern Oregon University. The TAB is the first level of appeal concerning traffic and parking citations on the campus.

(6) The TAB will consist of three faculty or unclassified members identified through the Administrative Committee appointment procedure, three student members recommended by the Student Senate, and three classified staff members identified through the Administrative Committee appointment procedure. All members are subject to confirmation by the President or the President's designee. Decisions of the TAB shall reflect the majority vote of those members present.

(7) Each member of the TAB will be appointed for a period of three years. Terms of office will be staggered.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOSC 5, f. & ef. 9-2-76; SOSC 4-1979, f. 8-8-79, ef. 9-1-79; SOSC 5-1980, f. & ef. 8-19-80; SOSC 2-1984, f. & ef. 8-14-84; SOSC 8-1985, f. & ef. 8-12-85; SOSC 4-1989, f. & ef. 9-19-89; SOSC 4-1991, f. & cert. ef. 6-11-91; SOSC 3-1993, f. & cert. ef. 5-21-93; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 2-2002, f. & cert. ef. 6-28-02; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-050-0040

### Penalties for Offenses

Multiple violations may be cited for a single incident:

- (1) Failure to display valid permit: Fine — \$30.
- (2) Fraudulent display of permit: Fine — \$75.
- (3) Permit not affixed: Fine — \$20.
- (4) Improper permit: Fine — \$20.
- (5) Parking in Disabled Space: Maximum fine — \$250.
- (6) Overtime Parking: Fine — \$20.
- (7) Blocking wheel chair ramp: Fine — \$100.
- (8) Improper Parking: Fine — \$20.
- (9) Parking in Reserved Space: Fine — \$75.
- (10) Blocking Traffic: Fine: — \$50.
- (11) Boot Fee: — \$25.00.

(12) A vehicle may be towed off campus property and impounded at the owner's expense (including additional fines) under the following circumstances:

- (a) A vehicle causing imminent danger to people or University property;
- (b) A vehicle without a valid yellow, green, or red parking permit and records of \$50 or more in unpaid citations (may be towed or booted);
- (c) A vehicle left parked or standing in an area not normally used for parking, including parking on a sidewalk or on grass;

(d) A vehicle improperly parked in a disabled space;

(e) A vehicle blocking traffic or blocking any other vehicle, blocking any door or fire exit, blocking access to any trash container, fire lane, crosswalk, driveway, or other safety hazard (may also be cited for blocking traffic).

(13) Vehicles in timed parking areas may be cited when their time parked exceeds the posted time limit. The vehicle may be cited again after double the posted time limit is exceeded. Example: In a 30-minute parking area, a vehicle may be cited after 30 minutes; again after a total of 90 minutes (including the first 30 minutes); again after 150 minutes, etc.

(14) Vehicles parked in permit-required parking areas may be cited every eight hours, not to exceed three citations every 24 hours.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOSC 5, f. & ef. 9-2-76; SOSC 4-1979, f. 8-8-79, ef. 9-1-79; SOSC 5-1980, f. & ef. 8-19-80; SOSC 4-1982, f. & ef. 7-28-82; SOSC 6-1983, f. & ef. 8-23-83; SOSC 2-1984, f. & ef. 8-14-84; SOSC 8-1985, f. & ef. 8-12-85; SOSC 3-1986, f. & ef. 7-22-86; SOSC 5-1987, f. & ef. 9-8-87; SOSC 4-1989, f. & cert. ef. 9-19-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 4-1991, f. & cert. ef. 6-11-91; SOSC 2-1994, f. & cert. ef. 6-10-94; SOSC 2-1996, f. & cert. ef. 8-2-96; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 2-1998, f. & cert. ef. 7-16-98; SOU 1-1999, f. & cert. ef. 5-7-99; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 2-2002, f. & cert. ef. 6-28-02; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-050-0045

### Enforcement and Appeals

(1) Campus regulations are in effect 24 hours a day, seven days a week, except when parking permits are not required (as stated in OAR 573-050-0030).

(2) Tow-away zones will be enforced 24 hours a day, seven days a week.

(3) All penalties prescribed in OAR 573-050-0040 will be administratively enforced by Southern Oregon University. Violators will receive a parking citation of offense, together with the scheduled fine for said violation, in accordance with the penalties set forth in OAR 573-050-0040.

(4) After receipt of a parking citation, the individual must, within seven calendar days of the date of the citation, file a request for a hearing before the TAB or pay the appropriate fine.

(5) Any University personnel or students issuing a Guest permit may contact Parking Services to transfer responsibility for citations received by their guests to themselves. This in no way implies the fine will be suspended, only that the guest will not be billed or pursued to pay the fine. The University personnel or students will be responsible and have all avenues of appeal available as if the citation were issued to them personally.

(6) Any person wishing to take a case before the TAB must prepare a Petition for Appeal of Traffic Violation for a hearing indicating why the citation should be adjudicated. The petition form, available from Parking Services, must be completed and returned to the office within seven calendar days of the citation date.

(7) A person appealing the citation may appear before the TAB to present his/her case. If the appellant does not wish to appear in person, for reasons he/she may specify, the written appeal will be reviewed by the TAB, which shall render judgment. The appellant shall be notified by mail or e-mail of the decision of the TAB.

(8) The party appealing the citation may have legal counsel to present his/her case to the TAB.

(9) In adjudicating appeals, the TAB shall have full authority to do the following:

- (a) Dismiss the violations;
- (b) Find the individual not guilty of the charges of the citation;
- (c) Find the individual guilty of the violation and either impose the fine stipulated in these rules or impose a lesser fine;
- (d) Enter a finding of guilty without imposing any fine, issue a reprimand or warning, or impose a fine.

(10) The decision of the TAB may be appealed in writing to the Transportation Planning and Parking Committee by obtaining, completing, and filing a second appeal form with Parking Services within ten calendar days following the decision of the TAB. Parking Services will also have an opportunity to submit a written statement concerning the issuance of the citation.

(11) Once the TAB makes the decision on an appeal for a parking citation, the student will have ten calendar days from the decision date to appeal the TAB's decision further via the Transportation Planning and Parking Committee. After a decision has been made on the second appeal, a student has ten calendar days to pay any amount owed before it is charged to his/her account.

(12) The student's right to register for classes may be denied if any fines owing under these regulations remain unpaid.

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(13) A student who fails to pay the University for any outstanding fine will have the fine charged to his/her account.

(14) Students leaving or graduating from the University will continue to be responsible for parking fines owed to the University, as long as such fines can be identified as belonging to the student(s) responsible.

(15) A faculty or staff member who fails to pay the University for any outstanding parking fines may have the fine deducted from his/her payroll check 30 days after written notice of the outstanding fines.

(16) Vehicles having outstanding parking fines may be denied issuance of a replacement or new parking decal.

(17) Fee Schedule:

(a) Carpool, sold for entire school year only: — \$50 each pool.

(b) Faculty and staff decal for first registered vehicle:

(A) Fall term through summer term: — \$72.

(B) Winter term through summer term: — \$60.

(C) Spring term through summer term: — \$48.

(D) Quarter/Term decals: — \$37.

(c) Student Commuter and Residence Hall decal for first registered vehicle:

(A) Fall term through summer term: — \$68.

(B) Winter term through summer term: — \$56.

(C) Spring term through summer term: — \$43.

(D) Quarter/Term decals: — \$33.

(d) Motorcycles, mopeds, and scooters, one vehicle only:

(A) Fall term through summer term: — \$27.

(B) Winter term through summer term: — \$25.

(C) Spring term through summer term: — \$23.

(D) Quarter/Term decals: — \$21.

(e) Second Vehicle permit: — \$15.

(f) Replacement permit: — \$15.

**NOTE:** The second permit is for the convenience of those persons who may be driving a different vehicle from time to time. Only one decal (the original or second decal) is valid on campus permit-required lots at a time. Violation of this rule will result in both vehicles being cited for improper permit.

(A) Second permits will be sold only to Faculty/Staff and Commuter permit holders.

(B) One second permit is allowed for each full-price (first registered vehicle) permit purchased.

(C) Replacement permits can be obtained only in accordance with OAR 573-050-0025(8).

(g) Departmental Reserved Parking spaces (nonrefundable): \$100 over and above price for regular parking permit and \$10 fee for each subsequent sign-change after a sign is posted.

(h) Commercial permit, each vehicle:

(A) Long-term, twelve months: — \$100.

(B) Long-term, six months: \$60.

(C) Short-term, one month: — \$15.

(D) Short-term, daily: — \$5.

(i) Weekly parking permits (for red and green lots only): — \$15 per week (available at Business Services, Housing, and Parking Services).

(j) Daily parking permits (for red and green lots only): — \$5 per day (available at Business Services, Housing, and Parking Services).

(k) Evening and weekend parking: — \$1.

(l) Visitor pay parking in specified lots: — \$1 per hour.

(m) Volunteer permit:

(A) Volunteer, each vehicle, long-term, one year: — \$5.

(B) Volunteer, each vehicle, short-term, less than one month: — \$1.

(n) Handling charges:

(A) Deducting fines from payroll check: — \$5.

(B) Out-of-state Department of Motor Vehicles research fee: — \$5.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOSC 5, f. & ef. 9-2-76; SOSC 4-1979, f. 8-8-79, ef. 9-1-79; SOSC 5-1980, f. & ef. 8-19-80; SOSC 3-1981, f. & ef. 9-9-81; SOSC 4-1982, f. & ef. 7-28-82; SOSC 6-1983, f. & ef. 8-23-83; SOSC 2-1984, f. & ef. 8-14-84; SOSC 8-1985, f. & ef. 8-12-85; SOSC 3-1986, f. & ef. 7-22-86; SOSC 5-1987, f. & ef. 9-8-87; SOSC 4-1989, f. & cert. ef. 9-19-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 4-1991, f. & cert. ef. 6-11-91; SOSC 3-1993, f. & cert. ef. 5-21-93; SOSC 2-1996, f. & cert. ef. 8-2-96; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 2-1998, f. & cert. ef. 7-16-98; SOU 1-1999, f. & cert. ef. 5-7-99; SOU 2-2000, f. & cert. ef. 6-9-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 2-2002, f. & cert. ef. 6-28-02; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-070-0001

### Housing Department and Housing Policy Committee

(1) The Housing Department shall establish additional housing policies, procedures and practices that may not conflict with these administrative rules.

(2) A Housing Policy Committee shall be created to advise the Housing Department regarding policies, procedures and administration of

housing operations, including Residential Life, Conference Services, Senior Programs, and Food Services. It shall be a standing administrative advisory committee of the University whose membership shall consist of students, faculty and staff from the University, appointed through the appropriate administrative advisory committee procedures:

(a) Four members of this committee shall be students, three of whom must be residence hall students;

(b) Four members of this committee shall be faculty and three members of this committee shall be classified staff;

(c) The director of housing and residential life shall be an ex officio, nonvoting member of the committee;

(d) Additional nonvoting members of the committee may include the director of residential life, housing office manager, director of food services, director of senior programs, and/or the conference coordinator;

(e) The chairperson of the committee shall be elected from within the membership of the committee;

(3) The Housing Policy Committee, or appropriate sub-committee (see 573-070-0004), may provide advice in the following areas:

(a) Contractual matters, housing rates and fees, and policy and procedure formulation and implementation related to housing, residential life, food services, senior programs, and conferences;

(b) Hear appeals of financial charges imposed upon residents by the Housing Office. Appeals will be processed and administered by the Housing Office;

(c) Hear appeals regarding exceptions to policies and procedures based upon unusual circumstances.

(4) A quorum shall be necessary for the transaction of business. A quorum is defined as a simple majority of the committee or sub-committee members.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-070-0004

### Department of Residence Halls, Conference, Senior Programs, and Food Services Policies

All departmental policies for residence halls, conferences, senior programs, and food services shall be maintained in appropriate policy documents in the Housing Office. Copies of these policy documents shall be made available upon request. Policies shall be developed and/or revised in the following manner:

(1) A sub-committee of the Housing Policy Committee may be appointed by the Chairperson to work on specific policy revisions or hear specific appeal cases:

(a) The department director or his/her designee shall chair the committee;

(b) Committee members shall include the following:

(A) The committee Chairperson;

(B) A departmental representative from one of the following areas appointed by the Housing Director:

(i) Residence halls;

(ii) Conferences;

(iii) Senior Programs;

(iv) Food Services;

(C) A minimum of two students from the Housing Policy Committee;

(D) At least one classified staff member and one faculty member from the Housing Policy Committee.

(2) The Chairperson of the committee shall convene the committee on an as-needed basis for policy review and/or revision.

(3) Recommendations of the Housing Policy Sub-committee shall be forwarded to the Housing Policy Committee for review and recommendation.

(4) The recommendations of the Housing Policy Committee shall be forwarded to the department director for review and implementation.

(5) Those policies needing approval from the appropriate dean or the president shall be forwarded by the director to the appropriate dean or the president.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: SOSC 4-1994, f. & cert. ef. 7-29-94; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-070-0011

### Residence Hall Room and Board Agreement

(1) Each applicant for residence hall accommodations shall be required to sign a Room and Board Agreement before occupying a room. The Room and Board Agreement specifies all contractual obligations for

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resident students. All rules and regulations in the Room and Board Agreement are binding.

(2) Copies of the current Room and Board Agreement will be available in the Student Housing Office.

(3) If a student is evicted from, moves from, or otherwise leaves a residence hall, but does not withdraw from the institution, the student is assessed a per day fee for the remaining days of the agreement period.

(4) If a student changes rooms anytime during the contract period, the student will be assessed a \$10.00 moving fee for each move.

(5) If a student fails to follow procedures when completing a room change, the student is subject to a \$20.00 improper moving fee.

(6) With an approved petition a student may be released from his or her Residence Hall Room and Board Agreement without the per day penalty. The main criteria used in approving such a petition are as follows:

(a) Health reasons, verified by a licensed physician, preferably local, who is acceptable to the Housing Policy Committee;

(b) Student teaching or academic programs requiring the student to live in another community;

(c) If a student is a non-freshman and finds a suitable replacement to take over the agreement, i.e., someone not required by University policies to live in residence halls and someone who has not previously contacted the Housing Office;

(d) Being dropped from SOU for academic reasons.

(e) Officially withdrawing effective the current academic term.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: SOSC 6-1980(Temp), f. & ef. 9-23-80; SOSC 10-1980, f. & ef. 11-19-80; SOSC 4-1994, f. & cert. ef. 7-29-94; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 3-2002, f. & cert. ef. 12-30-02; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-070-0067

### Student Housing and Residential Life Student Conduct Policies and Procedures

(1) All student housing rules and regulations, as well as judicial policies and procedures governing student conduct in and around the residence halls, shall be published in the following documents:

(a) The Southern Oregon University Residence Hall Handbook;

(b) Residence hall rules and regulations may also be published in the Southern Oregon University Student Handbook.

(2) Copies of the Residence Hall Handbook and the Student Handbook shall be made available upon request.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: SOSC 4-1994, f. & cert. ef. 7-29-94; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-070-0068

### Resident Hall Policy Implementation

(1) All agencies affected by any change in policy shall be notified of any and all policy changes no less than ten working days before the changes are implemented:

(2) In the case of a policy change that would affect the student population of the residence halls, the students shall be informed and the policy change implemented in the following manner:

(a) Notice of the policy change shall be sent to the following agencies:  
(A) The Housing and Residential Life Office;  
(B) The office of the Student Advocate.

(b) During the first week of the academic term in which the policy change is to be implemented, notice of the policy change shall be posted in each of the residence halls and announced during residence hall meetings.

(c) After being properly announced, a copy of the changed policy shall be made available from the Housing Office and the Hall Directors to any student who requests it.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: SOSC 4-1994, f. & cert. ef. 7-29-94; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0000

### Introduction to Code of Student Conduct

(1) Southern Oregon University is centered on its core values of learning and achievement, truth and disciplined inquiry, free expression and collaboration, open-mindedness and informed criticism, mutual respect and trust, cross-cultural understanding and international competence, integrity and stewardship, civic engagement and responsibility and innovation and entrepreneurship. Allegiance to these core values and the Code of Student Conduct allows Southern Oregon University to enjoy a learning environment that prepares its student citizens to engage actively and responsibly in the greater local and global communities.

(2) The purpose of the Code of Student Conduct is to outline expectations for student conduct, ensure a fair process to determine student misconduct, and to provide suitable sanctions when a student or student organization violates the Code. Maintaining an academic environment conducive to intellectual inquiry requires balancing individual freedom with respect for others in the greater University community. The existence of an inspiring and successful learning community is dependent upon assuming personal responsibility and holding others accountable to act responsibly.

(3) All students must conduct themselves as responsible members of the University community and respect the rights of fellow citizens. Enrollment at Southern Oregon University requires each student to abide by regulations of student conduct, ensures a fair process when student behavior may have deviated from those expectations, and provides appropriate sanctions when a student or organization has violated the Code of Student Conduct. Students and organizations are also responsible for the behavior of their guests and may be held responsible for the actions of their guests who violate provisions of this Code.

(4) Southern Oregon University reserves the right to take necessary and appropriate action to protect the safety and well being of the campus community. Generally, the Code of Student Conduct applies to incidents that take place on University premises or at University-sponsored or supervised functions. When the University is notified, the chief student affairs officer or designee may determine that acts prohibited by the Code of Student Conduct, but not committed on University premises, could also be grounds for disciplinary action. Such acts include, but are not limited to, drug trafficking offenses and acts or threats of violence against persons.

(5) The Code of Student Conduct should be read broadly. It does not define proscribed conduct in exhaustive terms.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0010

### Standards and Expectations

(1) Students at Southern Oregon University are responsible for meeting these University standards and expectations:

(a) To be active participants in the process of education: asking questions, seeking and using resources, reading and responding to communication;

(b) To be positive contributors to the University, Ashland, and surrounding communities;

(c) To conduct themselves with civility and be held accountable as members of the SOU community;

(d) To be honest and to treat others courteously and with respect;

(e) To be open to the concepts of volunteerism, wellness, and diversity;

(f) To approach this educational opportunity with an open-mind and a positive attitude, recognizing we all have much to learn.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 183 & 545

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0020

### Student Rights

At Southern Oregon University, the student will have the right:

(1) To pursue educational, recreational, social, cultural, and residential activities in an atmosphere where the rights, dignity, and worth of every individual is respected;

(2) To expect a campus environment characterized by safety and order;

(3) To organize and join associations to promote interests held in common with other students;

(4) To receive fair and impartial educational evaluations;

(5) To expect University faculty, staff and administrators to maintain and protect the confidential status of personal and academic records as set forth in the Administrative Rules and applicable laws;

(6) To participate through representation in the formulation of policy related to academics and student life;

(7) To dissent, to protest, or to demonstrate on University-owned property within the bounds of the law and other applicable authority;

(8) To participate in University activities without being discriminated against on the basis of race, color, national origin, religion, age, disability, marital status, veteran status, gender, or sexual orientation, and to be referred to the chief student affairs officer or designee in matters of alleged discrimination;

(9) To be accompanied to an institutional hearing, disciplinary or otherwise, by any person the student desires, and to consult such advisor at any

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time during a hearing for the purpose of securing advice. The advisor will not actively participate in a hearing unless the hearing board chair deems it necessary.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0030

### Student Responsibilities

Students at Southern Oregon University have the following responsibilities:

- (1) To maintain acceptable standards of academic performance;
- (2) To comply with University rules and regulations, as well as local, state, and federal laws;
- (3) To exhibit conduct appropriate to a learning atmosphere and to respect the rights, dignity, and worth of every individual in the University community.

Stat. Auth.: ORS 315  
Stats. Implemented: ORS 351.070  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0040

### Proscribed Conduct

(1) Conduct proscribed by the Oregon State Board of Higher Education Administrative Rules, chapter 580, division 22, Section 045:

(a) Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other institutional activities, including the institution's public service functions or other authorized activities on institutionally owned or controlled property;

(b) Obstruction or disruption interfering with freedom of movement, either pedestrian or vehicular, on institutionally owned or controlled property;

(c) Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on institutionally owned or controlled property, unless expressly authorized by law, Board, or institutional rules (for purposes of this section, absence of criminal penalties shall not be considered express authorization);

(d) Detention or physical abuse of any person or conduct intended to threaten imminent bodily harm or endanger the health of any person on any institutionally owned or controlled property;

(e) Malicious damage, misuse, or theft of institutional property, or the property of any other person where such property is located on institutionally owned or controlled property, or, regardless of location, is in the care, custody or control of an institution;

(f) Refusal by any person while on institutional property to comply with an order of the President or appropriate authorized official to leave such premises because of conduct proscribed by this rule when such conduct constitutes a danger to personal safety, property, or educational or other appropriate institutional activities on such premises;

(g) Unauthorized entry to or use of institutional facilities, including buildings and grounds;

(h) Illegal use, possession, or distribution of drugs on institutionally owned or controlled property;

(i) Inciting others to engage in any of the conduct or to perform any of the acts prohibited herein. Inciting means that advocacy of proscribed conduct that calls on the person or persons addressed for imminent action, and is coupled with a reasonable apprehension of imminent danger to the functions and purposes of the institution, including the safety of persons, and the protection of its property;

(j) Violating the Board's Policy for Intercollegiate Athletics as described in Section 8 of its Internal Management Directives, specifically including the subsection thereof entitled Code of Ethics.

(2) Conduct prohibited by Southern Oregon University includes but is not limited to:

(a) Cheating, plagiarism or other acts of deceit, fraud, distortion of the truth or improper use of another person's effort to gain advantage including, but not limited to, acts of academic dishonesty outlined under 573-075-0270, "Academic Standards";

(b) Acts of dishonesty, including, but not limited to: furnishing false or misleading information to the University or to any University official; misrepresenting information to the University or any University official; giving false testimony, falsifying, distorting or misrepresenting information at a grievance or disciplinary hearing; furnishing to an unauthorized person any official University document or confidential record, including but not limited to identification cards, personal identification numbers (PIN), electronic mail access codes or passwords, computerized records, transcripts,

athletic passes, course registrations, and receipts; tampering with the election of any organization;

(c) Forgery, alteration, counterfeiting, mutilating, accessing without authorization, or misuse of documents, records, or instruments of identification;

(d) Illegal use, possession, or distribution of drugs or illegal substances on institutionally owned or controlled property or at University sponsored or supervised functions;

(e) Possession, consumption, or furnishing of alcoholic beverages on University owned or controlled property, or at University sponsored or supervised functions unless authorized by the President;

(f) Engaging in violent, abusive, indecent, profane, unreasonably loud or otherwise disorderly conduct;

(g) Unwanted sexual contact of any kind, or threat of such contact. Sexual contact will be considered unwanted or without consent if no clear consent is freely given; if inflicted through force, or threat of force; or if inflicted upon a person who is unconscious or otherwise without the physical or mental capacity to consent;

(h) Possession of "any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury" (ORS 161.015(1));

(i) Violations of University policies, rules or regulations. Such policies include, but are not limited to, those related to computers, family housing policies, residence hall policies, sexual assault, weapons, etc.;

(j) Failure to comply with the terms of any disciplinary sanction imposed in accordance with the Residence Hall or University disciplinary processes;

(k) On-campus violation of University, local, state, or federal laws and regulations. The University may also apply the Code of Student Conduct to student conduct, regardless where it occurs, which adversely impacts the overall mission, program, and functions of the University or the health, well-being and safety of members of the University community;

(l) Behavior that suggests a serious problem which is detrimental to the person or the University;

(m) Failure to comply with the directions of University officials, including law enforcement officers, acting in performance of their duties, and/or failure to identify oneself to these persons when asked to do so;

(n) Illegal gambling or wagering;

(o) Disruption, obstruction, and/or interference with teaching, research, administration, disciplinary proceedings, studying, public speaking, research, business operations, fire, police or emergency services or other University activities, including its public service functions, whether on- or off-campus, and other non-University activities which occur on University premises including, but not limited to:

(A) Disruption, obstruction, interference with, or attempts to obstruct, disrupt or interfere with another student's right to study, learn, or complete academic requirements including, but not limited to, destroying, preventing or limiting access to information or records used by another student in connection with their University responsibilities;

(B) Disruption, obstruction or interference with educational activities in classrooms, lecture halls, campus library, laboratories, computer laboratories, theatres, or any other place where education and teaching activities take place including, but not limited to, talking at inappropriate times, drawing unwarranted attention to self, engaging in loud or distracting behaviors, displaying defiance or disrespect of others, or threatening any University student or employee;

(C) Participation in a gathering or assembly that disrupts the normal operations of the University or infringes on the rights of other members of the University community;

(D) Leading or inciting others to disrupt scheduled or normal activities on University premises or at University sponsored or supervised functions;

(E) Intentional obstruction of the free flow of pedestrian or vehicular traffic on University premises or at University sponsored or supervised functions.

(p) Appearing in a public place on University premises or at University sponsored or supervised functions under the influence of an intoxicating or illegal substance;

(q) Physical abuse, verbal abuse, threats, intimidation, harassment, sexual contact without permission, stalking, coercion, forced consumption of liquor, drugs or other conduct directed at a specific person, which threatens the health and safety of any person or seriously alarms or intimidates another person. Such conduct may include, but is not limited to:

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(A) Explicit or implicit threats, including gestures that place a person in reasonable fear of unwelcome physical contact, harm or death;

(B) Stalking; or following a person repeatedly to or from his or her residence;

(C) Making remarks in a public place to a specific person(s) which are by common usage lewd or obscene or expose a person to public hatred or that can reasonably be expected to have a tendency to cause acts of violence to the person(s) to whom the remark is made;

(D) Unwanted communication using electronic or digital devices.

(r) Causing physical harm to any person or causing reasonable apprehension of such harm;

(s) Hazing of any kind;

(t) Exposing genitals, buttocks, or breasts in a public place on University premises or at University-sponsored or supervised activities;

(u) Attempted or actual theft of, damage to, destruction of, or misuse of University property, or the services or property of a member of the University community, or other personal or public property. Possession of stolen property or unauthorized possession of University property or the property of a member of the University community;

(v) Abuse, misuse or theft of computer data, equipment, programs, time, and/or violation of policies outlined by Computer Services. Violations include, but are not limited to, engaging in acts of theft of computers, theft of data, illegal file sharing, improper and/or unauthorized access to university computer files and systems; unauthorized alteration, disclosure and destruction of university computer files and systems; unauthorized entry into a file to use, read or change its contents; unauthorized transfer of a file(s); unauthorized use of another person's identification or password; use of computers to stalk, view or send threatening or obscene messages; intentional disruption of university computer systems; and violation of copyright or proprietary material restrictions connected with University computer systems, programs and materials;

(w) Unauthorized presence, entry to, or use of University facilities or premises including, but not limited to, camping, building a fire, or use of an unauthorized heating, cooking or electrical device;

(x) Unauthorized possession, duplication, or use of keys to any University facility or premises;

(y) Unauthorized possession, use, or storage of firearms, explosives, fireworks, incendiary devices, dangerous or noxious devices or materials, or illegal or unauthorized possession, use, or storage of weapons or dangerous chemicals;

(z) Initiating or causing any false report, warning, threat of fire, explosion, false fire alarm, bomb threat, or other emergency;

(aa) Misusing, damaging or tampering with fire extinguishers, alarms, smoke detectors or other safety equipment;

(bb) Setting fires or creating an open flame, such as candle burning, anywhere on University premises or at University sponsored or supervised functions without prior authorization of the SOU Director of Security and Safety;

(cc) Littering on University premises;

(dd) Smoking in non-designated areas on campus;

(ee) Consuming food and/or beverages in prohibited areas of campus;

(ff) Bringing any animal not trained to assist persons with disabilities into buildings; bringing unleashed or unlicensed animals on University owned or controlled property; leaving any animal unattended within twenty-five (25) feet of the entryway to a structure or within five (5) feet of any paved walkway on Southern Oregon University property (OAR 573-45);

(gg) Failure to appear at a disciplinary conference or hearing when directed to do so;

(hh) Aiding or abetting other individuals in carrying out an unlawful act or violation of any Southern Oregon University regulation. Whether he or she directly commits the act may be treated under the regulations as if he or she had directly committed the violations. Students present during the execution of any infraction of local, state, federal, or University ordinances, laws, or regulations may be considered in violation under this regulation. It is expected that students will exercise good judgment and appropriately report a violation(s) in progress. Failure to take appropriate action may be interpreted as collusion and will be referred accordingly through the judicial process.

Stat. Auth.: ORS Ch. 315 & 351

Stats. Implemented: ORS 351.070, OAR 580-12-010 & 580-22-045

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0050

### Sanctions

(1) The chief student affairs officer or designee(s) may impose the following sanctions when a student or organization admits responsibility for,

or is found to be in violation of the Code of Student Conduct. More than one sanction may be imposed for any single violation. The University is not designed or equipped to rehabilitate students who do not abide by this Code. It may be necessary to remove students in violation of the Code of Student Conduct from the University and sever the institutional relationship with such students;

(a) Restrictions or Loss of Privileges: Denial of certain privileges for a specified period of time. Removal from a living group, use of a specific University facility or denial of a computer account are examples of loss of privilege;

(b) Restitution: Compensation for loss, damage, or injury, etc. Such compensation may take the form of appropriate service, monetary replacement, and/or material replacement;

(c) Warning: A verbal or written notification that the continuation or repetition of prohibited conduct may result in additional disciplinary action;

(d) Discretionary assignments: Work assignments, service to the University, or related discretionary assignments;

(e) Probation: Requirement of conditions or restrictions with warning of more severe action if further infractions occur. Serious or continuous violation of the Code of Student Conduct has occurred; the student may be permitted to continue enrollment at the University, but is in danger of being suspended or expelled. Disciplinary probation includes a specified period of time during which the student must demonstrate the ability to comply with University rules, regulations and other requirements stipulated for the probation period;

(f) Residence Unit Suspension: Separation of a student from the residence halls, conference facilities, and/or family housing for a specified period of time after which the student may be eligible to return. Students may be held responsible for room and board payments as outlined in the contract; conditions for readmission to housing may be specified;

(g) Residence Unit Expulsion: Permanent separation from the residence halls, conference facilities, and/or family housing. Students may be held responsible for room and board payments as outlined in the contract;

(h) Interim Suspension: The chief student affairs officer may impose an interim suspension of a student prior to a disciplinary conference or hearing. The chief student affairs officer may suspend the registration of an organization prior to a disciplinary conference or hearing. An interim suspension may be imposed only:

(A) To ensure the safety and well-being of members of the University community or the preservation of University property; and/or

(B) If the student(s) or organization pose(s) a definite threat of disruption or interference with the normal operations of the University; and/or

(C) If a student or organization is charged with one or more of the following offenses of violence: aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, menacing by stalking, menacing, kidnapping, abduction, rape, sexual battery, gross sexual imposition, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidation of a crime victim or witness, escape, improperly discharging a firearm, endangering children, felonious penetration;

(D) During an interim suspension, a student may be denied access to a living unit and/or to the campus, including classes, and/or all other University activities or privileges for which the student might otherwise be eligible. An organization will discontinue all activities during interim suspension;

(E) An interim suspension takes place immediately upon issuance. A student or organization will receive written notice of the interim suspension, including a description of the alleged misconduct. The Vice President of Student Affairs or designee will begin the process outlined in Notification Procedures and Options (573-075-0070) within seven (7) days of the date on the written notice of interim suspension;

(i) Interim Suspension of Participation: Temporary separation of a student from participation in a University recognized activity or organization pending completion of disciplinary procedures;

(j) University Suspension: Serious violation of "Proscribed Conduct" has occurred; the student is excluded from enrolling at the University for a specific period of time not to exceed one year after which the student may petition for readmission. All services of the University are withheld for the duration of the suspension except by order of the President;

(k) University Expulsion: Serious violation of "Proscribed Conduct" has occurred; the student is permanently excluded from enrolling at Southern Oregon University. All services of the University are withheld except by order of the President;



# ADMINISTRATIVE RULES

(2) All of the above sanctions may be enhanced with additional conditions deemed appropriate by the disciplinary authority.

(3) Violations of the Law and the Code of Student Conduct: Violations of regulations may result in disciplinary action by both the University and civil authorities. Those accused of violations are subject to University disciplinary proceedings outlined in this Code despite the pendency of civil or criminal proceedings, or any other University proceedings regarding the same conduct. Proceedings under this Code may be carried out prior to, simultaneously with, or following criminal proceedings. Accused students may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil actions or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced or not yet adjudicated. The University will refer matters to local, state or federal authorities for prosecution when appropriate.

Stat. Auth.: ORS 351  
Stats. Implemented: ORS 351.070  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0060

### Procedural Fairness

(1) The student through publication of this Code of Student Conduct in the Student Handbook and on the University website is given notice of these standards of conduct.

(2) The student charged with a violation of the Code of Student Conduct will be advised in writing of the charges, the nature of the incident, and right to a hearing. This notification may be hand-delivered to the student, or sent to the student's address of record.

(3) Alleged violations of the Code of Student Conduct may be reported in writing to the chief student affairs officer or designee.

(4) The standard of proof for incidents of student misconduct is preponderance of evidence. Preponderance of evidence will be defined as evidence that a reasonable person would find persuasive or more likely than not to have occurred.

Stat. Auth.: ORS Ch. 315 & 351  
Stats. Implemented: ORS 351.070  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0070

### Notification Procedures and Options

(1) When alleged cases of violation of the Code of Student Conduct occur, the chief student affairs officer or designee will inform the student(s) in writing of the following:

- (a) The charges or complaint, including:
  - (A) An explanation of the relevant prohibited conduct;
  - (B) The date of the alleged violation; as well as
  - (C) The location; and
  - (D) A description of the violation.
- (b) The student's option to choose between a disciplinary conference with a designated administrator or a hearing by a student-faculty hearing board;
- (c) The student's right to be accompanied by an advisor to the disciplinary conference or hearing;

(2) Upon being informed of the charges the student will have three (3) days to choose, in writing, to settle the charges by:

- (a) A disciplinary conference with the chief student affairs officer or designee; or
- (b) Student and faculty hearing board.
- (3) The chief student affairs officer or designee uses the following procedures for a disciplinary conference:
  - (a) The student will have an opportunity to respond to the complaint and present relevant information and necessary witnesses;
  - (b) The student will have an opportunity to be assisted by one advisor of their own choice and at their own expense. Advisors may only participate in providing advice to the student. The advisor may not participate in the conference or the hearing itself, in responses, examinations or presentations of information to the hearing board unless asked to do so by the hearing official(s). It is the responsibility of the student to notify the advisor of the date, time, and place of the hearing. If an advisor fails to appear, the hearing will take place in his or her absence. Advisors may not appear in lieu of the accused student;
  - (c) Written notification of the determination, including sanction(s) will be sent to the student within seven (7) days of the disciplinary conference.

Stat. Auth.: ORS Ch. 315 & 351  
Stats. Implemented: ORS 351.070  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0080

### Procedures Governing A Hearing Board

(1) If a student chooses a hearing before a student/faculty hearing board, the hearing will be conducted in accordance with the procedure outlined in this section. The hearing board is comprised of three students and three faculty members. One of the faculty members serves as a non-voting chairperson. In the residence halls, a student hearing board is utilized.

(2) The procedures of the Hearing Board are:

(a) All affected parties are given notice of the hearing at least three (3) days prior to the hearing date. The student may request a change of date for the hearing. It is within the discretion of the chief student affairs officer or designee whether to grant the student's request for a change of date;

(b) The chief student affairs officer or designee will summarize the alleged violation and present this information at the hearing;

(c) The hearing will occur whether or not the student is present. The hearing board's decision is based on the information presented;

(d) Hearings are closed to the public. If a disruption occurs, the hearing board may close the hearing;

(e) The student has the right to be accompanied to the hearing by an advisor. The advisor may be at the student's side for consulting, but may not participate in the hearing unless asked to do so by the hearing board chair;

(f) The student will provide the chief student affairs officer or designee with a list of witnesses available for questions at least one day prior to the hearing;

(g) Disciplinary action may be taken against student witnesses who provide false information. Witnesses will be so advised;

(h) The hearing board will determine the relevancy of the information presented;

(i) The hearing will be tape recorded.

(3) The student will be asked for an opinion on an appropriate sanction.

(4) The hearing board will determine an appropriate sanction if the student is found in violation of the Code of Student Conduct. In recommending the sanction, the hearing board may consider the student's prior conduct.

(5) In making a determination on finding(s) and appropriate sanction(s), the hearing board may consider the student's previous conduct.

(6) Within three (3) days of the conclusion of the hearing, the hearing board issues a written statement containing:

- (a) The violation;
- (b) The finding, with rationale;
- (c) The recommended sanction, with rationale.

(7) The finding is delivered to the chief student affairs officer or designee who notifies the student of his/her decision within seven (7) days of receipt of the finding and recommended sanctions. Notification to the student will be in writing.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0090

### Appeals

(1) The decision of the chief student affairs officer or designee may be appealed by the student. The appeal shall be made in writing within seven (7) days of the date shown on the decision letter. In the residence halls, the appeal must be made within three days of the date shown on the decision letter. The student may appeal a decision of a chief student affairs officer or designee made following a disciplinary conference or hearing. The student must appeal the decision in writing within seven (7) days of the date of the decision letter of the chief student affairs officer or designee.

(2) The student may request to present his/her appeal to:

(a) The chief student affairs officer or designee for review and final decision; or

(b) The student may request that the chief student affairs office or designee convene an appeals board. The student may request to present the appeal to the chief student affairs officer or designee for review and decision or may request that the chief student affairs officer or designee convene an appeals board.

(3) The student's request for an appeal must clearly show:

- (a) New evidence not available during the hearing;
- (b) The hearing was not conducted according to the procedure outlined in this document;
- (c) The sanction(s) was too severe;
- (d) The finding was not supported by a preponderance of evidence.

(4) If an appeals board is chosen, it is comprised of an equal number of faculty and students, plus a faculty chair who votes only in case of a tie.

# ADMINISTRATIVE RULES

In the residence halls, the Housing Policy Committee is the appeals board. The decision of the Housing Policy Committee is final;

(a) The appeals board reviews the tape recording and records of the hearing. It may request the presence of the student or others. The appeals board may determine that there is no basis for an appeal; the original finding and sanction are appropriate; the original finding and/or sanction are not appropriate and offer a recommendation;

(b) The President is notified of the hearing board's findings within three (3) days of its conclusion. Within seven (7) days of receipt of the findings, the President's decision is issued, in writing, to the student and the chief student affairs officer or designee. The President's decision is final.

Stat. Auth.: ORS 315 & 351  
Stats. Implemented: ORS 351.070  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0100 Grievances

(1) A grievance is a wrong, real or fancied, thought to be grounds for a complaint. In the spirit of the SOU community, a grievance is best settled between the two parties - student/student, student/faculty, or student/administrator. The chief student affairs officer or designee is responsible to assist in the resolution of grievances. There are two types of grievances:

(a) Discrimination grievance: Alleged violations of federal laws prohibiting discrimination;

(A) This grievance must be filed within 180 days of the incident. Complaints of discrimination within the educational program of the University will be filed with the University grievance officer (the chief student affairs officer or other person designated by the Vice President for Student Affairs or by the President). For procedures governing discrimination complaints please refer to OAR chapter 573, division 35. A copy of these procedures is available in the Office of Student Affairs;

(B) Definitions: For the purposes of this policy, the following definitions will be used:

(i) Prohibited discrimination means any act that either in form or operation, whether intended or unintended, differentiates among persons on the basis of age, disability, national origin, race, color, marital status, religion, sex, or sexual orientation;

(ii) Sexual harassment means any sexual advance, any request for sexual favors, or other verbal or physical conduct of a sexual nature when:

(I) Submission to the advances, request or conduct is made either explicitly or implicitly a term or condition of employment or participation in an academic program or activity;

(II) Submission or rejection of the advances, request or conduct is used as a basis or condition for employment or academic decisions affecting the student; or

(III) Such conduct unreasonably interferes with the work or academic performance of the student because it creates an intimidating, hostile, or offensive work or academic environment for the student who is the object of the advance, request, or conduct and a reasonable person in that student's position would have been similarly affected.

(iii) Other prohibited harassment includes verbal or physical conduct by an individual based on age, disability, national origin, race, color, marital status, religion, or sexual orientation, which creates an intimidating, hostile or offensive working or academic environment that interferes with a second individual's work or academic performance and a reasonable person in that same situation would have been similarly affected.

(C) All reasonable attempts to resolve the grievance will be attempted before invoking the formal process. The grievance officer will be consulted to determine possible avenues of resolution and, as a last resort, to initiate the formal grievance process.

(b) Nondiscrimination grievance: Complaints that do not fall within the above definitions;

(A) This complaint must be filed within thirty (30) days following the incident. Exceptions to this timeline may be granted by the dean of the school in which the complaint is said to occur. The student will speak to the student/faculty/or administrator with whom s/he has the complaint. If the results are not satisfactory, the student will take the complaint to that person's supervisor (or department head). If not satisfied, and the complaint is with a faculty member, the complaint will next be addressed by the dean of that school. All reasonable attempts to resolve the complaint will be made. The grievance officer will be consulted to determine possible avenues of resolution and, as a last resort, to initiate the formal grievance process;

(B) If a satisfactory resolution is not achieved, the student will consult with the grievance officer to determine the next step. If the student chooses to pursue the complaint, s/he must file a written complaint on the form which is available in the Office of Student Affairs. The grievance offi-

cer will give a copy of the complaint to the department chair, who in turn will give a copy to the involved. The grievance will be heard within fourteen (14) days, with the student and faculty receiving notice of the hearing at least seven (7) days in advance. If there is no appropriate standing committee, the grievance officer will call together a grievance committee. Appropriate standing committees include: Academic Standards Committee, Business Services Student Appeals Committee, Family Housing Advisory Committee, Financial Aid and Awards Committee, Housing Policy Committee, Student Affairs Committee. The student, in consultation with the grievance officer, will decide which committee is appropriate.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070 & 580.15  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0110 Procedures Governing Formal Grievance Hearings

(1) If a Grievance Committee is chosen, it will include five members:

(a) An administrator;

(b) Two faculty members on full-time teaching assignments, one required to be in the academic school where the grievance originated;

(c) Two students, one of which is from the same academic school as the student filing the grievance.

(2) The grievance officer or designee will be present at the hearing to ensure the procedures are followed and will not give testimony nor take part in final deliberations.

(3) The committee will choose a chairperson and recording secretary. If the Grievance Committee decides after reading the grievance that a hearing is not warranted, their reasoning will be written and submitted to the grievance officer (chief student affairs officer or designee), who will notify the student. If the committee decides a hearing is warranted, the chairperson and a representative from the Office of Student Affairs will conduct a hearing as follows:

(a) Presentation of student testimony (witnesses and exhibits, if any);

(b) Questions to the student and witnesses from committee or faculty member/administrator;

(c) Presentation of faculty member/administrator testimony (witnesses and exhibits, if any);

(d) Questions to the faculty member/administrator and witnesses from the committee or student;

(e) Closing statement from the faculty member/administrator; and

(f) Closing statements from the student.

(4) The standard of evidence will be preponderance of evidence. Preponderance of evidence is defined as evidence that a reasonable person would find persuasive or more likely than not to have occurred.

(5) After the hearing, the Grievance Committee will deliberate and submit its decision and rationale in writing to the student, the faculty/administrator, and the grievance officer within seven (7) days of the completion of the hearing.

(6) Tape recordings and other records of the hearing will be the responsibility of the grievance officer and will be kept for at least one year.

(7) Either side may appeal the decision of the Grievance Committee. The appeal must be submitted to the chief student affairs officer or designee within seven (7) days of the receipt of the decision. The appeal should indicate whether the person chooses an appeals board or the President to consider the appeal. If an appeals board is chosen, the chief student affairs officer or designee will convene an appeals board from the members of the Student Affairs Committee.

(8) There are two bases for an appeal:

(a) The original hearing was not conducted according to appropriate procedures set forth in this document;

(b) The decision was not supported by preponderance of evidence or new evidence has surfaced.

(9) An appeals board will include two faculty, two students, and the chief student affairs officer or designee. Whether the President or an appeals board is chosen by the person appealing, records of the hearing will be considered within fourteen (14) days of receipt of the appeal. The appeals board/President may request the presence of both sides. The results may be that no basis is found for an appeal; the original decision is upheld; or a different decision is reached. This appeal is final.

Stat. Auth.: ORS 315 & 351  
Stats. Implemented: ORS 351.070 & 580.15  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0120 Maintenance of Records

The following rules will be observed by all persons dealing with student records:

# ADMINISTRATIVE RULES

(1) Only such student records as are demonstrably relevant to the educational and related purposes of the institution, division, or department will be generated and maintained. Institutional officials generating or maintaining such student records will annually review the continued relevancy of such records and will destroy all such records, which are no longer demonstrably needed, unless a student has requested access to said records or the State Archivist has directed their retention;

(2) Institutional officials generating or maintaining duplicate copies of student records (whether permanent or temporary) will review them in the same manner as designated above;

(3) No student is required to give, though the student may voluntarily provide, information as to race, religion, political affiliation or preference, or personal values of the student except as required by state statute, federal law, or valid federal rules, regulations, or orders;

(4) Student records will be kept in locations central to the institution, division, or department by which they are maintained, with the custody thereof assigned in writing to designated personnel specifically charged with maintaining the confidentiality of the records and will circulate a written statement of policy regarding the handling of such records to the personnel so designated;

(5) The duplication of permanent student records and the generation of temporary student records is kept to a minimum and is maintained only for the minimum time required to serve the basic official function of the office which generated and/or maintains them;

(6) The permanent retention of student records is limited to those which the institutional executive will determine to be of long-range value to the individual student or the institution;

(7) Student records, both originals and duplicate copies, will be disposed of in such a manner as to protect their confidentiality.

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ. & Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0130

### Definition of Terms

(1) "Student" means a person currently, or previously, attending Southern Oregon University. The payment of required fees is a prerequisite for legal attendance.

(2) "Parent" includes a natural or adoptive parent, a legal guardian, or an individual acting in lieu of a parent or guardian.

(3) "Education Record" means files, documents, materials, or data recorded in, but not limited to, such media as handwriting, print, tapes, electronic records, film, microfilm, microfiche, containing information directly related to a student and maintained by the institution or by a person acting for it.

(4) "Directory Information" means a student's name, local and permanent addresses and telephone numbers, date and place of birth, academic major, participation in officially recognized activities and sports, dates of attendance, degrees and awards received, and the most recent educational agency or institution attended.

Stat. Auth.: ORS 315.070

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0140

### Availability of Records

With an appropriate office or department staff member, a student may see and review all education records that pertain to him/her, except as noted below. No education records are to be released to other persons or organizations without the student's prior approval, except as noted below. Access of the student to his/her records as well as a request for copies, at the student's expense, is provided as early as possible, but at least within 45 days of the student's request;

(1) The following education records are not available to students:

(a) Records of an instructional, advisory, or administrative nature in the sole possession of the maker thereof if such records are only accessible to the maker or a substitute (grade books, as an example);

(b) Records made or maintained by a physician, psychiatrist, psychologist, or other professional or paraprofessional acting in a professional capacity related to treating a student. However, such records can be reviewed by a physician or other appropriate professional with the student's written consent;

(c) Financial records of the student's parents, unless they have given written consent to the student seeing said records;

(d) Confidential evaluations/recommendations put in education records prior to January 1, 1975, if the evaluations/recommendations continue to be used only for their original purpose;

(e) Confidential evaluations/recommendations received after January 1, 1975, for which the student has signed a waiver of the right of access;

(f) Education records to which the student has waived the right of access. Such records should be limited to applications to an educational institution, an application for employment, or a recommendation for an honor, award, or other form of recognition;

(g) Records compiled about an employee of the University which are made and maintained in the normal course of business and which relate exclusively to the individual in question in his/her capacity as an employee, and are not available for any other purpose.

(2) Release of records without student permission. Education records can be released without permission to:

(a) Other institutional officials who have a legitimate educational interest (as determined by the institution) in the records;

(b) Officials of schools to which the student seeks or intends to enroll;

(c) The U.S. Comptroller General, the Secretary of HEW, the Administrator of the Office of Education, and the Chancellor of Oregon University System;

(d) An agency from which the student has applied for, or is receiving financial aid;

(e) State and local authorities for whom information was specifically required to be disclosed by state statute prior to November 19, 1974;

(f) Organizations conducting legitimate education research, testing, accreditation, granting financial aid, or improving instruction; if such data does not permit identification of the student or parents to others, and if the information is destroyed when no longer needed to carry out its specified purpose(s);

(g) Persons in compliance with a judicial order or a lawfully issued subpoena.

(3) Except as otherwise noted herein, other education records may be released only with the student's prior written permission. The written notice of permission is filed with the record thereby released.

Stat. Auth.: ORS Ch. 315

Stats. Implemented: ORS 351.070, OAR 580-13 & Family Educ. & Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0150

### Student Right to Waive Access

A student may voluntarily waive the right of access to an education record. A student cannot be compelled to waive the right of access. Additionally, a student who waives the right must be informed of the names of persons making confidential evaluations/recommendations and that such evaluations/recommendations are being used only for the purposes originally intended.

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ, Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0160

### Challenge to Content of Records

The student has the right to challenge the content of education records in order to ensure that they are accurate and in compliance with the privacy or other rights of the student. Additionally, the student has the right to request the amendment of the education record. If the student challenges the content of a record and requests deletion or modification of said record, the student is entitled to a hearing. The procedure concerning challenges will be:

(1) The person maintaining the challenged record, in reviewing the record with the student, may agree to correct matters of fact or allow the student to enter an explanatory statement relating to matters of opinion.

NOTE: Grades are not included as "matters of fact" unless an error was made in transcribing or recording the grade;

(2) If the custodian of the record does not concur with the request of the student for a deletion or modification of the record, the student may request a hearing;

(3) Requests for a hearing will be submitted to the Registrar, as Custodian of Student Records, who will act in accordance with the Contested Case Hearing process (OAR chapter 573, division 30);

(4) The person initiating the hearing will bear the burden of proof of a preponderance of the evidence in order to prove the validity of his/her claim at the hearing.

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ. & Privacy Act Hist.

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

# ADMINISTRATIVE RULES

## 573-075-0170

### Non-Release to Third Parties

All copies of education records provided to non-institutional individuals/organizations should bear a statement to the effect that: "Under the provisions of Public Law 93-380 (as amended), the information contained in this document is not to be released to others without the written consent of the student named herein."

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0180

### Record of Access to Student Records

A written notation is made in the education record of a student on each occasion that either a person outside the University, or a University employee who does not customarily work with said record, either requests or is given access to the record. The notation should indicate the name of the person, the organization represented, and the reason for granting access. Though not required by law, the date of access should be noted as a matter of record. However, such notation is not required where:

(1) The disclosure is made to the student as allowed in this policy;

(2) The disclosure is made pursuant to the written consent of the student;

(3) The disclosure is made to University officials with a legitimate educational interest (as defined by the University);

(4) The disclosure consists of directory information not restricted by the student; or

(5) The disclosure is made to other officials as noted in OAR 573-075-0140(b).

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0190

### Destruction of Records

Prior access is granted to students who have requested access before the records are destroyed, and the State Archivist is empowered to order the retention of some categories of records.

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0200

### Delay in Granting Access

A maximum delay of forty-five (45) days is authorized in granting access to education records involving students. (HEW regulations require that requests for access to, or copies of, student records must be acted on within forty-five (45) days. However, it is institutional policy that such requests be acted on within fifteen (15) days, except in unusual circumstances. Should such circumstances arise, the custodian of said records will provide the student making the request a written explanation for the delay.)

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0210

### Health or Safety Emergencies

(1) An educational institution may release information from education records to appropriate persons in connection with an emergency, if the knowledge of such information is necessary to protect the health or safety of a student or other persons.

(2) However, such information may be released only if the threat to health or safety is serious, if the records are needed to meet the emergency, if there are persons who can use the information to deal with the emergency, and if time is of the essence in dealing with the emergency.

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0220

### Access to Records on Several Students

If a student requests access to an institutional record containing data on several students, the student is given access to only that data relating to him/her. The privacy of the other students' data shall not be violated.

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0230

### Annual Publication of Institutional Policy

The Custodian of Student Records shall annually give notice to students and to the parents of dependent students of the following:

(1) Their right of access to education records;

(2) The types of education records and information directly relating to students being maintained;

(3) The name and position of the official responsible for the maintenance of each type of record, the person(s) having access to these records, and the reason for their having access;

(4) The institutional policy for reviewing and expunging these records;

(5) The right of the student to copies of certain records, for a reasonable charge;

(6) The right of the student to have the meaning of entries in personal education records explained;

(7) The procedures for challenging the content of education records and for inserting a denial or correction of disputed data;

(8) The categories of information designated as directory information, and which of these categories the student may opt not to have released.

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0240

### Procedure for Student Access to Records

(1) If there is any doubt as to the identity of the person requesting access to education records, positive identification must be secured from the applicant.

(2) If the applicant can produce legal identification, the student can obtain access under the conditions noted in OAR 573-075-0140. A note must be made on the record if a request was made for copies of the document and what response was made to the request.

(3) If the applicant cannot produce legal identification, verification of the previous student status of the applicant must be obtained from the Registrar. Once verification has been made, access will be granted under the same conditions as those for current students.

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0250

### Non-Release of Directory Information

(1) A student may opt in writing to keep confidential all "Directory Information" as defined in OAR 573-075-0130(4).

(2) Exclusion of any one of the above items in OAR 573-075-0130(4) will exclude all items. This option can be made by filing a written, dated, and signed request at the Registrar's Office.

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0260

### Questions and Inquiries Relating to Student Records

(1) This statement on the administration of student records provides students at Southern Oregon University the rights under Section 438 of the **General Education Provisions Act**, as amended (added by **Section 513 of Public Law 93-380** as amended by Section 2 of **Public Law 93-568**), and the regulations thereunder. All questions and inquiries regarding the policy and copies of the policy may be directed and obtained in the Office of Student Affairs. Students have the right to file complaints with the Department of Health, Education and Welfare concerning any alleged failure of the University to comply with the regulations of sections 438 and 439 of the Act and its supporting regulations.

(2) The University annually shall inform the students of their rights under this policy by publishing the rules contained herein, or the substance thereof, in the Student Handbook, or in the time schedule of classes. In any instance where the provisions of institutional policy regarding student records are determined by legal counsel to be inconsistent with the requirements, limitations, or restrictions of 20 U.S.C. 1232g, the Custodian of Student Records is empowered to waive the provision in question and to administer this policy consistent with 20 U.S.C. 1232g and its implementing regulations.

(3) If federal or state authorities amend current legislative directives on student records during the academic year, the Custodian of Student Records will make such amendments known to the students via *The Siskiyou*.

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

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 315  
Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-075-0270

### Academic Standards

(1) The maintenance of academic standards is a joint responsibility of the students and the faculty at Southern Oregon University. Freedom to teach and freedom to learn are dependent upon individual and collective conduct to permit the pursuit and exchange of knowledge and opinion. Faculty have the responsibility to create an atmosphere in which students may display their knowledge. This atmosphere includes an orderly testing room and sufficient safeguards to inhibit dishonesty. Students have the responsibility to rely on their own knowledge and resources in the evaluation process.

(2) Academic dishonesty is defined as cheating, plagiarism, or otherwise obtaining grades under false pretenses;

(3) Plagiarism is defined as knowingly submitting the language, ideas, thoughts, or work of another author as one's original work, or allowing one's work to be used in this fashion;

(4) Cheating is defined as:

(a) Using unauthorized information during an examination verbally, visually, or by unauthorized notes, books and other materials;

(b) Obtaining or providing information concerning an examination in advance of that examination;

(c) Taking an examination for another student or arranging to have someone else take an examination for you;

(d) Altering or changing:

(A) Test answers after that test has been submitted for grading;

(B) Grades after the grades have been awarded; or

(C) Other academic records, after those records have become official.

(5) Procedures: The faculty member who suspects a student of academic dishonesty should confront the student with the accusation. In the event that the student disputes the allegation of academic dishonesty, then the incident should always be referred to the chief academic affairs officer or designee. The academic decision should then be deferred pending finding on the allegation. If the student admits to the misconduct, then one or more of the following sanctions will be imposed by the instructor.

(a) Academic:

(A) Administratively withdraw the student from class. This action must have the approval of the chief academic affairs officer or designee and is subject to appeal through Grievance Procedures in OAR chapter 573, division 30, "Model Rules of Procedure Applicable to Contested Cases";

(B) Award a failing mark on the test or paper; or

(C) Require the student to take another test or resubmit the paper;

(D) The academic sanctions described above may be employed alone, or in concert with disciplinary procedures. Refer to "Proscribed Conduct" rule OAR 573-075-0040(2)(a).

(6) Disciplinary: The faculty member may refer the incident to the chief student affairs officer or designee where the disciplinary process will be followed to determine what, if any, disciplinary sanction is appropriate;

(C) Faculty will notify the chief student affairs officer or designee of academic action taken so a record can be maintained.

Stat. Auth.: ORS 315

Stats. Implemented: ORS 351.070, 580-13 & Family Educ., Privacy Act  
Hist.: SOU 1-2004, f. & cert. ef. 4-5-04

## 573-080-0005

### Population Served

(1) General: The Student Health and Wellness Center (SHWC) exists primarily to provide primary medical care, limited counseling and health education services for the registered students of Southern Oregon University. Such care is available only during those hours the SHWC is open, and may be limited by clinical scope of practice and available resources. The provision of all services must be free of discrimination with regard to age, handicap, national origin, race, marital status, religion, gender or sexual orientation.

(2) Population served:

(a) Full-time registered students. Full-time students (defined as students carrying at least 9 hours for credit) pay a health fee in advance each term at registration. The fee, which is subject to change from year to year, is adopted by the Oregon State Board of Higher Education;

(b) Students carrying less than 9 hours for credit have the option of paying the health fee to become eligible for medical, limited counseling, and health education services.

(c) Provision of services to non-registered SOU students is dependent upon available resources including but not limited to staffing, space, and

scheduling so as not to compromise quality and availability of service for registered students. At a minimum, full cost reimbursement for such services will be charged unless prior arrangement for compensation has been determined by the SHWC Director with a sponsoring program. A record of such services shall be maintained.

(d) Non-registered students (auditor status) are not eligible for regular services rendered by the Health Center;

(e) Any non-enrolled student who was enrolled the previous term and will be enrolled the subsequent term is eligible for services provided the health fee is paid for that term.

(3) Emergency Care: Persons in need of emergency care or first-aid, other than those eligible for regular SHWC care as outlined above, who present themselves or are brought to the SHWC or to a SHWC First Aid Station at SOU events, may receive initial medical assessment, emergent or first aid care and triage to community based resources. Such care is available only during those hours the SHWC is normally open, and when the First Aid Station is staffed. Persons receiving care may be charged for the full the cost of services and supplies.

(4) Disaster Care: In the event of a community wide disaster or mass casualty incident, the SHWC may serve as treatment and triage site for injured persons that may not have otherwise been eligible for care, and that are in need of medical care outside the normal scope of services available at the SHWC.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070, 351.590, 689.605 & 580-011-0005

Hist.: SOU 2-1978, f. & ef. 1-3-78; SOU 7-1978, f. & ef. 8-23-78; SOU 5-1979, f. & ef. 9-19-79; SOU 2-1982, f. & ef. 4-15-82; SOU 2-1983, f. & ef. 4-22-83; SOU 1-1994, f. & cert. ef. 5-11-94; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2004, f. & cert. ef. 4-5-04

## 573-080-0025

### Funding

The Student Health Center is funded by fees paid by the population served. In general, there are two types of fees paid:

(1) A health service fee paid each term by full or part-time registered SOU students.

(2) Fees charged for specific visits, supplies and services, including but not limited to laboratory tests, x-rays, prescriptions, mental health services, or procedures. The charges for these items may vary dependent upon acquisition costs and will be made available upon request.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070, 351.590, 689.605 & OAR 580-011-0005

Hist.: SOU 2-1978, f. & ef. 1-3-78; SOU 5-1979, f. & ef. 9-19-79; SOU 7-1980, f. & ef. 11-19-80; SOU 2-1982, f. & ef. 4-15-82; SOU 1-1994, f. & cert. ef. 5-11-94; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2004, f. & cert. ef. 4-5-04

## Oregon University System, Western Oregon University Chapter 574

Adm. Order No.: WOU 1-2004

Filed with Sec. of State: 3-24-2004

Certified to be Effective: 3-24-04

Notice Publication Date: 2-1-04

Rules Amended: 574-020-0020, 574-050-0005

Subject: Amendments will allow for increases, additions, and revisions of special course fees and general services fees and revise staff positions titles in the handling of faculty records.

Rules Coordinator: Debra L. Charlton—(503) 838-8175

## 574-020-0020

### Locations and Custody of Faculty Records

(1) The university will maintain faculty records only in the offices of:

(a) The Provost;

(b) College Dean;

(c) The Division Chair of the faculty member (only these areas may have evaluation information).

(2) The Human Resources Office will maintain records only necessary for payroll information.

(3) The required custody of the files will be accomplished by assigning designated personnel the maintaining of confidentiality and security of the records:

(a) Provost's Office — Administrative Assistant to the Provost;

(b) Dean's — Administrative Assistant to the Dean;

(c) Division Office — Administrative Assistant to the Division Head;

(d) Human Resources Office — Human Resources Personnel.

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.065, 351.070 & 580-022

# ADMINISTRATIVE RULES

Hist.: OCE 3, f. & ef. 8-9-77; WOSC 5-1991, f. & cert. ef. 5-22-91; WOU 3-2003, f. & cert. ef. 10-28-03; WOU 1-2004, f. & cert. ef. 3-24-04

## 574-050-0005

### Special Fees for Selected Courses and Some General Services

The Schedule of Fees for Selected Courses and General Services for Western Oregon University are hereby adopted by reference.

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

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: OCE 1, f. & ef. 7-12-76; OCE 1-1978, f. & ef. 10-27-78; OCE 2-1980, f. & ef. 11-5-80; OCE 1-1981, f. & ef. 1-7-81; OCE 3-1981, f. & ef. 8-7-81; OCE 4-1981, f. & ef. 11-2-81; WOSC 2-1982, f. & ef. 9-17-82; WOSC 1-1983, f. & ef. 10-11-83; WOSC 1-1985, f. & ef. 10-4-85; WOSC 1-1986, f. & ef. 10-15-86; WOSC 1-1987, f. 4-1-87, ef. 9-23-87; WOSC 2-1988, f. & cert. ef. 9-19-88; WOSC 1-1989, f. & cert. ef. 4-18-89; WOSC 2-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 5-1989, f. & cert. ef. 9-7-89; WOSC 1-1990, f. & cert. ef. 4-18-90; WOSC 2-1990, f. & cert. ef. 9-24-90; WOSC 1-1991, f. & cert. ef. 1-30-91; WOSC 2-1991, f. & cert. ef. 3-22-91; WOSC 4-1991, f. & cert. ef. 5-21-91; WOSC 7-1991, f. & cert. ef. 7-22-91; WOSC 2-1992, f. & cert. ef. 6-16-92; WOSC 3-1992, f. & cert. ef. 8-14-92; WOSC 1-1993, f. & cert. ef. 1-15-93; WOSC 2-1993, f. & cert. ef. 6-18-93; WOSC 3-1993, f. & cert. ef. 7-16-93; WOSC 5-1993, f. & cert. ef. 10-21-93; WOSC 1-1994, f. & cert. ef. 8-12-94; WOSC 1-1995, f. & cert. ef. 8-11-95; WOSC 1-1996, f. & cert. ef. 10-16-96; WOSC 1-1997, f. & cert. ef. 2-27-97; WOU 3-1997, f. & cert. ef. 10-7-97; WOU 1-1998, f. & cert. ef. 1-26-98; WOU 2-1998, f. & cert. ef. 7-24-98; WOU 1-1999, f. & cert. ef. 2-25-99; WOU 2-1999, f. & cert. ef. 7-27-99; WOU 1-2000, f. & cert. ef. 3-16-00; WOU 2-2000, f. & cert. ef. 6-28-00; WOU 1-2001, f. & cert. ef. 3-5-01; WOU 2-2001, f. & cert. ef. 7-30-01; WOU 1-2002, f. 3-12-02, cert. ef. 3-15-02; WOU 2-2002, f. 8-2-02, cert. ef. 8-15-02; WOU 3-2002, f. 10-7-02, cert. ef. 10-15-02; WOU 1-2003, f. & cert. ef. 4-2-03; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 1-2004, f. & cert. ef. 3-24-04

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## Oregon Watershed Enhancement Board Chapter 695

**Adm. Order No.:** OWEB 2-2004

**Filed with Sec. of State:** 4-6-2004

**Certified to be Effective:** 4-12-04

**Notice Publication Date:** 1-1-04

**Rules Adopted:** 695-040-0020, 695-040-0030, 695-040-0040, 695-040-0050, 695-040-0060, 695-040-0070

**Rules Amended:** 695-020-0020

**Rules Repealed:** 695-020-0056, 695-020-0057, 695-020-0058

**Subject:** The Oregon Watershed Enhancement Board has a watershed council support grant award program. The rules amend and establish the following for watershed council support grants: (1) eligibility criteria, (2) grant application requirements, (3) the criteria used to evaluate watershed council support grant applications, (4) the evaluation and funding recommendation process, and (5) the grant award conditions. The adopted rules provide the OWEB Board with a way to invest limited watershed council support funding more strategically.

**Rules Coordinator:** Bonnie King—(503) 986-0181

### 695-020-0020

#### 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.

(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 construction, 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

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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 541.345-541.395

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; OWEB 2-2004, f. 4-6-04 cert. ef. 4-12-04

## 695-040-0020

### Definitions

(1) "Watershed Council Support" means a grant for the purpose of supporting 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, risk management and accountability assurance, and fiscal grant management costs.

(2) "Council Coordinator" means the lead person or persons employed by or on behalf of a watershed council or a group of watershed councils to assist the council(s) in achieving the watershed protection, enhancement, and restoration objectives of the council(s). The activities carried out by a coordinator may include support to a council's board, coordination among sub-councils, development of projects, work with landowners, grant writing, fiscal management, work plan development, volunteer recruitment and supervision, communications, education, and outreach.

(3) "Hydrologic unit" means any geographic area drained by a river system, a reach of a river and its tributaries in that reach, a closed basin(s), or a group of streams forming a coastal drainage basin. Hydrologic units are divided into size classifications, or fields, as defined by USGS codes, where the first field, such as the Columbia Basin, is a region.

(4) "Umbrella Watershed Council" means a watershed organization that (a) provides support to and coordination for at least three watershed groups or councils, and has a coordinating council, shared staff and a single Watershed Council Support grant, or (b) provides service to a watershed area containing three or more 4th field hydrologic units.

(5) "Merit Category" means a classification of Watershed Council Support applicants by similar qualities, achievements, or abilities, as determined by an evaluation of the grant application submitted, based on the criteria described in OAR 695-040-0050. The distribution of applicants in each merit category, the available funding, and other factors as described in OAR 695-040-0060(4) will determine the grant funding level for individual applicants. Within merit categories there may be different funding levels.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.368, 541.370(1)(e), 541.384 & 541.388

Hist.: OWEB 2-2004, f. 4-6-04 cert. ef. 4-12-04

## 695-040-0030

### Eligibility Criteria

(1) A watershed council, or a group of watershed councils, is eligible to apply for Watershed Council Support if:

(a) The council serves a unique geographic area. A unique geographic area is one that is not or has not been located entirely or partially within the boundaries of another existing watershed council support grantee that has received council support funding from OWEB;

(A) In the situation where a watershed council has been awarded shared funding for watershed council support, but serves a watershed area that is not served by another watershed council, that council may be eligible to apply independently if it receives prior approval from the Board.

(b) Council membership reflects the balance of interests or is actively seeking a balance of interests in the affected watershed as defined in ORS 541.388(2); and,

(c) The council has been designated by a local government as provided by ORS 541.388. This eligibility criterion applies if the council formed after September 9, 1995.

(2) The following costs are eligible for funding through a watershed council support grant:

(a) Council Coordinator salary and benefits;

(b) Operating costs including, but not limited to, supplies and materials, utilities, rent, travel and per diem, printing, postage, facilitation, safety equipment, office equipment, and training;

(c) Risk management and accountability assurance costs including audit, tax preparation, risk management and insurance; and,

(d) Fiscal management of the council support grant award not to exceed 10% of direct costs.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.368, 541.370(1)(e), 541.384 & 541.388

Hist.: OWEB 2-2004, f. 4-6-04 cert. ef. 4-12-04

## 695-040-0040

### Application Requirements

(1) Applications for Watershed Council Support grants shall include information on the following:

(a) A scope of work as identified in OAR 695-040-0050(1);

(b) The organizational capacity of the watershed council(s);

(c) The past accomplishments of the watershed council(s);

(d) A description of the complexity of the watershed as described in OAR 695-040-0050(1)(f);

(e) A proposed biennial budget for the watershed council(s); and,

(f) Other information necessary to apply the merit-based criteria described in OAR 695-040-0050.

(2) Applications for Watershed Council Support must also comply with OWEB's generally applicable grant application requirements.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.368, 541.370(1)(e), 541.384 & 541.388

Hist.: OWEB 2-2004, f. 4-6-04 cert. ef. 4-12-04

## 695-040-0050

### Evaluation Criteria

(1) Applications for Watershed Council Support will be evaluated on a scope of work submitted by the applicant that:

(a) Demonstrates the extent to which the applicant is furthering the goals of the Oregon Plan for Salmon and Watersheds;

(b) Proposes measurable objectives and priorities for the upcoming biennium;

(c) Proposes council actions and outcomes for the upcoming biennium;

(d) Addresses how the council:

(A) Identifies and addresses the priority protection, restoration and enhancement needs of the watershed(s) served.

(B) Monitors and evaluates watershed conditions and functions and the efforts to improve watershed health, including the methods and data sources to be used.

(C) Encourages and tracks citizen participation in watershed projects and activities.

(D) Promotes and evaluates citizen learning about watershed science and key resource issues.

(E) Builds partnerships, organizational capacity, and council effectiveness.

(e) Identifies the council coordinator's role;

(f) Addresses the complexity of the watershed(s) including:

(A) Total population;

(B) Land use including total acres and a general characterization of land ownership within the watershed(s);

(C) Hydrologic units served;

(D) Total stream miles within the watershed and miles of stream on the Department of Environmental Quality's 303(d) list or in a completed Total Daily Maximum Load;

(E) The kind and number of species listed as Threatened or Endangered under the Endangered Species Act within the watershed;

(F) Total area of watershed jointly identified by Oregon Water Resources Department and Oregon Department of Fish and Wildlife as high priority for streamflow restoration;

(G) Municipal drinking water issues;

(H) Stormwater management issues; and,

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(I) Groundwater areas with water quality and water quantity concerns, as identified by Oregon Water Resources Department and Department of Environmental Quality.

(g) Is reflected in the applicant's proposed budget.

(2) Watershed council support grant applications will also be evaluated based on the following factors:

(a) Whether the applicant has previously received a watershed council support grant from OWEB and the extent to which the watershed council(s) has made progress in accomplishing the goals of previous biennium's work plan, which reflects the level of council support funding received for that biennium.

(b) The extent to which the watershed council(s) takes a leadership role in achieving watershed restoration projects and activities within the watershed(s).

(c) The extent to which the watershed council(s) is following the currently accepted techniques of watershed management or is using innovative science-based watershed restoration techniques in addressing key watershed issues.

(d) How the watershed coordinator is supervised and evaluated and the role of the watershed council(s) in the supervision and evaluation of the coordinator.

(e) The organizational and fiscal administration capacity of the council and its fiscal agent, including employment, risk management, fiscal accountability, and decision-making.

(f) Whether the council(s) has or is seeking active participation of a diversity of interests in the watershed.

(g) Whether the council(s) has developed collaborative partnerships as shown by:

(A) Cooperative working relationships with local government, soil and water conservation districts, other watershed councils, landowners and other entities in the watershed.

(B) Sharing resources, staff, or project responsibilities with other entities.

(h) Whether the applicant has completed a watershed council self-evaluation, following an OWEB approved methodology, within the past 18 months and is implementing the results of the self-evaluation completed within the past 18 months.

(i) Whether the applicant has completed a watershed assessment(s), or is using an assessment(s) completed by others, consistent with the OWEB Assessment Manual.

(j) Whether the applicant has an action plan that identifies resource concerns, limiting factors, priorities, and the measures needed to address the issues identified.

(k) Whether the applicant has demonstrated how OWEB funds have been used to leverage other investments in the watershed(s).

(l) The age of the watershed council.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.368, 541.370(1)(e), 541.384 & 541.388

Hist.: OWEB 2-2004, f. 4-6-04 cert. ef. 4-12-04

## 695-040-0060

### Grant Evaluation Process

(1) Watershed council support applications will be reviewed and evaluated by a Council Support Advisory Committee.

(a) The Committee shall be appointed by the Director and be comprised of:

(A) At least two representatives from each of OWEB's regions. These regional representatives shall have technical knowledge of their region's watershed functions and values and watershed council needs; and,

(B) At least three statewide representatives with expertise about watershed council roles and responsibilities under the Oregon Plan.

(b) OWEB regional program representatives may provide comments on the criteria identified in OAR 695-040-0050 to the Council Support Advisory Committee regarding watershed council support applications.

(2) The Council Support Advisory Committee will evaluate Watershed Council Support applications submitted and make merit category recommendations to the Director. The Committee will make its merit category recommendations based on the quality of response in the application to the evaluation criteria described in OAR 695-040-0050.

(3) Information provided by the applicant, the evaluation criteria in OAR 695-040-0050, the recommendation of the Council Support Advisory Committee, the recommendation of the Director, and the applicant's response to these recommendations will be used by the Board to determine an applicant's merit category placement and grant funding level.

(4) Individual watershed council support grant funding levels will be based on:

(a) An applicant's merit category.

(b) Whether the applicant is an umbrella watershed council as defined in OAR 695-040-0020(4).

(c) Whether the applicant is two or more watershed councils serving unique geographic areas in a single Watershed Council Support grant where the application demonstrates operational economies of scale over two separate grant applications.

(d) Available funding.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.368, 541.370(1)(e), 541.384 & 541.388

Hist.: OWEB 2-2004, f. 4-6-04 cert. ef. 4-12-04

## 695-040-0070

### Grant Agreement Conditions

(1) The Watershed Council Support Grantee will be required:

(a) To complete a self-assessment as provided by the Board or a similar evaluation method approved by OWEB for each watershed council receiving support;

(b) To submit an annual report to OWEB and local government entities;

(c) To obtain insurance or bonding providing coverage for financial decisions and actions as identified by OWEB if the Grantee is its own fiscal agent, or if the Grantee's fiscal agent does not have such insurance or bonding; and,

(d) To assure that expenditures of OWEB funds are subject to an audit by an entity independent of the council or its fiscal agent

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.368, 541.370(1)(e), 541.384 & 541.388

Hist.: OWEB 2-2004, f. 4-6-04 cert. ef. 4-12-04

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## Public Utility Commission Chapter 860

**Adm. Order No.:** PUC 6-2004(Temp)

**Filed with Sec. of State:** 3-24-2004

**Certified to be Effective:** 3-24-04 thru 9-20-04

**Notice Publication Date:**

**Rules Amended:** 860-027-0300

**Subject:** Implements HB 2333, which allows an electric utility to amortize more than six percent of a deferred amount if (a) the deferral was directly related to extraordinary power supply expenses incurred during 2001, (b) the amount to be deferred was greater than 40 percent of the revenue received from Oregon customers in 2001, and (c) The Commission determines that the higher rate is reasonable under the circumstances. In addition, an electric utility customer that uses more than one megawatt of electricity has the option to prepay its share of the deferred amount.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

## 860-027-0300

### Use of Deferred Accounting by Energy and Large Telecommunications Utilities

(1) As used in this rule:

(a) "Amortization" means the inclusion in rates of an amount which has been deferred under ORS 757.259 or 759.200 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 recording the following in a balance sheet account, with Commission authorization for later reflection in rates:

(A) Electric, gas, and steam heat utilities: a current expense or revenue associated with current service, as allowed by ORS 757.259; or

(B) Large telecommunications utilities: an amount allowed by ORS 759.200.

(2) Expiration: Any authorization to use a deferred account shall expire 12 months from the date the deferral is authorized to begin. If a deferral under ORS 757.259 or 759.200 is reauthorized, the reauthorization shall expire 12 months from the date the reauthorization becomes effective.

(3) Contents of Application: Application for deferred accounting, by an energy or large telecommunications utility or a customer, shall include:

(a) A description of the utility expense or revenue for which deferred accounting is requested;



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(b) The reason(s) deferred accounting is being requested and a reference to the section(s) of ORS 757.259 or 759.200 under which deferral may 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 or 759.200 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 energy or large telecommunications utility's last general rate case. If the applicant is other than an energy or large telecommunications utility, the applicant shall serve a copy of the application upon the affected 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 an energy or large telecommunications utility;

(b) A description of the 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;

(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 may be no sooner than 25 days from the date of the application; and

(e) A statement that the granting of the application will not authorize a change in rates, but will permit 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 ten days of the due date for comments on the application from interested persons, the applicant, and the energy or large telecommunications utility if the utility is not the applicant, may file reply comments with the Commission, and shall serve those comments 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 energy or large telecommunications utility or another party. The Commission may authorize amortization of such amounts only for utility expenses or revenues for which the Commission previously has authorized deferred accounting. Upon request for amortization of a deferred account, the energy or large telecommunications 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 will encompass all or part of the period during which the deferral took place or must be reasonably representative of the deferral period. Unless authorized by the Commission to do otherwise:

(a) An electric, gas, or steam heat utility shall request that amortizations of 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 electric, gas, or steam heat utility shall request amortization at least annually, unless amortization of the balancing account is then in effect; or

(c) A large telecommunications utility shall request amortization of deferred accounts as soon as practical after the deferrals cease but no later than in its next rate proceeding.

(10) An electric utility customer may prepay under ORS 757.259(11) its obligation of deferred power supply expense. The obligation must be calculated as the customer's pro rata share of the utility's total energy usage within the state of Oregon during 2001, multiplied by the unrecovered deferral balance at the time of prepayment. When such customer has prepaid its obligation in full, the customer may no longer be charged the power supply adjustment related to the deferral.

Stat. Auth.: ORS 183, 756, 757 & 759

Stats. Implemented: ORS 756.040, 756.105, 757.259 & 759.200

Hist.: PUC 11-1988, f. & cert. ef. 6-9-88 (Order No. 88-597); PUC 2-1990, f. & cert. ef. 3-2-90 (Order No. 90-235); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 4-1998, f. & cert. ef. 2-24-98; PUC 16-2001, f. & cert. ef. 6-21-01; PUC 6-2004(Temp), f. & cert. ef. 3-24-04 thru 9-20-04

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**Adm. Order No.:** PUC 7-2004

**Filed with Sec. of State:** 4-9-2004

**Certified to be Effective:** 4-9-04

**Notice Publication Date:** 1-1-04

**Rules Adopted:** 860-036-0370, 860-036-0380, 860-036-0412, 860-036-0420, 860-036-0739, 860-036-0757, 860-037-0308, 860-037-0309, 860-037-0407, 860-037-0547, 860-037-0570

**Rules Amended:** 860-036-0010, 860-036-0030, 860-036-0120, 860-036-0410, 860-036-0505, 860-036-0900, 860-036-0905, 860-036-0910, 860-036-0915

**Rules Repealed:** 860-036-0330

**Subject:** This rulemaking implements HB 2226 and HB 2227 and incorporates recommendations of the Water Issues Steering Committee. It revises Divisions 036 and 037.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

## 860-036-0010

### Definitions for Water Utilities and Associations

As used in division 036:

(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 who:

(a) Applies for service with a utility; or

(b) Reapplies for service at a new or existing location after service has been discontinued.

(3) "Association" means an incorporated or homeowner association providing water 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 water utility service on an account with the water 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 water 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) "Commercial customer" means a customer who performs or produces a service or product that is a source of revenue, income or livelihood to the customer or others using the premises.

(6) "Commission" means the Public Utility Commission of Oregon.

(7) "Contributions in aid of construction" means any money, services or property received by a water utility to fund capital investments at no cost to the company with no obligation to repay.

(8) "Construction work in progress (CWIP)" means account 105 in the utility plant section of the balance sheet representing the costs of utility plant under construction but not yet placed in service.

(9) "Cooperative" means a cooperative corporation as defined in ORS Chapter 62.

(10) "Cost-based" means the direct and indirect costs of a specific item or project, including overhead and a reasonable expected return on investment.

(11) "Customer" means a person who has applied for, been accepted, and is currently receiving service unless otherwise noted. Notwithstanding section (1) of this rule, a customer who voluntarily disconnects service and subsequently asks for service with the same water utility at a new or existing location within 20 days after disconnection retains customer status.

(12) "District" means a corporation as defined under ORS Chapter 198.

(13) "Emergency" means an extraordinary interruption of the usual course of water service by a natural cause, an unforeseen event, or a com-

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bination of unexpected circumstances; an urgent need for assistance or relief; or the resulting state that calls for immediate action.

(14) "End-user" means a domestic water user.

(15) "Exempt water company" means a water company that meets the definition of a public utility in ORS 757.005, but is exempt from regulation as provided in ORS 757.005(1)(b)(E).

(16) "Forced connection" means a water utility or its customers being required by law, regulation, rule, or company policy to retrofit, improve, or change the original service connection. All retrofits, improvements, additions or changes to the original service connection will be the operational and financial responsibility of the company, with the following exceptions (1) any national or state laws or rules clearly assigning such costs to the customer, or (2) the Commission otherwise approves as provided in OAR 860-036-0105(1) and (2).

(17) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(18) "Large commercial customer" means a commercial customer with a meter or pipe diameter of two inches or larger.

(19) "Mainline 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 to receive service, the cost of such extension shall comply with the water utility's main line extension policy.

(20) "Meter set" means the parts, material, and labor necessary to install a meter. The meter set assembly is owned, installed, and maintained by the utility. The meter set does not include any components of the service connection required to provide unmeasured service.

(21) "People's utility district" (PUD) means a corporation as defined in ORS Chapter 261.

(22) "Public utility" has the meaning given the term in ORS 757.005 and 757.061. The term does not include districts, People's Utility Districts (PUDs), cooperatives, or municipalities.

(23) "Rate-regulated utility" means a water utility that is not exempt from certain financial regulations and conditions under ORS 757.061.

(24) "Registered dispute" means an unresolved issue between a customer or applicant and a water utility that is under investigation by the Commission's Consumer Services, but is not the subject of a formal complaint.

(25) "Residential customer" means a customer who receives domestic or irrigation water in residential areas and is not considered a commercial customer.

(26) "Small commercial customer" means a commercial customer with a meter or pipe diameter of less than two inches.

(27) "System development fee or charge" is the proportionate fee charged by a water company prior to service being initiated that encompasses the cost of the system allocated to all potential customers.

(28) "Utility" means any water utility, except when a more limited scope is explicitly stated.

(29) "Water utility" has the same meaning as public utility in section (22) of this rule, except if a more limited scope is explicitly stated.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 756.105

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 9-2001, f. & cert. ef. 3-21-01; PUC 22-2001(Temp), f. & cert. ef. 9-26-01 thru 3-24-02; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0030

### Threshold Levels of Rates and Charges for Water Utilities Serving Fewer than 500 Customers

(1) Pursuant to ORS 757.061(2) the Commission adopts the following maximum rates and charges for water utilities serving fewer than 500 customers:

(a) \$24 annual average monthly residential or small commercial service rate;

(b) \$85 annual average monthly service rate for large commercial customers; and

(c) \$450 for standard service connection charge.

(d) Any system development fee, facilities charge, or other like charge shall be cost based and demonstrated as such to the Commission's satisfaction upon request of the Commission.

(2) A standard service connection is defined in OAR 860-036-0060.

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

Stats. Implemented: ORS 757.061

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0120

### Meter Readings and Bill Forms

(1) Every water utility providing metered service shall indicate clearly on the meter the units of service for which the charge is made to the customer, except when automatic meter reading systems preclude such facilities.

(2) All water service bills shall show the beginning and ending meter readings for the period the bills are rendered, the date of the meter readings, the number of units of service supplied clearly stated (gallons or cubic feet), the schedule number under which the bill was computed, and any other information needed to compute the bill. Each bill shall bear on its face the delinquent date of the bill and the water utility's telephone number. When there is good reason for so doing, estimated bills may be submitted. Any estimated reading shall be clearly designated as such on the bill.

(3) As a matter of general practice, all service meters shall, as nearly as possible, be read at monthly intervals on the corresponding day of each meter reading period. Meters may be read at other than monthly intervals, if the Commission is given notice and does not object to the water utility's meter reading proposal. The water utility shall provide each customer a written statement that explains the disadvantages of having the meter read and billed less often than monthly. If at any time the Commission determines that circumstances warrant, a water utility may be required to return to monthly meter reading.

(a) When access to a meter is difficult due to the meter location or other circumstance, the water utility shall seek the customer's cooperation in obtaining monthly meter readings (for example, having the customer complete and return a meter reading form). Any customer reading shall be subject to actual verification by the water utility not less than once every four months;

(b) Each customer shall provide the water utility with regular access to the meter on the customer's property. Failure to permit the water utility access at reasonable times and after reasonable written notice of requested access is grounds for disconnection.

(4) Upon written request by a customer, the water utility shall cause the meter reader, when the customer's meter is read, to leave on such meter or with such customer, a card showing the actual meter reading and the date and time such reading was made.

(5) Water utilities shall make reasonable efforts to prepare opening and closing bills from actual meter readings.

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

Stats. Implemented: ORS 756.040 & ORS 757.250

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0370

### Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs

(1) The Commission may use up to \$5,000 per biennium of the fees collected under ORS 756.310 to make emergency repairs for water utilities. The Commission may expend monies under the provisions of this rule if the Commission determines that:

(a) Customers of a utility are without service and are likely to remain without service for an unreasonable period of time;

(b) The utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and

(c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The Commission shall promptly attempt to recover fees used under this rule from the utility providing water service. No interest shall accrue on the outstanding balance.

(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the fees are expended.

Stat. Auth.: ORS 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0380

### Commission-Assessed Civil Penalties for Noncompliance

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 for each violation of state statutes, Oregon administrative rules, or Commission orders related to water utilities.

(2) Prior to assessing civil penalties, the Commission may send a warning letter to the water utility by registered or certified mail. The warning letter must include, but not be limited to, the following:

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(a) A statement that the water utility is in violation of state statutes, Oregon administrative rules, or Commission orders;

(b) The time allowed for correcting the violation(s); and

(c) A statement that, if the violations are not corrected within the time allowed, staff may make a recommendation to the Commission to assess civil penalties.

(3) The Commission must give notice of civil penalties by registered or certified mail to the water utility incurring the penalties. The notice must include, but is not limited to the following:

(a) The section of the statute, rule, or order violated;

(b) A concise statement of the violation(s) asserted or charged;

(c) A statement of the amount of civil penalties that may be assessed;

(d) A statement of the water utility's right to request a hearing within 20 calendar days of the date of service of the notice; and

(e) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) Within 20 calendar days of the date of service of the notice, the water utility incurring the penalties may request a hearing. Such request must be in writing and shall state what actions, if any, have been made to correct the violation(s) stated in the notice. If the water utility does not request a hearing within the time allowed, or if the water utility requesting a hearing fails to appear, the Commission may issue a final order imposing the penalty.

(5) The Commission may require that penalties imposed under this rule be used for the benefit of the customers of water utilities affected by the violation(s).

Stat. Auth.: ORS 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 183.090, 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0410

### Relating to Rate Regulation of Water Utility by Customer Petition

(1) As used in this section, "customer" means individual residential dwelling or commercial unit served by the water utility. Hotels, motels, and recreational vehicle (RV) parks shall be deemed one commercial customer, except those individuals who use such facilities as a primary residence shall also be counted as customers.

(2) Once a water utility has exceeded a threshold level, as defined in OAR 860-036-0030, and if the Commission did not receive a petition from 20 percent or more of the customers, the customers may submit a petition to the Commission at any time for full rate regulation. Petitioners must be current customers of the water utility. Such petitions are in effect for six months. Petitions older than six months must be resubmitted to the Commission.

(3) Petitions must be in writing, state the purpose of the petition, and include the customer's name, address, telephone number, and signature.

(4) Individual customer letters may be submitted in lieu of a petition.

(5) If 20 percent of customers petition the Commission, the water utility will be notified by the Commission, in writing, of its change in status to a rate-regulated water utility.

(6) The water utility must file appropriate tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.

(7) If the water utility fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(8) Customer petitions filed with the Commission requesting rate regulation of a water utility may not be withdrawn or rescinded.

(9) Existing nonpetitioned rates and charges will be deemed interim rates and may be subject to refund during the pendency of the tariff filing application. The period of refund will begin on the date of the notice requiring a tariff filing sent by the Commission, unless the date the water utility began serving 500 customers can be reasonably determined, and end on the issuance date of the Commission order establishing new rates. Refunds may be limited to those charges and fees, or a portion thereof, paid by customers determined by the Commission to be unreasonable, excessive, or not justified by the water utility's cost. At the discretion of the Commission, any such refund may include interest.

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

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0412

### Request for Rate Regulation of an Association by Members

(1) For purposes of this rule, "association" means any association of individuals that furnishes water to members of the association, even if the association does not furnish water directly to or for the public. This rule does not apply to any cooperative formed under ORS Chapter 62 or to any public body as defined by ORS 174.109.

(2) Association members may submit a petition to the Commission at any time for regulation of a water system owned, operated, managed, or controlled by an association. Petitioners must be current members of the water association.

(3) Petitions must be in writing, state the purpose of the petition, and include the member's name, address, telephone number, and signature.

(4) The Commission will consider individual letters submitted by association members, which meet the criteria of subsection (3), as petitions for the purposes of calculating the 20 percent requirement.

(5) If 20 percent of association members petition the Commission, the Commission must issue an order notifying the association of its change in regulatory status to a regulated water utility.

(6) If required by the regulatory change, the association must file tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.

(7) If the association fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(8) Petitions filed with the Commission may not be withdrawn or rescinded and are valid for six months.

Stat. Auth.: ORS 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0420

### Request for Rate Regulation by a Water Utility

(1) Any water utility serving fewer than 500 customers may, at any time, file a petition with the Commission for full rate regulation of the water utility.

(2) When the water utility files the petition with the Commission requesting rate regulation, the water utility must also provide written notification to its customers. The water utility must provide the Commission with a copy of the notice. At a minimum, the notice must include the following information:

(a) Name, address, and telephone number of the water utility;

(b) Purpose of the notice;

(c) The reason(s) the water utility is seeking rate regulation;

(d) The Commission's toll-free telephone number, TTY number, and its mailing and location addresses. The information is available on the Commission website or by calling the Commission; and

(e) A statement informing customers that ORS 757.061 was amended in 2003 to allow water utilities to petition the Commission for rate regulation.

(3) Within 30 days after the water utility files its petition requesting rate regulation, the Commission must issue an order notifying the water utility of its change in regulatory status to a rate-regulated water utility.

(4) Within 60 days after the Commission notifies the water utility of its change in regulatory status, the water utility must file appropriate tariffs pursuant to ORS 757.205.

Stat. Auth.: ORS 183, 756 & Ch. 082, OL 2003

Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0505

### Relating to New Water Utilities

(1) This rule applies to newly constructed water utilities that have not previously offered water service to the public during the past 12 months. This rule does not apply to remodeled, renamed, new additions, or new ownership of existing water supply systems.

(2) A new water utility may initially establish a monthly residential rate exceeding the threshold level established in OAR 860-036-0030 provided it notifies each customer in writing at the time of connection, or earlier, of the customer's right to petition the Commission for rate regulation. The notice shall comply with OAR 860-036-0405. All subsequent rate increases will comply with the requirements of OAR 860-036-0405.

(3) If the Commission receives petitions from 20 percent or more of the new water utility's customers and the water utility charges or proposes to charge for services in excess of the threshold levels established in OAR

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860-036-0030, the rules contained in OAR 860-036-0410 will become applicable.

(4) Customer count will be made pursuant to OAR 860-036-0415. The 20 percent calculation of customers will be based upon the total number of customers existing in the month the Commission receives the petition. Petitions will carry over month to month and will be cumulative. Petitioners need not file petitions monthly in order to be counted for any particular month.

(5) Petitions are valid for six months, after which they must be resubmitted to the Commission.

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

Stats. Implemented: ORS 756.040 & ORS 757.205

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0739

### Allocation of Costs by a Water Utility

(1) As used in this rule:

(a) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a water utility;

(b) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a water utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the water utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single water utility;

(c) "Asset" means any tangible or intangible property of a water utility or other right, entitlement, business opportunity, or other thing of value to which a water utility holds claim that is recorded or should be recorded as a capital expenditure in the water utility's financial statements. All water utility tangible or intangible property, rights, entitlements, business opportunities and things of value should be considered assets, services, or supplies;

(d) "Cost" means fully distributed cost, including the water utility's authorized rate of return and all overheads;

(e) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(f) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(g) "Net book value" means original cost less accumulated depreciation;

(h) "Nonregulated activity" means an activity that is not a regulated activity of the water utility as defined in subsection (1)(i) of this rule;

(i) "Regulated activity" means a Commission regulated activity that is provided by a water utility directly or indirectly relating to the general operations of the water utility such as production, transmission, delivery, or furnishing of water unless the Commission has determined the activity to be exempt from regulation;

(j) "Services" means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All water utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies; and

(k) "Supplies" means any tangible or intangible property of a water utility or other thing of value to which a water utility holds claim that is recorded or should be recorded as an operating expense in the water utility's financial statements. All water utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies.

(2) For purposes of this rule, regulated and nonregulated activities of a water utility shall be accounted for in accordance with the Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners as modified by the Commission.

(3) When a water utility is conducting an affiliate interest transaction, as defined in this rule, the water utility must use the following cost allocation methods:

(a) When an asset is transferred to a water utility from an affiliate, the transfer shall be recorded in the water utility's accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from a water utility to an affiliate, the transfer shall be recorded in the water utility's accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applica-

ble, proceeds from the transfer shall be recorded in the water utility's accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from a water utility to an affiliate at a fair market value that is greater than net book value, the difference shall be considered a gain to the water utility. The water utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a water utility to an affiliate, sales shall be recorded in the water utility's accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in the water utility's accounts at the water utility's cost or the market rate, whichever is higher.

(e) When services or supplies are sold to a water utility by an affiliate, sales shall be recorded in the water utility's accounts at the affiliate's cost or the market rate, whichever is lower. The affiliate's cost shall be calculated using the water utility's most recently authorized rate of return.

(f) Income taxes shall be calculated for the water utility on a stand-alone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the water utility shall record income tax expense as if it were determined for the water utility separately for all time periods.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.490 & 757.495

Hist.: PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0757

### Accounting for Construction Work In Progress (CWIP)

The Commission may allow into rates the costs of a specific capital improvement project in progress if:

(1) The water utility uses the additional revenues solely for the purpose of completing the capital improvement project;

(2) The water utility demonstrates that its access to capital is limited and it is in the public interest to provide funding for the capital improvement through rates; and

(3) Such costs are approved through tariffs filed with the Commission.

Stat. Auth.: ORS 183, 756, 757 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0900

### Service Territory Allocation

(1) For purposes of service territory allocation OAR 860-036-0900 through 860-036-0930:

(a) "Allocated territory" means an approved area with boundaries set out in a Commission order granting an application for the allocation of service territory.

(b) "Community water supply system" means a water source and distribution system, whether publicly or privately owned, that serves more than three residences or other users to whom water is provided for public consumption, including but not limited to schools, farm labor camps, industrial establishments, recreational facilities, restaurants, motels, mobile home parks, or group care homes.

(c) "Utility service" means service provided by a water utility as defined in subsection (1)(d) of this rule, any equipment, plant, or facility for the distribution of water to users through a connected and interrelated distribution system. "Utility service" does not include service provided through or by the use of any equipment, plant, or facilities solely for the production and sale of water to other water utilities.

(d) "Water utility" as used in OAR 860-036-0900 through 860-036-0930 means any water system that meets the definition of a water utility in ORS 758.300.

(2) The requirements of this rule apply to all water utilities.

(3) A water utility providing water service may make application to the Commission, on forms provided by the Commission, for an order designating the territory it serves adequately and exclusively as its exclusive service territory.

(4) The Commission shall recognize the exclusive service territory of a water utility that has an existing franchise as of October 23, 1999, with a municipality. A water utility may apply to the Commission to designate exclusive service territory area other than that identified in the franchise agreement, if the water utility is currently providing adequate and exclusive service to areas identified in the franchise agreement.

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

Stats. Implemented: ORS 758.300-758.320 & Ch. 202, OL 2003

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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 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0905

### Original Application Requirements

(1) A completed application requesting an exclusive service territory for area the water utility is currently serving shall include the following:

(a) The water utility's complete name, address, and telephone number;

(b) The nature of the water utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(c) The name(s) and address(es) of all corporate officers, directors, partners, or any other person(s) owning an interest in the water utility;

(d) A statement showing the financial and technical ability of the applicant to provide service to the current territory;

(e) A detailed map or maps of the water system showing the existing lines and facilities;

(f) A detailed map or maps identifying the boundaries of the water utility's current service territory marked with a fine-tipped RED pen. The map must identify the map source and the date of the map in the upper left corner of the map. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the utility's current service territory boundaries and enable correlation with a written description of such territory;

(g) A complete and accurate written description of the water utility's current service territory. The description may be a legal description or may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;

(h) Evidence that the water utility owns the land upon which the water utility facilities are located, or a copy of an agreement that provides for the continued use of the land, such as an easement or 99-year lease;

(i) A schedule showing the number of customers currently served, by class and meter size, as well as the number of customers projected to be served when the current service territory is fully occupied; and

(j) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities having concern with the application, and all known water utilities and community water supply systems in the general area of the current service territory.

(2) The application may also include any adjacent territory that the water utility plans to serve within six months following the date of the application:

(a) If another water utility or community water supply system is not serving such territory; and

(b) If the applicant demonstrates that it is more economical and feasible to serve the area by an extension of the applicant's existing facilities than by an extension of the facilities of another water utility or community water supply system. Application requirements for expanded service territory are contained in OAR 860-036-0915.

(3) Within 15 days of making its proposed service territory filing pursuant to OAR 860-036-0906, a water utility must provide written notice to its customers by mail or hand delivery. The notice shall include the following information:

(a) Name, address, and telephone number of water utility;

(b) The purpose of the notice;

(c) An accurate and detailed written description of the territory applied for;

(d) Filing date;

(e) A statement that customers may file a protest with the Commission's Administrative Hearings Division; and

(f) The Commission's toll-free telephone number, TTY number, and mailing and location addresses.

(4) The water utility's application to the Commission must include a copy of the notice to customers and a customer mailing list.

(5) In reviewing a completed application for current exclusive service territory, the Commission shall consider the applicant's ability to provide adequate and exclusive service to its existing customers which may include but is not limited to, financial resources, technical ability, customer service history, physical facilities, system capacity, revenue and cost studies, and system compliance with the Oregon Health Division's water rules and regulations.

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

Stats. Implemented: ORS 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 13-2002, f. & cert. ef. 3-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0910

### Commission Notice and Procedure

(1) Within 30 days of receipt of a completed service territory application, the Commission shall give written notice to any municipality, county, planning council, and governmental authority known to have a concern with the application, and to all known water utilities and community water supply systems in the areas adjacent to the proposed area described in the application.

(2) The Commission shall publish notice of the filing in a newspaper or newspapers of general circulation in the proposed territory at least once weekly for two consecutive weeks.

(3) Any objections to the application must be filed with the Commission no later than 30 days after the last date that the notice was mailed or published, whichever is later.

(4) The Commission may, on its own motion, hold a hearing on the application; however, the Commission must hold a hearing on the application if a customer of the water utility requests a hearing on the application within 30 days after the final publication of notice as required in section (2) of this rule.

(5) If a hearing is scheduled, the Commission shall give notice of the hearing, setting the time, date, and place of hearing. If the hearing is by reason of a customer's request, the Commission shall give notice of the hearing within 30 days after the request is received by the Commission. The hearing shall be held at a place within or conveniently accessible to the area described in the application.

(6) The Commission shall enter an order granting or denying an application for an exclusive service territory under OAR 860-036-0900. The Commission may grant an application subject to such conditions and limitations as the Commission deems appropriate.

(7) The applicable provisions of ORS 756.500 through 756.610 shall govern the conduct of hearings under this section and any appeal of the Commission's order.

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

Stats. Implemented: ORS 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 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-036-0915

### Filing an Application to Expand Exclusive Service Territory

(1) A water utility may apply to expand its service territory to serve an area not currently being provided water service. It shall file an expanded service territory application with the Commission.

(2) Upon application by the water utility or by the Commission's own motion, an approved service territory may be expanded to include unserved areas.

(3) In reviewing a completed application for an expanded exclusive service territory, the Commission shall consider the applicant's ability to adequately and exclusively provide service to the expanded territory, which may include but is not limited to, financial resources, technical ability, physical facilities, customer demand, system capacity, revenue and cost studies, regional planning, environmental impact, customer service history, impact on existing customers, compliance with the Oregon Health Division's water rules and regulations, economic and feasibility studies, and availability of alternate service.

(4) Notice and hearing of the proposed expansion shall be given as provided in OAR 860-036-0910.

(5) The application must include:

(a) The water utility's complete name and address;

(b) The nature of the utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(c) The name and address of any other water utility or community water supply system that could potentially provide water service within the proposed expanded territory;

(d) The name and address of all corporate officers, directors, partners, or any other person owning an interest in the utility;

(e) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities that may have a concern with the application, and all known water utilities and community water supply systems in the general area of the proposed expanded service territory;

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(f) A map identifying the boundaries of the proposed expanded service territory (currently unserved) marked with a fine-tipped BLUE pen. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the expanded service territory boundaries and enable correlation with the description of the proposed expanded territory;

(g) A complete and accurate written description of the proposed expanded territory. The description may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;

(h) The total projected number of customers to be served in the proposed expanded territory by meter size and customer class, that is, single family homes, mobile homes, duplexes, golf course clubhouse, commercial, etc.;

(i) The estimated date applicant plans to begin providing service to customers in the proposed expanded territory;

(j) The estimated flat rate or base and usage rate structure to be utilized, unless an alternative rate structure is supported by the applicant and authorized by the Commission;

(k) A cost study including customer growth projections supporting the proposed water service rates and charges;

(l) A schedule showing by account the projected operating expenses of the water system to serve the expanded service territory when 100 percent of the system is being utilized;

(m) A schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 100 percent of the design capacity of the system;

(n) A statement describing the need for water service in the proposed expanded service territory;

(o) Evidence demonstrating adequate existing or proposed capacities of the system and facilities to serve the proposed expanded territory in terms of estimated average daily customer demand, customer peak demand, and daily pumping capacity per water source in gallons or cubic feet. If development will be in phases, separate this information by phases;

(p) A written description of the type of water treatment required, if necessary;

(q) A schedule showing the projected cost of the proposed system(s) by accounts. If the system is to be built in phases, show information for each phase individually;

(r) A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the water utility for capital improvement, and an explanation of the manner and amount of such funding, including their financial statements and a copy of all contracts or agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility;

(s) Financial statements demonstrating applicant's financial capability to provide service;

(t) A statement showing applicant's technical ability or capacity to procure technical skill necessary to provide service;

(u) A statement describing any impact the expansion of service territory may have on existing customers.

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

Stats. Implemented: ORS 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 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-037-0308

### Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs

(1) The Commission may use up to \$5,000 per biennium of the fees collected under ORS 756.310 to make emergency repairs for privately-owned wastewater utilities that provide service within the boundaries of a city. The Commission may expend monies under the provisions of this rule if the Commission determines that:

(a) Customers of a wastewater utility are without service and are likely to remain without service for an unreasonable period of time;

(b) The wastewater utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and

(c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The Commission shall promptly attempt to recover fees used under this rule from the utility providing water service. No interest shall accrue on the outstanding balance.

(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the fees are expended.

Stat. Auth.: ORS 183, 756, 757 & Ch. 202, OL 2003

Stats. Implemented: ORS 757.061 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-037-0309

### Commission-Assessed Civil Penalties for Noncompliance

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 for each violation of state statutes, Oregon administrative rules, or Commission orders related to wastewater utilities.

(2) Prior to assessing civil penalties, the Commission may send a warning letter to the wastewater utility by registered or certified mail. The warning letter must include, but not be limited to, the following:

(a) A statement that the wastewater utility is in violation of state statutes, Oregon administrative rules, or Commission orders;

(b) The time allowed for correcting the violation(s); and

(c) A statement that, if the violations are not corrected within the time allowed, staff may make a recommendation to the Commission to assess civil penalties.

(3) The Commission must give notice of civil penalties by registered or certified mail to the wastewater utility incurring the penalties. The notice must include, but is not limited to the following:

(a) The section of the statute, rule, or order violated;

(b) A concise statement of the violation(s) asserted or charged;

(c) A statement of the amount of civil penalties that may be assessed;

(d) A statement of the wastewater utility's right to request a hearing within 20 calendar days of the date of service of the notice; and

(e) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) Within 20 calendar days of the date of service of the notice, the wastewater utility incurring the penalties may request a hearing. Such request must be in writing and shall state what actions, if any, have been made to correct the violation(s) stated in the notice. If the wastewater utility does not request a hearing within the time allowed, or if the wastewater utility requesting a hearing fails to appear, the Commission may issue a final order imposing the penalty.

(5) The Commission may require that penalties imposed under this rule be used for the benefit of the customers of wastewater utilities affected by the violation(s).

Stat. Auth.: ORS 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 183.090, 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-037-0407

### Request for Rate Regulation of an Association within the Boundaries of a City

(1) Association members may submit a petition to the Commission at any time for full rate regulation of a wastewater utility owned or operated by an association located within the boundaries of a city. Petitioners must be current customers of the wastewater utility.

(2) Petitions must be in writing, state the purpose of the petition, and include the customer's name, address, telephone number, and signature.

(3) Individual members may submit letters in lieu of a petition.

(4) If 20 percent of association members petition the Commission, the Commission shall issue an order notifying the association of its change in regulatory status to a rate-regulated utility.

(5) The association must file tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.

(6) If the association fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(7) Petitions filed with the Commission may not be withdrawn or rescinded and are valid for six months.

Stat. Auth.: ORS 183, 756 & Ch. 082, OL 2003

Stat. Implemented: ORS 756.040 & Ch. 082, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-037-0547

### Allocation of Costs by a Wastewater Utility

(1) As used in this rule:

(a) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a wastewater utility;

(b) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a

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wastewater utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the wastewater utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single wastewater utility;

(c) "Asset" means any tangible or intangible property of a wastewater utility or other right, entitlement, business opportunity, or other thing of value to which a wastewater utility holds claim that is recorded or should be recorded as a capital expenditure in the wastewater utility's financial statements. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services or supplies;

(d) "Cost" means fully distributed cost, including the wastewater utility's authorized rate of return and all overheads;

(e) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(f) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(g) "Net book value" means original cost less accumulated depreciation;

(h) "Nonregulated activity" means an activity that is not a regulated activity of the wastewater utility as defined in subsection (1)(i) of this rule;

(i) "Regulated activity" means a Commission regulated activity that is provided by a wastewater utility directly or indirectly relating to the general operations of the wastewater utility such as production, transmission, delivery, or furnishing of water, and the provision of wastewater services to the public inside the boundaries of a city unless the Commission has determined the activity to be exempt from regulation;

(j) "Services" means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies; and

(k) "Supplies" means any tangible or intangible property of a wastewater utility or other thing of value to which a wastewater utility holds claim that is recorded or should be recorded as an operating expense in the wastewater utility's financial statements. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities and things of value should be considered assets, services, or supplies.

(2) For purposes of this rule, regulated and nonregulated activities of a wastewater utility shall be accounted for in accordance with the Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners as modified by the Commission.

(3) When a wastewater utility is conducting an affiliate interest transaction, as defined in this rule, the wastewater utility must use the following cost allocation methods:

(a) When an asset is transferred to a wastewater utility from an affiliate, the transfer shall be recorded in the wastewater utility's accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from a wastewater utility to an affiliate, the transfer shall be recorded in the wastewater utility's accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall be recorded in the wastewater utility's accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from a wastewater utility to an affiliate at a fair market value that is greater than net book value, the difference shall be considered a gain to the wastewater utility. The wastewater utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a wastewater utility to an affiliate, sales shall be recorded in the wastewater utility's accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in the wastewater utility's accounts at the wastewater utility's cost or the market rate, whichever is higher.

(e) When services or supplies are sold to a wastewater utility by an affiliate, sales shall be recorded in the wastewater utility's accounts at the wastewater utility's cost or the market rate, whichever is lower. The affiliate's cost shall be calculated using the wastewater utility's most recently authorized rate of return.

(f) Income taxes shall be calculated for the wastewater utility on a standalone basis for both ratemaking purposes and regulatory reporting.

When income taxes are determined on a consolidated basis, the wastewater utility shall record income tax expense as if it were determined for the wastewater utility separately for all time periods.

Stat. Auth.: ORS 183, 756 & 757

Stat. Implemented: ORS 756.040, 757.490 & 757.495

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

## 860-037-0570

### Accounting for Construction Work In Progress (CWIP)

This rule applies to wastewater utilities that provide service inside the boundaries of a city. The Commission may allow into rates the costs of a specific capital improvement project in progress if:

(1) The wastewater utility uses the additional revenues solely for the purpose of completing the capital improvement project;

(2) The wastewater utility demonstrates that its access to capital is limited and it is in the public interest to provide funding for the capital improvement through rates; and

(3) Such costs are approved through tariffs filed with the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stat. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04; PUC 7-2004, f. & cert. ef. 4-9-04

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**Adm. Order No.:** PUC 8-2004

**Filed with Sec. of State:** 4-9-2004

**Certified to be Effective:** 4-9-04

**Notice Publication Date:** 1-1-04

**Rules Amended:** 860-036-0080

**Subject:** Previously the Commission's rules narrowly proscribed the circumstances under which a water utility may refuse to serve a customer. This rule amendment specifies that a water utility may refuse to provide service if it is prohibited from doing so by law.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

## 860-036-0080

### Refusal of Water Utility Service

(1) A water utility may refuse to provide service to a customer or applicant until it receives full payment of any overdue amount of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account except as provided below:

(a) Except for residential customers or applicants who were disconnected for theft of service, a water utility shall provide service to a residential applicant upon receipt of payment equal to at least one-half of any overdue amount. The balance of the amount owed to the utility shall be paid within 30 days of the date service is initiated. Except for the last payment, installments shall be the greater of \$30 or one-half the overdue amount.

(b) Upon failure to pay, the water utility may disconnect service after providing a written five-day notice. The notice shall contain the information and be served in the manner prescribed as provided in OAR 860-036-0245. When a customer whose service was terminated applies for service within 20 days of the termination, the provisions of this rule apply.

(2) If water service is disconnected for failure to comply with the payment terms set forth in section (1)(a) of this rule, the water utility may refuse to restore service until it receives full payment of any overdue obligation of an Oregon tariffed or price-listed charge and any other like obligation related to a prior account, including any reconnection fee, late payment fee, and past due bill.

(3) A water utility may refuse to provide service until payment is received when the following circumstances exist:

(a) A residential customer has incurred an overdue balance at a service address;

(b) A residential applicant for service resided at the service address described in subsection (1)(a) of this rule during the time the overdue balance was incurred; and

(c) The residential customer described in subsection (1)(a) of this rule will reside at the location to be served under the new application.

(4) Any water utility shall refuse to provide service if a customer or applicant has not complied with state and municipal codes and regulations governing service and with the rules and regulations of the water utility.

(5) A water utility shall refuse to serve a customer or applicant, if, in the best judgment of the water utility, the facilities of the customer or applicant are of such a character that safe and satisfactory service cannot be given.

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(6) If service is refused, the water utility shall provide written notification within 10 working days to the customer or applicant of the reasons for refusal and of the Commission's complaint process. A copy of the notice shall also be sent to the Commission unless service was refused for non-payment.

(7) A water utility shall not accept an application for service or materially change service to a customer if it does not have adequate facilities or water resources to render the service applied for, if the desired service is of a character that is likely to unfavorably affect service to other customers, or if it is prohibited by law from providing the service. If a water utility refuses service on the grounds of inadequate facilities or water resources, the water utility shall provide the customer or applicant with a written letter of refusal, a copy of which shall be sent to the Commission. The letter must:

(a) Provide the reason for the refusal;

(b) Inform the customer or applicant that he/she may request the details upon which the water utility's decision was based, including but not limited to current capacity and load measured in gallons or cubic feet per minute and pounds per square inch (psi);

(c) When capacity does not exist, provide the costs to provide capacity for the customer or applicant; and

(d) Inform the customer or applicant that he/she may challenge the water utility's refusal of service through the Commission's dispute resolution process pursuant to OAR 860-036-0025.

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

Stats. Implemented: ORS 756.040, 757.035 & ORS 757.225

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 15-1998, f. & cert. ef. 8-27-98; PUC 22-2002, f. & cert. ef. 9-9-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 21-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PUC 8-2004, f. & cert. ef. 4-9-04

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

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**Subject:** Amends greyhound rules pertaining to definitions; types of licenses; duties of commission veterinarian, racing secretary, kennel owner, lead-out; official schooling requirements, grading system, forming the race, adoption and care in transit.

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## 462-110-0030

### Greyhound Racing

The following definitions and interpretations shall apply in these rules unless otherwise indicated or text otherwise requires. (Words of the masculine gender include the feminine and neuter. Words in the singular include the plural and vice versa):

(1) "Abandonment": Intentionally, knowingly, recklessly or with negligently leaving a racing animal at a location without providing for the animal's continued care.

(2) "Added Money": A sum by which established purse is increased.

(3) "Adequate Food": The provision, at intervals of not more than 24 hours or less if the dietary requirements of the greyhounds so require, of a quantity of foodstuff suitable for the greyhounds and sufficient to maintain a proper level of nutrition in each greyhound. The foodstuff shall be served in a clean receptacle, dish or container.

(4) "Adequate Water": Access to a supply of clean, fresh potable water provided in a sanitary manner and provided at suitable intervals for the greyhounds to maintain proper hydration.

(5) "Adoption Group": Means a non-profit organization endorsed by MGP and OGA to facilitate the adoption of greyhounds.

(6) "Adoption Kennel": Means an ORC approved facility used to house greyhounds awaiting adoption.

(7) "Age": Length of time since whelping.

(8) "Assistant Trainer": a person designated by the kennel owner or trainer to assist the trainer in the performance of the trainer's duties.

(9) "Authorized Agent": An individual granted designated powers to act for the owner through a written instrument signed by the owner and filed in accordance with the Rules of Greyhound Racing. A person with power of attorney to act for another is an authorized agent.

(10) "Assumed Name": A name other than the true name of a person on the license application. Assumed names are limited to agreements involving no more than two people and they are governed by OAR 462-120-050(2) which governs partnerships.

(11) "Bertillon": A card showing identifying features of a greyhound.

(12) "Boarding Kennel": Means a place or establishment where greyhounds are sheltered, fed, watered or trained in return for a consideration.

(13) "Breeder": Means a person who breeds male or female greyhounds for the purposes of pari-mutuel racing.

(14) "Established/Set Weight": The official racing weight.

(15) "False Start": When the starting box door is not automatically opened and the backup mechanical release operated by the starter does not work on the first attempt.

(16) "Forfeit": Money due but lost because of an error, fault, neglect of duty, breach of contract, or a penalty.

(17) "Graded": A greyhound that has won an official race, or began the current race meet at age 25 months or older, or has been allowed to move up a grade at the trainer's request.

(18) "Graded Maiden": A maiden which has not won an official race, but has been allowed to move up to a higher grade at the trainer's request.

(19) "Greyhound": Any dog that is registered with the NGA.

(20) "Greyhound Owner": person(s) or entity whose name appears on the NGA ownership certificate.

(21) "Holding Kennel": A facility approved by the board of judges to hold greyhounds awaiting adoption after they have been processed through an adoption kennel.

(22) "Interference": Physical contact by a greyhound which obstructs or impedes the running of another which appears to be intentional, other than the normal bumping which is inevitable in a race.

(23) "Invitational Race": A special race approved by the commission, consisting of greyhounds currently racing in Oregon and greyhounds currently racing at other tracks which have been invited to compete.

(24) "Invitational Race Preparation": An informal exhibition which takes place before the public and the board of judges for the purposes of familiarizing greyhounds competing in an invitational race with the race-track.

(25) "Judges": The persons employed or approved by the commission who are responsible for the proper conduct of a race meet. The terms judges and board of judges are used interchangeably with the terms stewards and board of stewards.

(26) "Kennel Compound": A kennel area provided by the race meet licensee.

(27) "Kennel Crate": Any structure within a kennel used to contain an individual greyhound.

(28) "Kennel Housing Facilities": Any room, building or area used to contain greyhounds.

(29) "Kennel Name (Assumed Name)": The name used by a racing kennel, other than the full legal name or names of the owner(s).

(30) "Kennel Owner": Person(s) or entity(ies) that own a racing kennel.

(31) "Kennel Roster": A list of all greyhounds competing for a contracted kennel during the race meet. Said list shall also contain the full name and address of all persons having an ownership interest in the kennel and/or any greyhound named on the list.

(32) "Lead Out": An attendant employed by the race meet licensee whose responsibilities include putting greyhounds in the lockout kennels, leading to and loading a greyhound in the starting box, and returning the greyhound to the kennel representative after the race.

(33) "Lease Certificate": A Racing Commissioners International Uniform Lease or other written document stating the name/s of the lessee and the lessor and the terms and purpose of the lease.

(34) "Lessee": A person who holds a registered lease certificate for the racing of a greyhound in the person's name.

(35) "Lessor": A person who owns a greyhound and who leases part or all of it to another person.

(36) "Licensee": Any person or entity holding a currently valid license to engage in greyhound racing or related regulated activities.

(37) "Lure": A mechanical apparatus consisting of a stationary rail installed around the running surface, a motorized mechanism which travels on the rail, a pole which is attached to the mechanism and extends over the running surface and to which is attached an inorganic object to attract the greyhound.

(38) "Maiden": A greyhound which is at least 15 months old, began the current race meet at an age less than 25 months old, has never won an official race (including maiden graduation race) in any country, and has



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never run an official race as a graded maiden. Conditions referring to a maiden shall mean maidens at the time of starting. A maiden which has been disqualified after finishing first is still to be considered a maiden.

(39) "Maiden Graduation Race": An official race, upon which no wagering is permitted and on which a purse is paid, with the entire field of entries made up of qualified maiden greyhounds.

(40) "Matinee": A schedule of races conducted upon a race track in daylight hours.

(41) "Minor": Any person under the age of 18 year.

(42) "NGA": The National Greyhound Association of Abilene, Kansas.

(43) "Night Performance": A schedule of races conducted upon a race track during night hours.

(44) "Official Racing": A race where pari-mutuel wagering is permitted.

(45) "Official Schooling Racing": A race for qualifying purposes only, where pari-mutuel wagering is prohibited.

(46) "Oregon Bred Greyhound": A greyhound which was whelped in Oregon and was physically present in Oregon for the first 12 months immediately following its whelping.

(47) "Oregon Greyhound Farm": A facility licensed by the ORC to breed, whelp, raise, train and/or board dogs whelped of a dam and sire registered by the NGA.

(48) "Overage Maiden": A maiden that is 25 or more months old on the first day of the race meet. A greyhound is considered 25 months old on the first day of the month following its second birthday.

(49) "Ownership Registration Certificate": A certificate issued by the NGA showing that the greyhound has been properly registered with the NGA.

(50) "Post Time": The time set for the release of the greyhounds from the starting box in a race.

(51) "Primary Enclosure": Any structure used to contain a greyhound such as a pen, room or run.

(52) "Program": A schedule of races of either a matinee or night performance conducted in any racing day.

(53) "Public Training Track": Any racecourse, the facilities of which are available or open to the public for use in the training or schooling of racing animals.

(54) "Race": A race is competition among greyhounds under the circumstances provided by the rules of greyhound racing which requires the presence of at least two (2) judges. Either a non wagering qualifying or a wagering race shall be official. All maiden graduation races are also official.

(55) "Race Meet" or "Race Meeting": An entire period for which a license to conduct greyhound racing has been granted by the commission, including a continuous meeting or continuous race meeting.

(56) "Race Track": That area of the racecourse laid out for racing and excluding any adjacent or fringe areas accessible to the racers.

(57) "Racing Kennel": Means a kennel which participates in pari-mutuel racing and training services at a greyhound race track in return for a consideration.

(58) "Racing Muzzle": A plastic or leather muzzle, the entire nose section of which is white.

(59) "Racing Official":

(a) Commission officials include the presiding judge, deputy judge, commission veterinarians, photofinish operator, commission chief investigator, commission investigators, supervisor of licensing and pari-mutuels, commission auditors and any other commission employee designated by the commission or the executive director.

(b) Race meet licensee include the race meet licensee judge, director of racing, racing secretary, paddock judge, kennel master, track superintendent, starter, lure operator, announcer, mutuel manager, chart writer, program editor, director of security and any other person designated by the commission or the executive director.

(60) "Restricted Area": Includes, but is not limited to, the kennel compound, office of the racing secretary, test area enclosure, paddock area, lock out kennels, the rooms occupied by the judges, lure operator, chart writer, photofinish operator, video camera and control system, announcer's booth, pari-mutuel work areas, totalizator computer room, and any other area designated as "restricted" by the commission.

(61) "Rule Off": The act of barring any licensee or other person or greyhound from the grounds of a race meet licensee and denying all racing or other privileges.

(62) "Scratch": To remove an entered greyhound from a race after the drawing for the post positions in that race.

(63) "Special Race": A race drawn by the racing secretary which may pay enhanced points on the race meet licensee's purse schedule, the mutuel handle for which is included in the computations of weekly handle and weekly purses, and may have an added fixed dollar enhancement. This race shall be designated as an "AT" race.

(64) "Stake Race": A race which has special entry conditions approved by the board of judges for a set purse amount the mutuels handle for which is included in the computation of weekly handle and weekly purses for all non stakes races run during the week.

(65) "Starter":

(a) A greyhound which is in the starting box at the time the starting box opens at the beginning of a race.

(b) A person hired by the race meet licensee to supervise the loading of the greyhounds into the starting box, and operate the starting box for official racing.

(66) "Stewards": See definition of judges in subsection 25 of this rule.

(67) "Trainer": A person employed by a greyhound owner or kennel owner to condition greyhounds for racing and performs duties of a trainer on the racecourse and in the kennel.

(68) "Trainer's Roster": A list of each person employed on the racecourse during the race meet by a contracted kennel.

(69) "Vendor": Any person who solicits the sale of goods or services (used to feed, care for or equip racing greyhounds) to greyhound owners, kennel owners or trainers.

(70) "Vets List": A list of greyhounds maintained by the commission veterinarian which the commission veterinarian has reason to believe have a health or physical problem which could affect their racing performance or could endanger other greyhounds.

(71) "Weight Loser": A greyhound which consistently loses too much weight between weigh-in and weigh-out, as determined by the racing secretary and the commission veterinarian. (Greyhounds other than weight losers may be placed on the "Weight Loser's List", pursuant to OAR 462-140-0070(11)(d)(A).

(72) "Whelped": The time of a greyhound's birth.

(73) "Withdraw": To remove an entered greyhound from a race after the greyhound has been drawn into the race but prior to the post position draw.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC1-2003, f. 3-27-03 cert. ef. 4-1-03; RC 2-2004, f. & cert. ef. 4-8-04

## 462-120-0040

### Types of Licenses

(1) Every person, in order to obtain and maintain his/her qualifications for any license held by him/her, shall attest to the knowledge of the rules and statutes, including all amendments.

(2) Each person described below must have a valid license issued by the commission before participating in or beginning employment at a licensed race meet:

(a) A race meet license is required of any person or corporation who conducts pari-mutuel racing.

(b) A horse owner's license is required of every person who is shown as an owner or lessee on the horse's registration papers or foal certificate, of every person who has a right to receive any share of a purse of a horse racing in Oregon, of any lessor of any horse racing in Oregon regardless of whether that person receives any share of the purses won by the leased horse(s), and of every person who owns or operates a stable which races horses in a licensed race meet in Oregon, and any person who has a right to receive any part of a stable owner's share of a purse of a horse racing in Oregon. However, a licensed employee of a stable may receive, as part of the employee's compensation, a percentage of the stable's earnings without having a horse owner's license and without being shown on the registration papers. The stable owner must disclose the employees' percentage to the commission in writing prior to any payment to the employees. A spouse of an owner does not need to be licensed unless the spouse's name appears on the horse's registration papers or foal certificate. No person is eligible for a horse owner's license unless the person has an officially documented ownership interest in a racehorse unless otherwise approved by the stewards.

(A) Licenses are personal in nature and expire upon the death of the licensee, and therefore are void and without effect as a pre-requisite for the entry of a horse.

(B) When the decedent was the owner either in part or in full the only mechanism by which the horse(s) may be entered or run before the property rights in those horses have been fully and completely transferred through legacy, intestate succession or authorized sale, is as follows: upon presen-

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tation of letter of administration or letters testamentary issued by a court of competent jurisdiction, or small estate affidavit, the person named in the letter or affidavit shall be licensed as an authorized agent of the estate of the decedent and allowed to enter the horse(s) formerly owned by the decedent, subject to any limitations imposed by the court.

(c) An owner's license/prospective owner's license with valid claim certificate is required of any person wishing to claim a horse if they do not have horses' registration papers in the race office.

(d) A greyhound owner's license is required of every person who is shown as an owner and/or lessor on the greyhound's NGA registration papers, and of every person who has a right to receive any share of a purse of a greyhound racing in Oregon, except kennel owners and their employees who are licensed in Oregon. A spouse of an owner does not need to be licensed unless the spouse's name appears on the greyhound's NGA registration papers. If two or more individuals are listed on the greyhound's registration papers using the disjunctive (e.g. John Jones "or" Sam Smith) each individual is shown as an owner or lessee and each individual must be licensed.

(e) A kennel owner's license is required of every person who owns or operates a kennel which races greyhounds in a licensed race meet in Oregon, and any person other than a licensed greyhound owner who has a right to receive part of a kennel owner's share of a purse of a greyhound racing in Oregon. However, a licensed employee of a kennel may receive, as part of the employee's compensation, a percentage of the kennel's earnings without having a kennel owner's license and without being shown on the NGA papers. The kennel owner licensee must disclose the employee's percentage to the commission in writing prior to any payment to the employee. A kennel owner's license also constitutes a license for the premises where the kennel's greyhounds are housed.

(f) A stable/kennel/assumed name owners license is required if the name appears as an owner on the foal certificate, NGA ownership or registration papers of any animal racing in Oregon.

(g) A trainer's license is required of persons employed by a racing animal owner or stable/kennel to condition and care for racing animals racing in Oregon. A kennel may have only one trainer.

(h) An assistant trainer's license is required of persons who assist trainers. Trainers and assistant trainers must be at least 18 years of age.

(i) Applicants for a greyhound trainer's license or assistant trainer's license, who have not been previously licensed as trainer or assistant trainer in the United States, must pass an examination given by the board of judges to demonstrate they have the knowledge and ability to handle the duties of their position. If such applicant has been licensed as trainer or assistant trainer in the United States previously but not in the last 36 months, the board of judges may require an examination demonstrating the applicant's knowledge and ability to handle the duties of the position. If any applicant fails the examination, the applicant must wait 30 days before reapplying. However, the board of judges may waive the 30 days waiting period for applicants who, in the opinion of the judges, narrowly failed the examination.

(j) Applicants for a horse trainer's license or assistant horse trainer's license may be required to pass a written examination given by the board of stewards to demonstrate they have the knowledge and ability to handle the duties of their position. Any person who has not been licensed as trainer in Oregon may be required to submit to a barn test given by a commission representative and/or a representative of the recognized horsemen's association for the breed with which the applicant wishes to work. The stewards shall consider any recommendation received from the commission representative or the horsemen's association representative. Applicants for a trainer's license must have held a license in a backside license category for a period of at least two years and must have the recommendation of at least 3 trainers currently licensed by the commission prior to being granted a trainer's license. Applicants for an assistant trainer's license must have been licensed in a backside license category for a period of at least one year prior to being granted an assistant trainer's license.

(k) A jockey license or apprentice jockey license is required of any person who rides a horse in a race. However, when there is doubt as to a jockey's experience or ability, the stewards may require an applicant for a jockey license or apprentice jockey license to demonstrate the ability to control a horse and to ride in two or more races before a license is issued. Also, the starter may require applicants to satisfactorily demonstrate their ability to control horses out of the gate. Notwithstanding OAR 462-120-0060 the temporary license may be for a period longer than 10 days in order for the stewards to evaluate the applicant's skill. A jockey or apprentice jockey must be at least 16 years of age. All jockeys must pass physical examinations once a year. A physical examination must include but is not

limited to a vision test and urine and/or blood tests. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride until he/she successfully completes such examination. A physical card or physician's release will be seen as initial proof of such examination; however, the stewards may require additional information on the examination.

(l) An outrider license is required of any employee of the race meet licensee who is stationed on horseback around the track and must be at least 18 years of age.

(m) An exercise rider license is required of any persons, other than licensed jockeys or apprentice jockeys, who exercise or work out horses. An exercise rider must be at least 15 years of age. The stewards may require evidence of competency.

(n) A pony rider license is required of any person who, while on horseback, leads horses to and from the stable area and paddock, or from the paddock to the starting gate. A pony rider must be at least 15 years of age. The stewards may require evidence of competency.

(o) A horseshoer license is required of any person who performs the usual services of a horseshoer on a racecourse. Farriers who have not been previously licensed by the commission must submit an application accompanied by the written recommendation of three trainers who are licensed by the commission, recommendation of the track plater or have a certificate of completion from an approved Farrier school. The recommendations must include a statement that the trainer knows the farrier to be qualified to be licensed as a farrier. All farriers not previously licensed by any racing jurisdiction may be subject to examination as directed by the stewards, prior to licensing.

(p) A groom's license is required of any person not licensed as an assistant trainer who works for a trainer. A groom, upon discontinued employment by a trainer, must surrender their license to security or commission licensing personnel within 10 days, to be returned when employed during the license period. A groom's license is not a freelance license.

(q) At a minimum the president and the vice president of adoption organizations.

(r) A public training track owner's license is required of every person who owns or manages a public training track.

(s) A veterinarian license is required of any veterinarian licensed by the Oregon Veterinary Medical Examining Board who performs veterinary services on a racecourse. A current copy of that license must be on file with the commission licensing office.

(t) A valet license is required of every person who assists or attends jockeys in the jockey room or saddling paddock.

(u) A morning line odds maker's license is required of any person employed or used by the race meet licensee to establish the final morning line odds in the daily racing program.

(v) Each owner, officer, director, all employees of the race meet licensee employed at a racecourse and its contractees must be licensed by the Oregon Racing Commission except:

(A) Contractees who perform most of their principal functions away from the racecourse such as certified accountants, attorneys, insurance brokers, advertising agents and other similar contractors.

(B) Other contractors or individuals designated by the commission.

(w) A vendor's license is required of any person who solicits the sale of goods or services (used to feed, care for, or equip racing animals) to racing animal owners, stable/kennel owners or trainers on a racecourse. Vendors must have a list of products they sell attached to the license application and a current copy of all state permits and licenses to dispense such products. Any changes must be approved by the commission veterinarian and/or stewards/judges.

(x) An authorized agent's license is required of authorized agents. A licensed owner may register an authorized agent by filing an application of authorized agent with the commission and by paying the fee set by the commission. No person shall be registered as an authorized agent who is ineligible for a license. An authorized agent may act for the registering owner as set forth in the application form. No authorized agent may sign on behalf of any owner the certificate of registration for any racing animal in the absence of a valid power of attorney authorizing such signature. A person may be an authorized agent for only one kennel.

(y) A public kennel owner's license is required of any person who rents or leases kennel space to more than one other person who is licensed to race greyhounds in Oregon. A public kennel owner's license also constitutes a license for the premises where the racing greyhounds are housed.

(z) A jockey agent's license is required of any person who makes engagements for or manages a jockey.

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(aa) All racing officials and their assistants shall be licensed under the name of their official position.

(bb) An Oregon greyhound farm.

(cc) Compliance Officer(s).

(3) Working members of the media who are not employed by a race meet licensee do not need to be licensed in order to enter restricted areas. However, they must display a current valid "press" badge at all times when in a restricted area. Prior approval must be obtained from the stewards/judges or office of the race meet licensee during non-race time, and they must be escorted by a race meet licensee representative while in the restricted area.

Stat. Auth.: ORS 462.250

Stats. Implemented: ORS 462.020

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 5-2002, f. 12-8-02, cert. ef. 1-1-03; RC 2-2004, f. & cert. ef. 4-8-04

## 462-140-0070

### Commission Veterinarian

(1) The commission veterinarian is responsible, to the extent possible, to ensure that horses/greyhounds coming upon the race course do not pose a health or safety problem to themselves or other racing animals. The commission veterinarian is authorized to check all animals coming on to the racecourse and to exclude and/or scratch any animal that may pose a health or safety problem in his/her opinion.

(2) A commission veterinarian shall be granted immediate access to any racing animal on or off the racecourse which has recently run a race or has been entered in a race. A commission veterinarian may examine or cause to be examined any racing animal on the racecourse and may take or cause to be taken blood, urine, saliva or other body fluids or samples for examination.

(3) A commission veterinarian shall observe all racing animals to ensure that all racing animals allowed to participate are, in his/her opinion, in sound racing condition and that its participation in a race is not contrary to the best interest of the racing animal.

(4) A commission veterinarian is authorized to scratch a racing animal from a race if, in the commission veterinarian's opinion, the animal is not in sound racing condition, may pose a health or safety problem to it's self or others, or that its participation in a race is contrary to the best interest of the racing animal. The commission veterinarian shall immediately notify the judges/stewards of the scratch.

(5) A commission veterinarian shall maintain a list, to be known as the "Vet's List", of racing animals that the commission veterinarian has reason to believe are uncontrollable, sick, injured, illegally medicated, are a danger to themselves or other racing animals, or are not in sound racing condition. Racing animals may only be removed from the "Vet's List" with the approval of a commission veterinarian.

(6) When necessary, a commission veterinarian is authorized to take immediate steps without approval of a racing animal's owner or trainer to protect the health and safety of the racing animal or other racing animals. This includes administering drugs and/or medications for treatment and/or humane euthanasia. In any other situation in which a commission veterinarian determines that a racing animal should be removed from the racecourse or scratched from a race, the veterinarian may order the racing animal removed or scratched.

(7) Except in the case of an emergency, the commission veterinarian, while employed by the commission, may not prescribe any medication for or treat any animal which will race on a racecourse in Oregon, with or without compensation. When emergency treatment is given the commission veterinarian shall make a complete written report to the stewards/judges.

(8) The commission veterinarian or designated assistant shall secure blood, urine or other samples, as specified by the commission, of winning racing animals and of other racing animals designated by the stewards/judges or commission veterinarian. Unused sealed containers furnished by the official state chemist must be used for collecting specimens for analysis.

(9) The commission veterinarian will not conduct searches but may be involved in searches conducted by the commission investigators.

(10) Horses only.

(a) The commission veterinarian shall verify the conditions of all horses reported to be nerved prior to the horse's first entry in a race meet or continuous race meet.

(b) A commission veterinarian shall be available to the stewards and racing secretary at scratch time, until the close of entries, and at least one hour prior to the first post. A commission veterinarian shall leave the paddock as the last horse leaves the paddock for each race and shall observe the horses during the post parade, warm up, and at the starting gate.

(11) Greyhounds only.

(a) When the commission veterinarian determines that a greyhound on the race track is coming in season or in milk, the veterinarian shall place the greyhound on the "Vet's List", order the greyhound removed from the race track, order the greyhound restricted from starting for fourteen (14) days, and notify the judges. In any other situation in which the commission veterinarian determines that a greyhound should be removed from the race track or scratched from a race, the veterinarian shall notify the judges.

(b) The commission veterinarian (or designee) shall be on the racecourse at weigh-in time and examine the physical condition of each greyhound at weigh-in time. For maiden graduation races the commission veterinarian (or designee) shall examine the physical condition of each greyhound at weigh-in time.

(c) The commission veterinarian (or designee) shall periodically inspect the lock-out kennels to ensure that the lock-out kennels are clean, sanitary, and in good repair, and that they contain nothing for the greyhounds to consume.

(d) The commission veterinarian, along with the paddock judge, shall establish a list of greyhounds whose performance in the paddock or during a race demonstrates that the best interests of racing would be served by scheduling the greyhounds in early races. The list shall be known as the "Weight-Loser's List". Except for "special" and "stake" races greyhounds on the "Weight Loser's List" may be drawn only into the first six parimutuel races for which it's weighed in. The commission veterinarian, however, may authorize a greyhound in a later race in order to determine whether the greyhound should be taken off the list. The commission veterinarian may take a greyhound off the list whenever he determines that the reason(s) for placing the greyhound on the list no longer exist. The commission veterinarian may place greyhounds on the "Weight Loser's List" under the following circumstances:

(A) The greyhound has lost three or more pounds between weigh-in and weigh-out; or

(B) The greyhound has a history of poor performance during late races (seventh race or later).

(e) At the end of each race day the commission veterinarian shall notify the racing secretary, board of judges and the paddock judge in writing of all additions to and the deletions from the "Weight Loser's List" and the "Vet's List".

(f) The commission veterinarian shall view the running of each race, whenever possible.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2004, f. & cert. ef. 4-8-04

## 462-140-0410

### Racing Secretary

(1) The racing secretary is responsible for maintaining a file of all leases and NGA ownership papers on greyhounds racing in the race meet. The racing secretary shall inspect all ownership and lease documents to be sure they are accurate, complete, and up-to-date. The racing secretary has the authority to demand the production of any documents or other evidence necessary in order to perform this responsibility. The racing secretary is responsible for the custody and safe keeping of all leases and NGA ownership papers, shall permit access to them only to authorized personnel, and shall allow them to be removed only by the greyhound's kennel owner or trainer. However, if the racing secretary is aware that a trainer is no longer working for a particular kennel, the racing secretary shall not release any papers except with the consent of the kennel owner or pursuant to court or arbitration order, or with the consent of the commission.

(2) The racing secretary is responsible for receiving all entry forms for official schooling and official racing. The racing secretary shall assure, to the extent possible, that all entry requirements have been met until the entry is withdrawn.

(3) The racing secretary shall be responsible for forming each race, and for ensuring to the extent possible that only greyhounds which are eligible to start and which meet any special entry requirements are drawn into the race. The racing secretary shall make every effort to ensure fairness and equal opportunity for all greyhound owners and kennel owners in the forming of all races.

(4) As soon as the entries have closed for each racing program, the racing secretary shall compile and post in a conspicuous place a list of entries minus any subsequent withdrawals. Names of greyhounds on the leftover list shall also be compiled and promptly posted in a conspicuous place.

(5) The racing secretary shall view the running of each race, whenever possible.

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(6) The racing secretary shall keep a complete record of all races and shall immediately report to the judges any conditions which may require a scratch and any violations of ORS chapter 462 or the rules of racing.

(7) The racing secretary shall keep a complete and current record of all required rosters. A photocopy of each roster shall be provided to the commission office on the racecourse and shall be updated by the racing secretary as changes or additions occur. The racing secretary shall report to the judges any delinquency in roster requirements.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2002, f. 3-29-02, cert. ef. 4-1-02; RC 2-2004, f. & cert. ef. 4-8-04

## 462-140-0420

### Kennel Owner

(1) Prior to the first official entry of the race meet the kennel owner (or designee) shall submit to the racing secretary a completed kennel roster. Said list shall be kept current throughout the race meet as changes or additions occur.

(2) The kennel owner (or designee) must provide the director of racing (or designee) written notification of the disposition of each greyhound who participated in an official race during the racing season. Notification must occur:

(a) Within seven (7) days prior to the end of the race meet;

(b) Within seven (7) days of the greyhound's removal from racing at the race meet if prior to the season's end; or

(c) Before receipt of the greyhound's NGA paper from the racing office. Such notification must include to what track the greyhound was moved, to which adoption agency the greyhound was given, and any other information needed for the judges to determine disposition of the greyhound.

(d) Licensees will cooperate with the relocation process.

(3) The kennel owner shall provide a sufficient number of qualified licensed persons to provide for the proper care of greyhounds and cleanliness and maintenance of kennel and related facilities.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 1-2003, f. 3-27-03 cert. ef. 4-1-03; RC 2-2004, f. & cert. ef. 4-8-04

## 462-140-0480

### Lead-Out

(1) The head lead-out is responsible for weighing each greyhound at weigh-in.

(2) The lead-outs shall put each greyhound in its designated lock-out kennel during weigh-in.

(3) While on duty at the race course the lead-outs shall not converse with:

(a) A member of the public with out prior permission of the paddock judge;

(b) With one another while in the paddock, en route to the starting box, while returning the greyhounds to the owner/trainer, or in their field positions, unless the conversation is consistent with the performance of their duties;

(c) Owners/trainers while on duty.

(4) Lead-outs shall present a neat appearance and conduct themselves in an orderly manner and shall not smoke in public while in uniform and on duty.

(5) Lead-outs are prohibited from wagering on the result of any pari-mutuel racing at any association facility, with the exception of "Video Gaming". No lead-out may have any ownership interest in any greyhound participating in the race meet.

(6) No lead-out is allowed to enter the kennel compound except during training sessions and in the performance of their duties.

(7) Lead-outs are required to attend training classes on the proper method of leading greyhounds, loading greyhounds, the handling of blankets, muzzles and leashes. In addition, the training shall include safety considerations for the lead-out and the racing greyhound.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2004, f. & cert. ef. 4-8-04

## 462-170-0010

### Official Schooling Requirements; Establishing Weight

(1) Before a greyhound may be officially schooled, the following requirements must be met:

(a) The greyhound must be properly registered with the NGA. However, the commission may certify any greyhound whose lack of regis-

tration with the NGA is attributable to arbitrary, discriminatory, or other unreasonable action or inaction. All transfers of any title to, leasehold or other interest in, greyhounds which will race in Oregon must be registered with the NGA;

(b) The greyhound must be fully identified by its Bertillon and ear tattoos;

(c) The greyhound's up-to-date official NGA ownership paper must be filed with the racing secretary. If a change of ownership is pending, registration of a photocopy of the NGA paper is satisfactory for official schooling purposes while the original paper is at the NGA;

(d) The owner or trainer must completely fill out and submit to the racing secretary an official schooling entry form provided by the racing secretary. The owner or trainer shall clearly indicate on the entry form the name and location of the track and the grade of the greyhound at the track where the greyhound last officially raced. If the owner or trainer is aware that a greyhound has been cited or ticketed for interference during an official race at any other track, the owner or trainer shall disclose that fact on the entry form;

(e) The greyhound must be in the care of a licensed trainer;

(f) The greyhound must be eligible by age to enter an official race;

(g) The greyhound must not have been ruled off or be under suspension by an official body of any racing jurisdiction for a reason that would cause them to be ruled off or suspended in Oregon;

(h) The kennel owner or trainer must submit in writing to the racing secretary at a minimum the greyhound's last four lines from the track at which the greyhound most recently performed in an official race, if any.

(2) If a greyhound performs satisfactorily in any one of the prescribed distances it shall be qualified to race in all of the remaining distances available. Maidens and overage maidens with no previous official betting starts must have at least two satisfactory official schooling lines to be eligible for maiden graduation races, and three official lines to be eligible for maiden pari-mutuel races. It is the trainer's responsibility to designate greyhounds as eligible for maiden graduation races or maiden pari-mutuel races. All other greyhounds need only one satisfactory schooling race.

(3) A greyhound which has been properly entered for official racing must perform satisfactorily in further official schooling before it may be re-entered for official racing if:

(a) The greyhound has been scratched from an official race unless the board of judges excuse it from this requirement for good cause;

(b) The greyhound has not raced for a period of ten racing days; however, schooling requirements may be waived by the board of judges if in their opinion satisfactory racing and schooling lines are available from another track, but only if the greyhound is returning to the Oregon track after an absence from performance at the current race meet, or the ten racing day requirement has expired due to a "no race" in which the greyhound participated;

(c) The greyhound has been placed on the "Schooling List" by the board of judges because its performance demonstrates a need for further schooling.

(4) Official schooling races must:

(a) Take place at an official racecourse in the presence of two or more of the judges;

(b) Consist of at least three greyhounds starting, provided that four or more have been officially entered and placed in the schooling race by the racing secretary; starting from a starting box, and wearing blankets and racing muzzles;

(c) Be at a distance of 5/16 mile or longer;

(d) The weigh-in-grooming, lead-out, starting, and racing requirement described in OAR 462-170-0050, 462-170-0060 and 462-170-0070 apply to official schooling races unless expressly limited to official racing.

(5) Whenever possible, greyhounds shall be schooled no more than one grade apart from all other greyhounds in the race.

(6) Any greyhound observed interfering, bearing out or in, quitting, or seriously checking in any official race or schooling race will be required to school back satisfactorily before being entered in an official race.

(a) Greyhounds which have interfered and are entered back for schooling will be schooled a minimum of two times with other greyhounds which have also interfered (within one grade only). If there are not enough of these greyhounds to make up a race, the racing secretary may school them with other greyhounds within one grade only, but only with the permission of the owners or trainers of the greyhounds which are not schooling because of interference. Schooling programs shall clearly identify any greyhound which is being schooled because of interference. There shall be at least four (4) starters in each "interfered" official schooling race.

# ADMINISTRATIVE RULES

(b) Greyhounds schooled back for quitting, bearing in or out, or checking are not required to be schooled back with greyhounds which committed those offenses. Any greyhound observed interfering twice or quitting twice while racing or officially schooling in Oregon during its entire racing experience shall be ruled off and will not be allowed to race further in Oregon.

(7) An official schooling performance is satisfactory if, in the opinion of the judges, the greyhound demonstrates that it is sufficiently experienced to compete properly.

(8) The trainer shall orally establish a greyhound's racing weight with the scale clerk at weigh-in for the greyhound's first official schooling race. The racing weight may be changed by one pound by oral request to the scale clerk at the time of weigh-in for any subsequent official schooling race. Any variation of more than three pounds from the new racing weight shall cause the greyhound to be scratched from the schooling race. The racing weight set as of the start of the greyhound's last official schooling race shall be the greyhound's official racing weight.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 2-2000, f. 3-27-00, cert. ef. 4-3-00; RC 2-2004, f. & cert. ef. 4-8-04

## 462-170-0030

### Grading System

(1) When a greyhound's NGA paper has been submitted to the racing secretary prior to official schooling, the racing secretary will assign a grade to the greyhound. The grade will be determined by the grade in which the greyhound started its last pari-mutuel race at its most previous track; however, a greyhound whose previous race was grade "maiden" and who won that race shall be placed in grade D. The racing secretary may use a track rating list on file in the secretary's office in adjusting grades of greyhounds racing at tracks given lower ratings, but in no case may a greyhound be lowered more than one grade. No greyhound will be initially placed in Grade E.

(2) The grades, in descending order, shall be A, B, C, D, E and M. The grade shall be composed according to the following rules:

(a) Over age maidens shall be initially graded in Grade D, shall carry the letter M beside their name in the program, and shall then conform to all grading system rules as graded greyhounds (i.e., must finish fourth or better in four starts in Grade D).

(b) Grade M will be composed of maidens.

(3) When a greyhound wins a race, it shall be advanced one grade, until it reaches Grade A. A greyhound which wins a maiden or maiden graduation race shall be advanced two grades to Grade D.

(4) Upon request of the owner or trainer, and with approval of the board of judges, a maiden may become a graded maiden and may advance to Grade D if it finishes second in an official maiden or maiden graduation race. The request must be made within two starts after the greyhound finished second. Under extraordinary circumstances, the judges may waive this requirement.

(5) A greyhound that fails to finish at least third in three consecutive starts in the same grade will be lowered one grade until it reaches Grade D.

(6) A greyhound racing officially in Grade D will be dropped a grade if:

(a) It started the meet graded and fails to finish fourth or better in four consecutive starts.

(b) If it started the meet in grade maiden and fails to finish fourth or better in six consecutive starts.

(7) A greyhound officially racing in Grade E may be dropped from further competition if it fails to finish third or better in three consecutive starts in Grade E.

(8) At the request of the trainer, the board of judges may lower a greyhound racing in Grades A, B, C, or D one grade, whenever it is determined by the board of judges that the greyhound's performance justifies the grade change. The following guidelines shall be considered but not binding:

(a) A greyhound may be lowered one grade if it finishes seventh, eighth or ninth in its first start during a race meet at odds of 15 to 1 or more;

(b) A greyhound may be lowered one grade if it finishes further back than fourth in its first two starts during a race meet at odds of 10 to 1 or more;

(c) Except in extraordinary circumstances, a greyhound which has been dropped a grade should not be dropped a second grade until it has raced twice in its new grade.

(9) Any greyhound (except Grade E) which has had an official start at the current race meet and has been off 45 days because of illness or injury shall be lowered one grade only, upon the request of the trainer and notification of the board of judges.

(10) A greyhound which has been raised or lowered to a new grade as a result of its performance in an elimination heat in the Oregon-bred Juvenile, Futurity or Sapling Derby may be returned to its previous grade if the owner or trainer obtains approval of the board of judges.

(11) A greyhound racing in Grade M or in maiden graduation races may be dropped from further competition if it fails to finish fourth or better within six starts.

(12) Grading changes which are mandated by section (3), (5), (6) and (7) of this rule shall be made automatically unless the board of judges unanimously agrees that the application of the rule would result in misgrading the greyhound.

(13) Greyhounds of different grades may be used in all races except 5/16ths of a mile. These races may be made up by the racing secretary, giving preference to suitable greyhounds on the preferred lists. Winners of these races shall be advanced one grade from their previous grade. If the greyhound fails to win (See section (5) of this rule), the start will count in the usual manner. Those mixed grade races shall be identified by the letter "T". This same procedure shall govern stake races, but these shall be identified by the letter "S", and special races shall be identified by the letters "AT".

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 2-2000, f. 3-27-00, cert. ef. 4-3-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 2-2002, f. 3-29-02, cert. ef. 4-1-02; RC1-2003, f. 3-27-03 cert. ef. 4-1-03; RC 2-2004, f. & cert. ef. 4-8-04

## 462-170-0050

### Forming the Race; Withdrawals; Stake Races

(1) A greyhound may not be drawn into or start a race unless all of the following requirements are met:

(a) The greyhound must continue to be properly entered for official racing and must meet all of the entry requirements;

(b) The greyhound must be in the hands of a licensed trainer, approved by the Board of Judges;

(c) The greyhound must be of the proper grade and meet all other race qualifications;

(d) If the greyhound has been scratched for medical or physical reasons (except weight scratches) since its last official race, the commission veterinarian must give approval for it to race;

(e) Except for "special" or "stake" races, if the greyhound is on the "Weight Loser's List", it may only be drawn into the first six pari-mutuel races for which it's weighed-in without prior authorization from the commission veterinarian;

(f) Two greyhounds from the same kennel may be drawn into any race. Double entries shall be uncoupled for wagering purposes.

(g) Greyhounds of different grades may be used in all races except 5/16ths of a mile (except as provided for in "stakes" or "special" races). These races may be made up by the racing secretary, giving preference to suitable greyhounds on the preferred list.

(h) Where no other qualified entrants are available, triple entries may be allowed with the approval of the board of judges.

(2) Any special entry requirements, including qualifying times and purses, for particular races or classes of races must be approved by the commission. The number and nature of stake and special races must be approved by the commission; however, subsequent to this approval, should emergency situations arise, the board of judges may make single-item changes or additions, with immediate subsequent notification to the commission of such action. The conditions of entry for all special and stake races shall be submitted by the racing secretary and approved by the board of judges.

(3) The racing secretary may select from greyhounds to fill five (5) races each week. The racing secretary must select from Oregon-bred greyhounds to fill at least one (1) Oregon-bred exclusive race per performance. The racing secretary may make no more than ten (10) races per week. All other races except stake and special races shall be drawn by lot in the presence of a member of the board of judges or an appointed representative of the board of judges and any representative(s) of the kennels who wish to attend. If there is not a sufficient number of qualifying Oregon-bred greyhounds to fill the Oregon-bred greyhound race for a performance, the racing secretary may enter other greyhounds in the race in addition to the available qualifying Oregon-bred greyhounds.

(4) In forming the races for the overnight draw, the racing secretary shall establish the grades of the various races, based upon the available entries and giving the better grades preference. The greyhounds left over after the drawing of a race shall have priority in the next races of that grade to be drawn.

# ADMINISTRATIVE RULES

(5) After the overnight draw and prior to the post position draw, a greyhound owner or trainer may withdraw the greyhound from a race for good cause. However, the owner or trainer may be fined or suspended if the racing secretary did not approve the withdrawal. After withdrawal of a greyhound, the racing secretary may replace the greyhound in accordance with the grading system rules.

(6) Post positions for all official racing (except for official schooling) shall be drawn by the racing secretary, in the presence of a member of the board of judges or their designee and conducted in the racing secretary's office. The draw will take place no later than one day prior to the running of the race. Post positions for special events (i.e. stakes races) shall be conducted as stated in the stake race condition sheets. Post positions for official schooling races shall be drawn by the racing secretary.

(7) After the post position draw, any removal of a greyhound from a race constitutes a scratch, and must be ordered or approved by the judges, after a showing of good cause.

(8) No greyhound may be drawn into an official parimutuel or maiden graduation race after the post positions are drawn. No greyhound may be drawn into an official schooling race after post positions are published, except under extraordinary circumstances, or in the case of clerical errors. Late additions to schooling must be approved by the director of racing and the board of judges.

(9) Except in special, stakes, stakes elimination and official schooling races, there must be at least four separate greyhound ownership entities represented or the race will be cancelled.

(10) Special Races. In the event the number of entries to any special race is in excess of the number of greyhounds that may, because of track limitations, be permitted to start, the starters for the race shall be determined by the racing secretary.

(11) If, before post positions are drawn, a greyhound is removed from a race by its trainer from a race already drawn, and the reason for the withdrawal is "sore" or "needs rest", the greyhound shall be removed from both that draw and the following draw. It shall be the trainer's responsibility to re-enter the greyhound after this condition is met.

(12) All aspects of this section shall apply to maiden graduation races.  
Stat. Auth.: ORS 462.270(3)  
Stats. Implemented: ORS 462.270  
Hist.: RC 2-2000, f. 3-27-00, cert. ef. 4-3-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 2-2002, f. 3-29-02, cert. ef. 4-1-02; RC1-2003, f. 3-27-03 cert. ef. 4-1-03; RC 2-2004, f. & cert. ef. 4-8-04

## 462-180-0010

### Purchase, Sale, and Adoption

(1) All NGA registered greyhounds offered for adoption must be processed through an ORC approved adoption kennel.

(2) Records shall be made and retained for a period of 12 months for each greyhound sold, or adopted from a licensee. Records shall include date of sale or transfer, identification of greyhound, names and addresses of seller and purchaser or transferor and recipient, and source of greyhound.

(3) Upon receipt of a dated and notarized bill of sale which involves a greyhound participating in the current race meet, the judges may authorize the racing secretary to mail, at owner's expense, the sold greyhound's papers to the NGA for transfer of ownership. The greyhound may continue to participate (for a period of 14 calendar days) in pari-mutuel races with a photocopy of the NGA registration paper on file in the racing office. The judges will place a "hold" on any purse earned by the sold greyhound until such time as the NGA paper reflecting the new ownership/transfer is returned by the NGA to the racing secretary and approved by the board of judges.

(4) Adoption groups shall furnish a statement of adoption to the following: each recipient of a greyhound, MGP's animal welfare coordinator, and the association from which the greyhound came. This statement shall include: name and address of the owner, name and address of the recipient, name and address of the adoption group, date of sterilization, date of adoption, description or identification of the greyhound adopted, rabies and other immunizations(s) and date(s) administered.

(5) Sterilization agreements shall contain the following:

(a) Name, address and signature of the person receiving custody of the greyhound from the adoption kennel.

(b) A complete description of the greyhound, including any identification.

(c) The date that the sterilization was completed and the medical facility performing the procedure.

(6) All greyhounds which are known to be exposed to or show symptoms of having infectious and contagious diseases or which show symptoms of parasitism or malnutrition sufficient to adversely affect the health of the greyhounds are restricted from adoption.

(7) Any greyhound under the jurisdiction of the commission which has not been placed through the Oregon Greyhound Association adoption kennel must reside with a commission licensee who will provide adequate care, safety and comfort for that greyhound.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 2-2000, f. 3-27-00, cert. ef. 4-3-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC1-2003, f. 3-27-03 cert. ef. 4-1-03; RC 2-2004, f. & cert. ef. 4-8-04

## 462-180-0060

### Care in Transit for More than One Hour

(1) A qualified Oregon Racing Commission licensee shall accompany the greyhounds and be responsible for their care during each trip. That licensee will complete a trip log on a form furnished by the Oregon Greyhound Association. Within ten (10) days of completion of a trip, licensee will furnish in person or by first class mail the completed form(s) to the Oregon Greyhound Association. (This rule does not apply to greyhounds being transported by endorsed adoption groups.)

(2) Greyhounds in transit shall be provided adequate feed. Potable water shall be continually available.

(3) Incompatible greyhounds shall not be placed together during shipment. Females in estrus shall not be placed in the same primary enclosure with a male.

(4) The greyhounds' physical condition and their individual enclosures, including water supply, shall be inspected every four (4) hours, and more frequently in temperature extremes.

(5) Greyhounds shall be removed for exercise and their enclosures cleaned at least once during each 24-hour period they are in transit unless conditions require more frequent removal or exercise.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270

Hist.: RC 2-2000, f. 3-27-00, cert. ef. 4-3-00; RC 2-2001, f. 3-19-01, cert. ef. 4-1-01; RC 2-2004, f. & cert. ef. 4-8-04

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## Secretary of State, Archives Division Chapter 166

**Adm. Order No.:** OSA 2-2004

**Filed with Sec. of State:** 3-31-2004

**Certified to be Effective:** 3-31-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 166-475-0060

**Subject:** Amends the retention requirements for animal research records to bring into compliance with federal regulations found in 9 CFR 2.35(f).

**Rules Coordinator:** Julie Yamaka—(503) 373-0701, ext. 246

## 166-475-0060

### Grants and Research Records

(1) **Commercial Companies Records** This series documents cooperative relationships with commercial companies in sharing research materials and data. This series may include but is not limited to cash receipt acknowledgments; requests for sample products; acceptances of products; and related correspondence. (**Retention:** 5 years, destroy)

(2) **Grant Direct Payment Records** This series documents requests and justification for transfers of direct payment funds from federal grantors. This series may include but is not limited to federal cash position reports; spreadsheets of various federal sources and cash needs; requests for cash; credit advice from the U. S. Treasury; and related documentation and correspondence. (**Retention:** 5 years, destroy)

(3) **Grant Indirect Cost/Returned Overhead Records** This series provides a record of the analysis of grant indirect costs in order to prepare returned overhead figures for institutional departments and is used to submit notification for the budget to be adjusted. The returned overhead report is prepared twice during the year. Estimates are prepared and reviewed by departments and used in budget preparation. A final report is used for budget adjustment. This series may include but is not limited to spreadsheets; work sheets; and related documentation and correspondence. (**Retention:** 5 years, destroy)

(4) **Grant Projects Research Records** This series documents the research activity associated with grant-funded projects. This series may include but is not limited to research data; working papers; research/activity reports; summary reports; and related documentation and correspondence. (**Retention:** (a) Permanent for final research report (b) 5 years after

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final financial report is submitted and account is closed, unless otherwise specified as longer by terms of contract for all other records, destroy)

(5) **Grant Proposal Funded Records** This series documents grant proposals developed and prepared by the institutional units that were funded. This series may include but is not limited to supporting statistics; demographic data; draft proposals; suggested revisions; final proposals; and related documentation and correspondence. (**Retention:** Permanent)

(6) **Grant Proposal Unfunded Records** This series documents grant proposals developed by institutional units which have not been funded. This series may include but is not limited to supporting statistics; demographic data; draft proposals; suggested revisions; final proposals; and related documentation and correspondence. (**Retention:** 18 months after submission, destroy)

(7) **Grants and Contracts Accounting Records** This series provides a record of the establishment and administration of individually sponsored grant and contract restricted funds accounts, documents compliance with fiscal reporting requirements, and includes billing information for accounts receivable from sponsoring agencies and from departments for gift account fees. Grants may be federal, state, corporate, or private. This series may include but is not limited to project summaries; grant authorizations; contract documents; project budget change and adjustment forms; invoices; receipts; cashier's receipts; equipment purchase orders; prior approval request forms; account request forms; vendor telephone contact logs; sub-contracts; grants and contracts monthly budget summary statements; institution billings balance sheets; SF272 reports for grants and contracts that are operating on direct payments; final financial reports; property reports; patent/invention reports; contractor's release report; assignment of refunds and rebates documents; equipment disposition reports; and related documentation and correspondence. (**Retention:** 5 years after annual or final financial report is submitted unless otherwise specified as longer by the terms of the contract, destroy)

(8) **Human Subjects Records** This series documents the review of research proposals that involve any type of use of human subjects. Reviews may be made by the entire review board, selected members, or the board's chair. Records may include applications for approval by the review board; Protection of Human Subjects forms (OMB-0531-0009); Protection of Human Subject — Assurance/Certification/Declaration forms (OMB-0925-0637); descriptions of protocol; signed consent forms; sample questionnaires or surveys; copies of grant proposals; review summaries; and related memoranda and correspondence. (**Retention:** 3 years after completion of the project, destroy)

(9) **Institutional Animal Care and Use Records** This series documents the care and proposed use of animals by the university for research purposes. Records include institutional animal care and use forms; research proposal check-off forms; and related correspondence. (**Retention:** (a) Records that relate directly to proposed activities and proposed significant changes in ongoing activities reviewed and approved by the IACUC 3 years after completion of the activity (b) All other records 3 years)

(10) **Institutionally Funded Research Records** This series documents the activities of the institutional councils and boards, which review proposals and make recommendations for awards to faculty (especially new faculty) for research that is not otherwise supported by organized or directed programs but is designed to lead to other funding sources. Examples of projects funded are pilot research, emergency funding, emerging research opportunities, new research field or new research field for investigator, developing research laboratories, and centrally shared research resources. This series may include but is not limited to applicant case files; agendas; minutes; reports; notes; working papers; funding summaries; award letters; applications for research support; personal data; final research reports; and related documentation and correspondence. (**Retention:** (a) Permanent for minutes and final research reports (b) 5 years for funding summaries and funded applications, destroy; one year for all other records, destroy)

(11) **Laboratory Notebooks** This series documents the routine research activities of non-grant funded research projects. This series may include but is not limited to notebooks; binders; or any other type of journal format. (**Retention:** 6 years after completion of project, destroy)

(12) **Laboratory Reports** This series documents the results of laboratory testing performed for clients. The reports may include but are not limited to case numbers; client names; details of tests and procedures performed; test results; evaluations; and related data. (**Retention:** 6 years, destroy)

(13) **Other Payroll Expenses (OPE) Reports** This series is used to substantiate payroll overhead costs. Information in this series may include but is not limited to employee names; social security numbers; institutions; classifications of positions; units of employment; pay periods; gross pay

amounts; various withholdings; overhead amounts; and the accounts used to pay employees. (**Retention:** 6 years, destroy)

(14) **Personnel Activity Report Forms (PAR)** This series provides a record of Classified and Academic employees' efforts involving indirect activities such as instruction and departmental research, and direct activities toward externally funded projects. The series is maintained in compliance with regulations of the Federal Office of Management and Budget (OMB) as set forth in OMB Circular A21 and in agreement with the U.S. Department of Health and Human Services. The PAR system is used to produce an equitable distribution and/or substantiation report of charges for employees' activities and to distinguish the employees' direct activities from their indirect activities. Information on the individual forms includes institution name; employee name; social security number; monthly salary rate; department code; account name and number; transaction codes; pay amounts for each account number; PAR codes; comments; authorizing signatures; and dates of authorization. (**Retention:** 6 years, destroy)

(15) **Scientific Misconduct Records** This series is used to provide a record of accusations of misconduct brought forward by or against faculty or students and relating to research projects. These records include accusation statements; inquiry committee findings; and related correspondence. (**Retention:** (a) 6 years after the expiration of the grant: all records not in litigation, destroy (b) 1 year after end of litigation: all records in litigation, destroy)

(16) **Technology Transfer Records** This series documents the transfer of technology from this institution to outside agencies as the result of research projects and grants carried out at the institution. This series may include but is not limited to: original patents; patent applications; international licensing agreements; agreements giving permission for institutional researchers to use other patented inventions in their research; and related documentation and correspondence. The series may also include invention disclosure forms that list the names of the inventors; descriptions and titles of inventions; sources of funding to create the inventions; details of the provenance of the inventions and their documentation; to whom the inventions have been disclosed; suggested manufacturers; reports issued concerning the inventions; and signatures of inventors and technically qualified witnesses. (**Retention:** (a) Permanent for original patents, formal invention assignment forms, license agreements, patent legal transactions, and invention disclosure forms (b) 6 years for all other records, destroy).

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005-192.170, 357.805-357.895

Hist.: OSA 3-1999, f. & cert. ef. 10-11-99; OSA 2-2003, f. & cert. ef. 2-14-03; OSA 2-2004, f. & cert. ef. 3-31-04

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

**Adm. Order No.:** ELECT 2-2004(Temp)

**Filed with Sec. of State:** 4-9-2004

**Certified to be Effective:** 4-9-04 thru 10-6-04

**Notice Publication Date:**

**Rules Amended:** 165-010-0005

**Subject:** This rule is being temporarily amended to adopt the Chief Sponsor Petition For Independent Nomination For President/Vice President Signature Sheet, Form SEL 122P. Form SEL 122P is approved for use for the nomination of candidates for electors of independent candidates for President and Vice President of the United States. This rule is also being revised to instruct candidates using Form SEL 122P to pursue nomination to the office of President of the United States that they must designate a Vice Presidential candidate and seven candidates for the electoral college. Each candidate must file a Certificate of Nomination By Individual Electors, Form SEL 114. Each completed form filed by the candidates must be attached at all times to the signature sheet, SEL 122P. In the alternative, the independent candidate for President may use existing forms and procedures.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

**165-010-0005**

**Designating the State Candidates Manuals, County Candidate's Manual and Forms**

(1) The Secretary of State designates the 2004 *State Candidate's Manual: Major Political Party* and associated forms as the procedures and

# ADMINISTRATIVE RULES

forms to be used by major political party candidates filing and running for state elective office.

(2) The Secretary of State designates the *2004 State Candidate's Manual: Nonpartisan* and associated forms as the procedures and forms to be used by nonpartisan candidates filing and running for state elective office.

(3) The Secretary of State designates the *2004 State Candidate's Manual: Minor Political Party* and associated forms as the procedures and forms to be used to form a Minor Political Party and by minor political party candidates filing and running for state elective office.

(4) The Secretary of State designates the *2004 State Candidate's Manual: Assembly of Electors* and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by assembly of electors for state elective office.

(5) The Secretary of State designates the *2004 State Candidate's Manual: Individual Electors* and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by individual electors for state elective office. This rule is temporarily amended April 9, 2004 to adopt and approve use of a new form SEL 122P for the nomination of candidates for electors of independent candidates for President and Vice President of the United States for the 2004 general election. When SEL 122P is used, each candidate for elector, President and Vice President must complete and sign form SEL 114, Certificate of Nomination By Individual Electors. In the alternative, an independent candidate for President may use existing forms SEL 122 and SEL 114 to pursue nomination for the office in his or her own name.

(6) The Secretary of State designates the *2004 County Candidate's Manual* and associated forms as the procedures and forms to be used by county office candidates and precinct committeeperson candidates filing and running for elective office.

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

Stat. Auth.: ORS 246.120, 246.150 & 249.009

Stats. Implemented: ORS 246.120, 246.150, 249.009 & 249.720

Hist.: SD 35-1980, f. & ef. 3-6-80; SD 31-1983, f. & ef. 12-20-83; SD 5-1986, f. & ef. 2-26-86; ELECT 9-1992(Temp), f. & cert. ef. 4-9-92; ELECT 32-1992, f. & cert. ef. 10-8-92; ELECT 33-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 18-2003, f. & cert. ef. 12-5-03; ELECT 2-2004(Temp), f. & cert. ef. 4-9-04 thru 10-6-04

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**Adm. Order No.:** ELECT 3-2004

**Filed with Sec. of State:** 4-15-2004

**Certified to be Effective:** 4-15-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 165-014-0030, 165-014-0110

**Subject:** These rules are proposed for amendment to add language clarifying that signature sheets which do not contain a dated circulator's certification shall be removed during the signature verification process. This requirement had been previously adopted in OAR 165-010-0005, 165-014-0005 and 165-020-0005. Besides minor technical and editorial changes, Appendix 1 of the state sampling formula has incorporated an accounting for triplicate signatures.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-014-0030

### Statistical Sampling Procedures for State Petition

This rule is adopted to implement ORS 250.105(4) and presumes that all requirements for petition filing have been met and that the petition signature sheets, as presented, are accepted for verification. Two signature samples may be taken in order to determine if the petition contains the required number of valid signatures of electors to qualify the petition as a ballot measure. (If additional signatures are submitted prior to the deadline but after verification has occurred, an additional sample will be verified pursuant to (15)). The sampling formula referred to in this rule is contained in **Appendix 1**, which is incorporated into this rule by reference.

(1) The chief petitioners must certify upon submission of signatures that the petition contains enough unverified signatures to meet the statutory or constitutional requirements. The petition is then accepted for signature verification. If the chief petitioners cannot certify that the petition contains enough unverified signatures to meet the statutory or constitutional requirements, the petition is not accepted.

(2) The chief petitioners must separate all signature sheets by county. The chief petitioners must then sequentially number the sheets within each county prior to submission to the Secretary of State.

(3) The Secretary of State's staff will first review, and remove prior to verification, each cover and signature sheet that does not meet the following criteria:

(a) The cover and signature sheet submitted is the same as the version or one of the versions approved for circulation including the "back to back" printing requirement.

(b) The circulator signed their name following the circulator attestation and dated their signature after all signatures were collected on the sheet.

(4) The necessary information from the petition signature sheets will be entered into a computer program for the signature selection process.

(5) The size of the first sample of signatures will be fixed at 1,000. The size of the second sample of signatures will be specified such that the total number of signatures for the combined first and second sample will be at least five percent of the total number of signatures submitted for verification.

(a) A random number generator program will be used to supply a list of random numbers equal in amount to the number of signatures needed for two samples. A "first" sample list will be produced by using a count of random numbers equal to the first sample requirement. However, in all cases the first sample will be 1,000 signatures. A "second" sample list will be produced by using the remainder of the random numbers. The combined number of signatures to be used in the first and second samples will be at least five percent of the total number of signatures submitted for verification.

(b) The "first" and "second" sample list will show the petition identification number, county number, petition signature sheet number and petition sheet line number of each signature selected for verification;

(c) The signatures selected on the "first" sampling list will be color coded with a color different than the signatures on the "second" sampling list.

(6) Using the "first" and "second" random sampling selection lists as the control element, the appropriate petition signature sheets are pulled from the county stacks and the selected signatures are highlighted. If the selected signature line is a blank or crossed out line, the next available line below will be selected. If there are no available lines below, the line above will be selected. These changes will be noted on the random sampling selection list.

(7) A "First and Second Sample Summary of Results of Verification," the random sampling selection list and the selected petition signature sheets are sent to the applicable county.

(8) Upon receipt of the selected petition signature sheet(s) the county elections official will immediately begin verifying the signatures of the "first" sample. As soon as all the signatures of the "first" sample are verified, the county election official will post these results to the "First Sample" section of the Summary of Results of Verification form. The county elections official will then immediately deliver or fax these results to the Secretary of State.

(9) The Secretary of State will immediately consolidate and tabulate all delivered or faxed "Summary of Results of Verification" data for the "first" sample.

(10) The sampling formula to determine acceptance or rejection will be applied to the consolidated data from the "first" sample. If the petition is accepted as a result of the "first" sample the Secretary of State will immediately notify the county elections officials that no further verification is required. If the results of the "first" sample do not qualify the petition to the ballot, a "second" larger sample will be verified.

(11) Upon notification by the Secretary of State, the county elections official will immediately begin verifying the signatures of the "second" sample, if the petition is not accepted as a result of the "first" sample. As soon as all the signatures of the "second" sample are verified the county election official will post these results to the "Second Sample" section of the Summary of Results of Verification form. The county elections official will then immediately deliver or fax these results to the Secretary of State.

(12) The Secretary of State will immediately consolidate and tabulate all delivered or faxed "Summary of Results of Verification" data for the "second" sample. The statistical formula will be applied to combined data from the "first" and "second" sample to determine its acceptance or rejection.

(13) As soon as all signatures have been verified and the results posted to the appropriate Summary of Results of Verification form, the clerk will return the original sampled petition signature sheets and Summary Result of Verification forms to the Secretary of State within ten business days. If notified by the Secretary of State, the county election official may terminate signature verification before all signatures included in a sample have been checked.



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(14) If the results of the "first" sample do not qualify the petition the "second" sample data will be added to the "first" sample data and the combined results will be applied to the sampling formula. The formula will show that:

(a) The petition has a sufficient number of valid signatures to qualify for the ballot; or

(b) The petition does not have a sufficient number of valid signatures to qualify for the ballot.

(15) In the event additional signatures are filed pursuant to ORS 250.105(3), an additional sample will be selected solely from the second submittal of signatures.

(a) The sample size of the second submittal will be taken as the larger of 250 and that value which is directly proportional to the size of the combined "first" and "second" samples from the first submittal.

(b) The verification procedures applied to the combined "first" and "second" sample will be applied to the second submission of signatures.

(c) To determine acceptance or rejection of the initiative or referendum petition, the verification results of the second submission will be added to the verification results of the combined "first" and "second" sample of the first submission of signatures.

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

Stat. Auth.: ORS 246.150 & 250.105

Stats. Implemented: ORS 250.105(4)

Hist.: SD 4-1978(Temp), f. & ef. 7-6-78; SD 2-1979, f. & ef. 4-23-79; SD 20-1986, f. & ef. 5-23-86; ELECT 12-1994, f. & cert. ef. 6-23-94; ELECT 8-1999, f. & cert. ef. 9-3-99;

ELECT 9-2000, f. & cert. ef. 6-6-00; ELECT 3-2004, f. & cert. ef. 4-15-04

## 165-014-0110

### Statistical Sampling Procedures for Local Petitions

This rule is adopted to implement ORS 250.215, ORS 250.315, and ORS 255.175 and presumes that all requirements for petition filing have been met and that the petition signature sheets, as presented, are accepted for verification. This rule applies to any statistical sampling of initiative, referendum or recall petitions relating to counties, cities or districts. Two signature samples may be taken in order to determine if the petition contains the required number of valid signatures of electors to qualify the petition as a ballot measure. The rule designates a sampling formula to be used in determining whether a petition contains the required number of signatures of electors for petitions requiring a number of signatures exceeding 4,500. The sampling formula referred to in this rule is contained in **Appendix 1**, which is incorporated into this rule by reference.

(1) The petitioners must certify upon submission of signatures that the petition contains enough unverified signatures to meet the statutory requirements. The petition is then accepted for signature verification. If the chief petitioners can not certify that the petition contains enough unverified signatures to meet the statutory requirements, the petition is not accepted

(2) The chief petitioners must separate all signature sheets by county. The chief petitioners must then sequentially number the sheets within each county prior to submission.

(3) Prior to verification, each petition cover and signature sheet is first reviewed, and subsequently removed, if it does not meet the following criteria:

(a) The cover and signature sheet submitted is the same as the version or one of the versions approved for circulation including the "back to back" printing requirement.

(b) The circulator signed his or her name following the circulator attestation and dated that signature after all signatures were collected on the sheet.

(4) The necessary information from the petition signature sheets will be entered into a computer program for the signature selection process.

(5) The sample size of the first sample of signatures will consist of the lesser of 1,000 or 10% of the total signatures submitted for verification. The size of the second sample of signatures will be the same number used in the first sample, plus at least one additional signature.

(a) A random number generator program will be used to supply a list of random numbers equal in amount to the number of signatures needed for two samples. A "first" sample list will be produced by using a count of random numbers equal to the first sample requirement. However, in all cases the first sample will be the lesser of 1,000 or 10% of the total signatures. A "second" sample list will be produced by using the remainder of the random numbers.

(b) The "first" and "second" sample list will show the petition identification number, county number, petition signature sheet number and petition sheet line number of each signature selected for verification;

(c) The signatures selected on the "first" sampling list will be color coded with a color different than the signatures on the "second" sampling list.

(6) Using the "first" and "second" random sampling selection lists as the control element, the appropriate petition signature sheets are pulled from the county stacks and the selected signatures are highlighted. If the selected signature line is a blank or crossed out line, the next available line below will be selected. If there are no available lines below, the line above will be selected. These changes will be noted on the random sampling selection list.

(7) A "Summary of Results of Verification" form, will be used to record the verification results.

(8) Upon completion of the procedures required in sections (1) through (7) of this rule, the county elections official will immediately begin verifying the signatures of the "first" sample. As soon as all the signatures of the "first" sample are verified, the county election official will post these results to the "First Sample" section of the Summary of Results of Verification form.

(9) The county elections official will immediately consolidate and tabulate all "first" sample data contained on the Summary of Results of Verification form.

(10) The sampling formula to determine acceptance or rejection will be applied to the consolidated data from the "first" sample. If the petition is accepted as a result of the "first" sample, no further verification is required. If the results of the "first" sample do not qualify the petition to the ballot, the "second" larger sample will be verified.

(11) The county elections official will immediately begin verifying the signatures of the "second" sample, if the petition is not accepted as a result of the "first" sample. As soon as all the signatures of the "second" sample are verified the county election official will post these results to the "Second Sample" section of the Summary of Results of Verification form.

(12) The county elections official will immediately consolidate and tabulate all "second" sample data contained on the Summary of Results of Verification form.

(13) If the results of the "first" sample do not qualify the petition, the "second" sample data will be added to the "first" sample data and the combined results will be applied to the sampling formula. The formula will show that:

(a) The petition has a sufficient number of valid signatures to qualify for the ballot; or

(b) The petition does not have a sufficient number of valid signatures to qualify for the ballot.

(14) In the event additional signatures are filed pursuant to ORS 250.165(7), 250.265(7), or 255.135(7), the county elections official has the option to either verify all additional signatures or to continue to use the sampling process described in this rule. If the county elections official chooses to verify additional signatures using the sampling process, samples will be selected solely from each additional submittal(s) of signatures.

(a) The sample size of any additional submittal(s) will be directly proportional to the combined "first" and "second" samples from the first submittal or 100 whichever is greater.

(b) The verification procedures applied to the combined "first" and "second" sample will be applied to any additional submittal of signatures.

(c) To determine acceptance or rejection of the initiative or referendum petition, the verification results of any additional submittal will be added to the verification results of the combined "first" and "second" sample of the first submission of signatures.

[ED. NOTE: Appendix referenced is available from the agency.]

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

Stats. Implemented: ORS 250.215, 250.315 & 255.175

Hist.: ELECT 19-1991(Temp), f. & cert. ef. 12-20-91; ELECT 13-1993, f. & cert. ef. 4-16-

93; ELECT 7-2000, f. & cert. ef. 4-5-00; ELECT 3-2004, f. & cert. ef. 4-15-04

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**Adm. Order No.:** ELECT 4-2004

**Filed with Sec. of State:** 4-15-2004

**Certified to be Effective:** 4-15-04

**Notice Publication Date:** 3-1-04

**Rules Amended:** 165-020-0050, 165-020-0060

**Subject:** 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

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950 and SEL950A provide a detailed accounting based on each of these methods.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-020-0050

### Purpose

(1) This rule provides a uniform billing system for state, county, city and special district elections as authorized under ORS 246.179, 254.046, and 255.305:

(a) All chargeable costs incurred by the county election officer for the conduct of an election held for the state on a date other than the primary or general election, shall be paid by the state, if provided by the act calling for the election or pursuant to ORS 246.179;

(b) All chargeable costs incurred by the county election officer for the conduct of an election held for a city on a date other than the primary or general election, shall be paid by the city;

(c) All chargeable costs incurred by the county election officer for the conduct of an election held for a special district shall be paid by the special district.

(2) An "Election Equipment Amortization Worksheet" (SEL 950, SEL 950A, or SEL 950B), "Average Ballots Cast/Average Aggregate Registration Worksheet" (SEL 951), "Allocated Cost Worksheet for Polling Place Elections" (SEL 952PP), "Allocated Cost Worksheet for Vote By Mail Elections" (SEL 952VBM), and "Local Elections Billing Worksheet" (SEL 953) are adopted by reference and designated for use to detail all costs to be billed to each electoral district holding an election.

(3) Any chargeable cost billed for an election shall be supported by such documentation as copies of payroll registers, invoices, vouchers, sales slips, billings, and receipts. Any cost not specified in this rule, or any unsupported chargeable cost, need not be paid.

(4) Documentation will be provided to the electoral districts upon request.

(5) Any electoral district bills and supporting documentation shall be subject to audit by the secretary of state at any time for the purpose of verifying the accuracy of the chargeable costs.

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

Stat. Auth.: ORS 246.150, 246.179 & 255.305

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

Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90; ELECT 11-2000, f. & cert. ef. 6-7-00; ELECT 10-2003, f. & cert. ef. 9-3-03; ELECT 4-2004, f. & cert. ef. 4-15-04

## 165-020-0060

### Computation of Costs

(1) The Election Equipment Amortization Worksheet Form SEL 950, SEL 950A, or SEL 950B shall be the form used for calculating the amortization of election equipment.

(2) The total amortization costs billed to electoral districts over the years the election equipment is used cannot exceed the total cost of purchasing, operating and maintaining the equipment during the years the equipment is used.

(3) Amortization of election equipment is not mandatory; however, any county election official who chooses to amortize such equipment must use the method designated by this rule.

(4) The Average Ballots Cast/Average Aggregate Registration Worksheet Form SEL 951 shall be the form used for computing the average number of ballots cast per election for prior four years.

(5) The Allocated Cost Worksheet Form SEL 952 shall be the form used for computing the allocated cost of the election.

(6) The Local Elections Billing Worksheet Form SEL 953 shall be the form used for computing local election costs.

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

Stat. Auth.: ORS 246.120, 246.150, 246.179, 246.540, 254.046, 255.305

Stats. Implemented: ORS 246.179, 246.540, 251.365, 254.046 & 255.305

Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90; ELECT 13-1997, f. & cert. ef. 10-27-97; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-2003, f. & cert. ef. 9-3-03

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## Teacher Standards and Practices Commission Chapter 584

**Adm. Order No.:** TSPC 1-2004(Temp)

**Filed with Sec. of State:** 3-17-2004

**Certified to be Effective:** 3-17-04 thru 9-12-04

**Notice Publication Date:**

**Rules Adopted:** 584-017-0042, 584-036-0067

**Rules Amended:** 584-040-0005

**Subject:** 1. Grants teacher education institutions authority to determine teaching competency if the required 15 weeks of student teaching cannot be met due to a shortened school year imposed on school districts by budget constraints.

2. Grants a licensed educator that possesses any Initial License on or before October 3, 2003, one extra year on the life of their license to complete CTL requirements.

3. Requires teachers to provide evidence of completion of an inservice program in their underlying subject-matter area.

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

## 584-017-0042

### Waivers for Student Teaching Requirements

(1) An institution may grant a waiver of the student teaching requirements pursuant to OAR 584-017-0045(2) in the event a candidate for teacher licensure is unable to complete the student teaching timeline requirements contained within OAR 584-017-0180(3) due to an early school district closure.

(2) In order to grant the waiver, the institution must submit a waiver to the Executive Director for approval pursuant to OAR 584-017-0040 which includes the following:

(a) A stipulation that the conditions contained within OAR 584-017-0045(2) for each candidate waiver have been met;

(b) Identity of the school district where the student teacher is placed; and

(c) The number of candidates affected by the early closures.

(3) The institution must report all the above information within the 2003-2004 annual report to TSPC.

(4) Institutions who grant a waiver pursuant to this rule shall not be considered to have made a minor or major modification to their approved program for the 2003-2004 academic year.

(5) The Executive Director shall provide the Commission with all requested and approved temporary waivers pursuant to this rule.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147

Hist.: TSPC 1-2004(Temp), f. & cert. ef. 3-17-04 thru 9-12-04

## 584-036-0067

### Temporary One-Year Extension of Initial Licenses

(1) Any licensed educator who possesses an Initial Teaching License (584-060-0011), an Initial School Counselor License (584-070-0011), an Initial School Psychologist License (584-070-0211) or an Initial Administrator License (584-080-0011) that was granted on or before October 3, 2003, is granted one extra year on the life of their license to complete the Continuing Licensure requirements.

(2) The TSPC will administer this extension internally by issuing a letter to the licensees who are entitled to the one year extension and altering the expiration date on their license within the TSPC database. Some license holders may receive the extra year upon renewal of their license.

(3) An educator can check on her or his expiration date by accessing their records on the TSPC Web site on or after June 1, 2004.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.136

Hist.: TSPC 1-2004(Temp), f. & cert. ef. 3-17-04 thru 9-12-04

## 584-040-0005

### Standard Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Standard Teaching License.

(2) The Standard Teaching License is issued for five years and is renewable repeatedly under conditions specified below. It is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty.

(3) The applicant must provide verification of successful teaching experience in Oregon schools while holding a Basic Teaching License or a Five-Year Regular License valid for the assignment in one of the following ways:

(a) Effective January 1, 1990, three years of one-half time or more experience is required; or

(b) For persons holding a Basic Teaching License prior to January 1, 1990, two years of experience or three years of one-half time or more experience, whichever is less.

(4) The applicant must provide evidence of one of the following:

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(a) Completion of an approved Standard Teaching License program which culminates with forty-five quarter hours of upper-division or graduate study beyond the bachelor's degree and includes the following:

(A) Verification of completion of the professional preparation described in OAR 584-040-0008 unless the application is for a Standard Teaching License with a standard special education endorsement, in which case the professional preparation in OAR 584-040-0008 is not required; and

(B) Evidence of completion of the academic preparation for one of the standard endorsements outlined in OAR 584-040-0010 through 584-040-0300 in a field in which the basic endorsement is held, or completion of two of the basic subject matter endorsements outlined in OAR 584-038-0010 through 584-038-0280. Fifteen of the quarter hours that are required for the endorsement(s) must be at graduate level; or

(b) Completion of a master's degree in education, subject-matter, school administration, school counseling or school psychology from an approved teacher education institution; or

(c) Completion of an inservice program offered by an approved teacher education program granting credit for the experience, culminating in either a master's degree or 45 quarter hours of upper-division or graduate study beyond the bachelor's degree.

(5) An applicant who does not complete the requirements of (4)(a)(B) above, will not be given a Standard Endorsement, but would retain any Basic Endorsement that the applicant holds.

(6) The applicant must have a passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission.

(7) The applicant must verify recent education experience in one of the following ways during the three-year period immediately preceding application:

(a) Completion of an approved teacher education program; or

(b) Beginning and completion in a public school or regionally accredited private school in a U.S. jurisdiction of at least one academic year as a full-time licensed educator or two consecutive years as a half-time licensed educator on any license appropriate for the assignment, or equivalent experience as in a state or federal school; or

(c) Receipt of 6 semester hours or 9 quarter hours of academic credit, germane to teaching licensure, from a regionally accredited college or university; or

(d) Completion of one hundred eighty days of teaching in Oregon schools on a teaching license valid for the assignment; or

(e) Compliance with provisions of OAR 584-048-0020, or

(f) A combination of such experience and credit may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience.

(8) The Standard Teaching License may be renewed under the provisions of 584-048-0035 together with completion of the professional development requirements as described in 584-090-0005.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-342.200

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 3-1988, f. & cert. ef. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 1-2004(Temp), f. & cert. ef. 3-17-04 thru 9-12-04

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**Adm. Order No.:** TSPC 2-2004

**Filed with Sec. of State:** 3-17-2004

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**Rules Adopted:** 584-100-0002, 584-100-0006, 584-100-0011, 584-100-0016, 584-100-0021, 584-100-0023, 584-100-0026, 584-100-0031, 584-100-0036, 584-100-0041, 584-100-0046, 584-100-0051, 584-100-0056, 584-100-0061, 584-100-0066, 584-100-0071, 584-100-0091, 584-100-0096, 584-100-0101, 584-100-0106, 584-100-0111

**Rules Amended:** 584-036-0017

**Subject:** 1. Establishes requirements and procedures for highly qualified teachers under the federal No Child Left Behind Act.

2. Allows more flexibility to schools in supervising distance-learning courses.

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

## 584-036-0017

### Distance Learning Teachers

(1) Except as provided by section (3) of this rule, any teacher employed by a distance learning program in Oregon, employed to deliver education outside of the school district in Oregon, shall hold a valid Oregon teaching license appropriate for the grade level and subject matter being taught.

(2) Except as provided by section (3) of this rule, an out of state distance learning teacher employed by a distance learning program in or outside of Oregon shall provide verification satisfactory to the Commission that the teacher holds a current valid teaching license from any state for the appropriate grade level and subject matter.

(3) A school district may contract with a post-secondary institution accredited by the Northwest Association of Schools and Colleges for distance instruction at the high school level provided restrictions and approvals required by ORS 342.173 have been met.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-342.200, 342.400 & ORS 342.985

Hist.: TS 8-1989(Temp), f. & cert. ef. 12-13-89; TS 2-1990, f. 6-1-90, cert. ef. 6-14-90; TS 1-1996, f. & cert. ef. 1-29-96; TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0002

### Purpose

(1) These rules establish requirements and procedures under the federal No Child Left Behind Act that mandates all teachers in core academic areas meet the law's definition of "highly qualified" by the end of the 2005-2006 school year.

(2) Additionally, after the first day of the 2002-2003 school year, all teachers hired in all programs supported with Title IA funds must be "highly qualified."

(3) Teachers new to Oregon licensure must first be evaluated under the existing Oregon administrative rules to become licensed, and then meet the requirements for "highly qualified teacher" appropriate for the license with which they qualify.

(4) The rules in division 100 apply only to No Child Left Behind classroom.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0006

### Definitions

These definitions apply only to division 100.

(1) "Advanced Credential or Advanced Certification": A Continuing Teaching License, or a Standard Teaching License or a certificate from the National Board for Professional Teaching Standards in the subject area, for teachers holding middle level or secondary authorization levels.

(2) "Bachelor's Degree":

(a) A degree obtained from a regionally accredited institution in the United States; or

(b) A degree from a foreign institution that is appropriately accredited as affirmed through the Oregon Office of Degree Authorization; or

(c) A higher degree in the arts or sciences or an advanced degree in the professions from a regionally-accredited institution may validate a non-regionally accredited bachelor's degree.

(3) "Complete School Year": Any related teaching assignment for 135 instructional days in a school year. Exceptions may be appealed to the Executive Director pursuant to OAR 584-052-0027.

(4) "Core Academic Subjects":

(a) English (Language Arts);

(b) Reading or Language Arts (Reading or Language Arts)

(c) Mathematics (Basic or Advanced Mathematics);

(d) Science (Integrated Science, Biology, Chemistry, or Physics);

(e) Foreign Languages (Spanish, French, German, Russian, Japanese, or Latin);

(f) Civics and Government (Social Studies);

(g) Economics (Social Studies);

(h) Arts (Art, Music, or Drama);

(i) History (Social Studies);

(j) Geography (Social Studies).

(5) "Elementary Classroom": Any combination of self-contained classrooms in grades preprimary through eight in any school.

(6) "Elementary Teacher": An educator teaching in a self-contained classroom grades preprimary through eight.

(7) "Middle-level Classroom": Any classrooms in grades seven or eight organized departmentally by subject matter.

# ADMINISTRATIVE RULES

(8) "New to the Profession": A teacher who has been teaching on an approved license in any U.S. jurisdiction in a public or regionally accredited private school less than three complete school years. (See definition of "Complete School Year" above)

(9) "Newly Hired Teacher": A teacher hired after the first day of the 2002-2003 school year in a Title IA program or Title IA school-wide program. The teacher is not considered "newly hired" if the teacher is already employed in the district and transferred into a Title IA program or Title IA school-wide program.

(10) "Not New to the Profession": A teacher who has been teaching on an approved license in any U.S. jurisdiction in a public or private school for a total of three or more complete school years. (See definition of "Complete School Year" above.)

(11) "Rigorous State Test":

(a) The Multiple Subjects Assessment for Teachers (MSAT) test for elementary or middle level (See OAR 584-100-0023 for more details); or

(b) The appropriate Praxis II or NTE Subject-matter test for middle-level and high school; or

(c) Satisfaction of the TSPC alternative assessment procedure; or

(d) Another state's subject-matter licensure exam designated as a "rigorous state test."

(12) "Secondary School":

(a) A combination of grades ten through twelve in districts providing a junior high school containing grade nine; or

(b) Any combination of grades nine through twelve organized as a separate unit; or

(c) Grades nine through twelve housed with grades preprimary through twelve.

(13) "Self-contained Classroom": An assignment for teaching in grades preprimary through eight in which the teacher has full responsibility for the curriculum.

(14) "Subject-matter competency": Subject matter competency may be demonstrated through any one of the following:

(a) Passing the appropriate "rigorous state test" (see rule above); or

(b) Having a major in the subject-matter area (does not apply to elementary endorsements or authorizations); or

(c) Having coursework equivalent to a major in the subject-matter area (does not apply to elementary endorsements or authorizations); or

(d) Having a graduate degree in the subject matter area (does not apply to elementary endorsements or authorizations); or

(e) Satisfying the Highly Objective Uniform State Standard of Evaluation (HOUSSE) requirements set forth in these rules if have taught three years or more.

(15) "Undergraduate Major or Coursework Equivalent to a Major": Forty-five quarter hours or thirty semester hours of undergraduate or graduate coursework in subject matter numbered 100 level or above, transcribed by a regionally accredited college or university. (See definition of "Bachelor's Degree" for undergraduate credits obtained from an unaccredited college or university.)

Stat. Auth: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0011

### Highly Qualified Elementary Teacher New to the Profession

(1) A teacher who has been teaching on an approved license in any school in a U.S. jurisdiction less than three complete school years must meet the following criteria:

(2) Hold one of the following licenses:

(a) A Basic Teaching License; or

(b) An Initial Teaching License; or

(c) A Preliminary Teaching License; or

(d) An *Approved NCLB Alternative Route Teaching License* as contained within OAR 584-100-0041; and

(3) Be properly assigned to a self-contained classroom in grades preprimary through eight.

Stat. Auth: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0016

### Highly Qualified Elementary Teacher Not New to the Profession

(1) A teacher who has been teaching on an approved license in any school in a U.S. jurisdiction for a total of three or more complete school years must meet the following criteria:

(2) Hold a Basic, Standard, Initial, Continuing, Five-Year Elementary Teaching License, or Preliminary Teaching License;

(3) Satisfied one of the following:

(a) Pass the appropriate rigorous state test; or

(b) Meet one of the Elementary Highly Objective Uniform State Standard of Evaluation (HOUSSE) standards as follows:

(A) Complete an approved elementary teacher education program or the coursework equivalent to sixty-quarter hours distributed as follows:

(i) Eighteen quarter or twelve semester hours in language arts;

(ii) Twelve quarter or eight semester hours in mathematics;

(iii) Nine quarter or six semester hours in science;

(iv) Nine quarter or six semester hours in U.S. history, cultural geography, and other social sciences;

(v) Three quarter or two semester hours in health education;

(vi) Three quarter or two semester hours in physical education;

(vii) Three quarter or two semester hours in music education;

(viii) Three quarter or two semester hours in art education; or

(B) Complete the TSPC Alternative Assessment procedure; or

(C) Obtain a certificate as Early Childhood Generalist, Early Childhood Art, Early Childhood Music, or Early Childhood ESOL from the National Board for Professional Teaching Standards; or

(D) Hold a Standard Elementary License; or

(E) Hold a master's degree; and

(c) Be properly assigned to a self-contained classroom in grades preprimary through eight.

Stat. Auth: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0021

### Highly Qualified Middle Level Teacher New to the Profession

(1) A teacher who has been teaching on an approved license in a U.S. jurisdiction less than three complete school years must meet the following criteria:

(2) Hold a Basic, Initial, *Approved NCLB Alternative Route Teaching License* or Preliminary Teaching License in any one of the core academic areas and satisfy one of the following:

(a) Pass the prescribed rigorous state exam in the subject matter area

(See OAR 584-100-0023 details related to subject-matter competency); or

(b) Hold an undergraduate major in the subject matter area; or

(c) Hold a graduate degree in the subject matter area; or

(d) Complete coursework equivalent to an undergraduate major; and

(3) Be properly assigned in the subject matter area in a departmental classroom in grades seven or eight.

Stat. Auth: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0023

### Multiple Subject Assessment for Teachers (MSAT) Test for Middle-Level Subject-Matter Competency

(1) A teacher who has passed the Multiple Subjects Assessment for Teachers (MSAT) test as a rigorous state test may be qualified to teach multiple core academic subjects in math, language arts, social studies and science only.

(2) MSAT scores to determine whether a teacher is eligible to have core academic subject matter area competency based upon performance on this test will be evaluated as follows:

(a) The composite score of 310 required to pass the MSAT in Oregon represents 77.5% success rate overall on the test.

(b) To be qualified in one or more core academic subject matter areas, based on performance on the MSAT, a candidate must pass each subject in which they wish to be "highly qualified" by at least 77.5%.

(3) The calculation will be as follows: The total number of raw points possible for each core academic subject matter area is achieved by adding together the total points available in both the content knowledge and content area exercises portions of that core academic subject only. The total number of raw points achieved by the test candidate must meet or exceed 77.5% of the total number of points available for that core academic subject matter area.

(4) If the candidate meets or exceeds 77.5% of the total points available in a core academic subject matter area, the candidate meets the requirements for having passed a rigorous state test in the core academic subject matter area at the middle level only.

(5) This analysis only applies for teachers wishing to seek multiple subject highly qualified designations on Initial Teaching Licenses with middle-level authorizations or Basic Elementary Teaching Licenses.

Stat. Auth: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

# ADMINISTRATIVE RULES

## 584-100-0026

### Highly Qualified Middle Level Teacher Not New to the Profession

(1) A teacher who has been teaching on an approved license in a U.S. jurisdiction for a total of three or more complete school years must meet the following criteria:

(2) Hold a Basic, Standard, Initial, Continuing, Five-Year, Five-Year Secondary, or Preliminary Teaching License and satisfy one of the following:

- (a) Pass the prescribed rigorous state exam; or
- (b) Hold an undergraduate major in the subject area(s); or
- (c) Hold a graduate degree in the subject area(s); or
- (d) Complete coursework equivalent to an undergraduate major; or
- (e) Hold advanced certification or credentialing; or
- (f) Meet the Middle Level HOUSSE requirements as follows:

(A) Hold a multiple-subjects endorsement or authorization on the license;

(B) Have taught on an approved license, or on a legal or approved misassignment and/or conditional assignment in the subject area at least one period or more for a total of three or more complete school years;

(C) Have completed twenty-four quarter or sixteen semester hours from a regionally accredited college or university in the subject area; and

(3) Be properly assigned in the subject area in a departmental classroom in grades seven or eight.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0031

### Highly Qualified Secondary (grades 9-12) Teacher New to the Profession

(1) A teacher who has been teaching on an approved license in a U.S. jurisdiction less than three complete school years must meet the following criteria:

(2) Hold a Basic or Initial Teaching License in the core academic subjects taught; or

(3) Hold an *Approved NCLB Alternative Route Teaching License*, see OAR 584-100-0041; or

(4) Hold a Preliminary Teaching License contained in OAR 584-100-0046; and

(5) Be properly assigned in the subject area in grades nine through twelve.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0036

### Highly Qualified Secondary (grades 9-12) Teacher Not New to the Profession

(1) A teacher who has been teaching on an approved license in a U.S. jurisdiction for a total of three or more complete school years must meet the following criteria:

(2) Hold a Basic, Standard, Initial, Continuing, in the core academic subjects taught; or

(3) Hold a Preliminary Teaching License contained in OAR 584-100-0046; and

(4) Be properly assigned in the subject matter area in grades nine through twelve.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0041

### Approved NCLB Alternative Route Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant shall be granted an *Approved NCLB Alternative Route Teaching License*.

(2) The application must be filed jointly by the hiring district and the teacher seeking the license.

(3) Districts hiring a highly qualified teacher based on the *Approved NCLB Alternative Route Teaching License* must ensure that the license has been obtained by the teacher prior to assignment within the district.

(4) The *Approved NCLB Alternative Route Teaching License* shall be restricted to use within the district that has jointly applied for it with the teacher.

(5) The license is not transferable to another district. Should the teacher seek to obtain another *Approved NCLB Alternative Route Teaching License* with another district, the license is only valid for the remainder of the three years from the initial date of the license.

(6) The district must submit an approved plan with the licensee's application that describes how the teacher will receive high-quality professional development that is sustained, intensive and classroom-focused before and while teaching in the district. The plan must also include how the teacher will be making progress toward completing full state licensure requirements in the next three years.

(7) The license expires exactly three-years from the date of issue and is not subject to the 120-day grace period.

(8) To be eligible for an *Approved NCLB Alternative Route License*, the applicant must:

- (a) Hold a bachelor's degree;
- (b) Demonstrate core academic subject matter competency by:

(A) Passing the TSPC approved rigorous state test required for the grade-level and subject-matter area; or

(B) Holding an undergraduate major or coursework equivalent in the core academic subject in the teaching area (does not apply to elementary authorizations); or

(C) Holding a graduate degree in the core academic subject in the teaching area (does not apply to elementary authorizations).

(9) Per federal law:

(a) Teachers on the *Approved NCLB Alternative Route Teaching License* are considered highly qualified for only three years; and

(b) The license is not renewable and is not eligible for any extension.

(10) Teachers who have taught on a Restricted Transitional License for one-year or less, upon application with a district may be eligible for the *Approved NCLB Alternative Route Teaching License* provided the requirements of section (8)(a) and (b) of this rule are met.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0046

### Preliminary Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant shall be granted a Preliminary Teaching License for up to one-year.

(2) An applicant is eligible for a Preliminary Teaching License only if the applicant is seeking to be hired into a Title IA program or Title IA school-wide program.

(3) To be eligible for a Preliminary Teaching License, the applicant must meet the following requirements:

- (a) Hold a bachelor's degree;
- (b) Document completion of a teacher education program in any state;
- (c) Demonstrate knowledge of applicable civil rights laws by completing the required civil rights affidavit;
- (d) Demonstrate subject matter competency as defined in OAR 584-100-0006(14);

(e) Provide a letter from the school district attesting that the position being sought is either in a Title IA program or a Title IA school-wide program; and

- (f) Furnish fingerprints in the manner prescribed by the Commission;
- (g) If do not hold a current first aid card, must obtain an approved first aid card within 90 days of receiving the license.

(4) At the expiration of one-year, in order to remain highly qualified, educators holding a Preliminary Teaching License must meet all remaining requirements for the Initial Teaching License.

(5) The Preliminary Teaching License is valid for one year only, and cannot be renewed or extended.

(6) The Preliminary Teaching License is not eligible for district conditional assignment permits.

(7) Eligible applicants will also receive a three-year unrestricted Transitional Teaching License pursuant to ORS 584-060-0161.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0051

### Highly Qualified Professional Technical Teacher

All professional technical teachers who teach professional technical courses that contain core academic subjects, for which students receive core academic credit, must meet the requirements for highly qualified secondary teachers as defined in OAR 584-100-0031 for that particular core academic subject.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

# ADMINISTRATIVE RULES

## 584-100-0056

### Highly Qualified Substitute Teacher

Teachers substituting more than four continuous weeks in a core academic subject must be highly qualified.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0061

### Special Education Teachers Generally

(1) Special education teachers who are providing instruction in core academic subjects must meet the "highly qualified" standards of the law.

(2) Special educators who do not directly instruct students in any core academic subject, or who provide only consultation to highly qualified teachers of core academic subjects in adapting curricula, using behavioral supports and interventions, and selecting appropriate accommodations, are not subject to the same requirements that apply to teachers of core academic subjects.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0066

### Highly Qualified Elementary Special Education Teacher

To be considered highly qualified an elementary special education teacher must:

(1) Meet the requirements for the "Highly Qualified Elementary Teacher" new or not new to the profession;

(2) Hold the appropriate Oregon special education endorsement; and

(3) Teach only in pre-primary through grade eight in a self-contained special education classroom.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0071

### Highly Qualified Middle-Level or Secondary Special Education Teacher

To be considered highly qualified a middle-level or secondary special education teacher must:

(1) Meet the requirements for the "Highly Qualified Middle-Level or Secondary Teacher" new or not new to the profession;

(2) Hold the appropriate Oregon special education endorsement; and

(3) Have a partnership relationship with a highly qualified teacher if teaching a core academic subject in which the teacher is not highly qualified.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0091

### Licensed and Registered Elementary Charter School Teacher

Licensed and registered elementary charter school teachers teaching in pre-primary through grade eight self-contained classrooms must meet the following criteria:

(1) Licensed teachers must meet the highly qualified teacher definition for new or not new to the profession for elementary teachers.

(2) Registered teachers must hold a bachelor's degree and demonstrate subject matter competency by passing the appropriate rigorous state test or meeting any one of the HOUSSE standards contained within OAR 584-100-0016.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0096

### Licensed and Registered Middle-Level or Secondary Charter School Teacher

(1) Licensed middle-level or secondary charter school teachers teaching in departmentalized middle level grades seven or eight or in secondary grades nine through twelve must meet the highly qualified teacher definition for new or not new to the profession for middle-level or secondary teachers.

(2) Registered middle-level or secondary charter school teachers teaching in departmentalized middle level grades seven or eight or in secondary grades nine through twelve must hold a bachelor's degree and must demonstrate subject matter competency by having one of the following:

(a) A passing score on the appropriate rigorous state test in the subject area; or

(b) An undergraduate major in the subject area; or

(c) A graduate degree in the subject area; or

(d) Coursework equivalent to an undergraduate major in the subject area.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0101

### Licenses Considered "Full State Certification"

The following Oregon Teaching Licenses are considered to meet full state certification under the No Child Left Behind federal act:

(1) Basic Teaching License; or

(2) Standard Teaching License; or

(3) Initial Teaching License; or

(4) Continuing Teaching License; or

(5) Five-Year Elementary Teaching License; or

(6) Five-Year Secondary Teaching License; or

(7) *Approved NCLB Alternative Route Teaching License*; or

(8) Preliminary Teaching License.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0106

### Licenses Not Considered to be "Full State Certification"

The following Oregon Teaching Licenses are not considered to meet full state certification under the No Child Left Behind federal act:

(1) Expedited Service License (until final license is issued).

(2) Personnel Service Licenses:

(a) School Counseling;

(b) School Psychologist;

(c) Supervisor.

(3) Limited Student Services License.

(4) Restricted or unrestricted Transitional Counselor License.

(5) Restricted or unrestricted School Psychologist License.

(6) Teaching Associate License.

(7) Any Substitute Teaching License.

(8) American Indian Languages License.

(9) Emergency Teaching License.

(10) Unrestricted Transitional Teaching License.

(11) Restricted Transitional Teaching License (See OAR 584-100-0041 for possible *Approved NCLB Alternative Route Teaching License* eligibility.)

(12) Limited Teaching License.

(13) Any Administrative License.

(14) Any approved conditional assignment permit.

Stat. Auth: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

## 584-100-0111

### Non-Core Academic Subjects

A teacher need not be highly qualified under the federal act in the following subjects taught in departmental middle, junior high or high schools:

(1) Basic Early Childhood Education;

(2) Business courses other than Economics;

(3) Educational Media;

(4) Family and Consumer Sciences;

(5) Health Education;

(6) Technology Education (non-vocational);

(7) Physical Education;

(8) Basic Adapted Physical Education;

(9) Professional Technical Endorsements:

(a) Communication Journalism;

(b) Communications Technologies;

(c) Design and Applied Arts;

(d) Administrative Services;

(e) Financial Services;

(f) Hospitality & Tourism;

(g) Marketing/Management;

(h) Health Services;

(i) Leisure & Fitness;

(j) Education;

(k) Family & Consumer Sciences;

(l) Personal Services;

(m) Legal & Protective Services;

(n) Social Services;

# ADMINISTRATIVE RULES

- (o) Computer Technology;
  - (p) Construction;
  - (q) Engineering Technology;
  - (r) Mechanical Systems;
  - (s) Manufacturing Technology;
  - (t) Agricultural Science & Technology;
  - (u) Forestry/Natural Resources; and
  - (v) Integrated Environmental Technology
- (10) Foreign Languages not considered core academic subject:
- (a) Greek;
  - (b) Hebrew;
  - (c) Mandarin;
  - (d) Cantonese;
  - (e) Korean;
  - (f) Vietnamese;
  - (g) Filipino associated languages;
  - (h) Native American Languages;
  - (i) African Languages;
  - (j) Sign Language; and
  - (k) Other languages for which an endorsement is not required.
- (11) Law Studies;
- (12) Consumer Law;
- (13) Business Law;
- (14) Psychology;
- (15) Sociology;
- (16) Anthropology;
- (17) Philosophy;
- (18) World Religions.
- Stat. Auth.: ORS 342  
Stats. Implemented: ORS 342.125  
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04

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**Veterinary Medical Examining Board**  
**Chapter 875**

**Adm. Order No.:** VMEB 1-2004  
**Filed with Sec. of State:** 4-2-2004  
**Certified to be Effective:** 4-2-04  
**Notice Publication Date:** 1-1-04  
**Rules Amended:** 875-010-0030

**Subject:** The amendment was made when ECFVG Program candidates were required to wait up to two years to sit for the CPE. The program has improved site availability and frequency of testing opportunities; therefore it is no longer necessary to provide an exception to requirements for ECFVG applicants.

**Rules Coordinator:** Lori V. Makinen—(503) 731-4051

**875-010-0030**

**Qualifications for Licenses and Permits**

(1) A graduate of a veterinary college or veterinary department of a university or college of good standing and repute as used in ORS 686.045(1), 686.065, and in any other references in ORS Chapter 686 means:

(a) A person who is graduated from a veterinary college or school or department of a university accredited by the American Veterinary Medical Association; or

(b) A person who has earned a certificate issued by the Educational Commission for Foreign Veterinary Graduates (ECFVG) of the American Veterinary Medical Association.

(2) Temporary and active licenses will not be issued to applicants who do not have at least one year experience, as set out in ORS 686.045(3) and 686.065(1)(b).

(3) Applicants who have committed violations of veterinary practice laws and rules in other states, provinces or countries, or who have documented history of incompetence or engaging in acts involving dishonesty, violence against persons or animals, illegal sale or use of drugs, substance abuse, acts of unfairness, or disrespect for the rights of others or for the law may be denied licensure.

(4) Making an intentional material false statement or omission on application or otherwise to the Board may be grounds for denial of licensure.

Stat. Auth.: ORS 686.210  
Stats. Implemented: ORS 686.045 & 686.065  
Hist.: VE 4-1978 f. & ef. 2-21-78; VME 1-1987, f. & ef. 12-22-87; VME 2-1990, f. 1-31-90, cert. ef. 2-1-90; VME 2-1994, f. & cert. ef. 11-30-94; VMEB 1-1999, f. & cert. ef. 1-8-99; VMEB 3-1999, f. & cert. ef. 2-18-99; VMEB 1-2000, f. & cert. ef. 1-6-00; VMEB 1-2004, f. & cert. ef. 4-2-04

**Adm. Order No.:** VMEB 2-2004  
**Filed with Sec. of State:** 4-2-2004  
**Certified to be Effective:** 4-2-04  
**Notice Publication Date:** 1-1-04  
**Rules Amended:** 875-010-0070

**Subject:** The amendment of Oregon Administrative Rule 875-010-0070 is needed to establish authority for the Board to modify or add qualifying examinations for applicants and to reflect housekeeping changes to the name of the organization administering the national licensing examination.

**Rules Coordinator:** Lori V. Makinen—(503) 731-4051

**875-010-0070**

**Definitions and Requirements**

(1) "North American Veterinary Licensing Examination (NAVLE)": This test is created by the National Board of Veterinary Medical Examiners (NBVME) to test a candidate's diagnostic skills and comprehensive veterinary knowledge. The NAVLE is required for licensing in Oregon, except as provided in OAR 875-010-0075(5). Effective November 2000, the NAVLE replaces the National Board Examination (NBE) and Clinical Competency Test (CCT). The Board may choose to certify candidates' eligibility or require applicants to apply in another state. Candidates for the NAVLE must be senior students at or graduates of AVMA accredited or approved schools or colleges of veterinary medicine, or candidates enrolled in the Educational Commission for Foreign Veterinary Graduates (ECFVG) program. NAVLE will be administered in two testing windows in the fall (November-December) and spring (April). Candidates must apply to the Board 92 days prior to test dates.

(2) "Oregon Jurisprudence Exam": This examination shall test the applicant's knowledge of ORS Chapter 686, and OAR chapter 875. This shall be an open book exam and shall be completed and submitted as part of the application for veterinary licensure.

(3) National Board of Veterinary Medical Examiners (NBVME) is the sole provider of the NAVLE. The NBVME will report the scores of NAVLE to the Board.

(4) All applicants for veterinary license must pass the NBE, CCT or NAVLE, the Oregon Jurisprudence Exam, or other tests or examinations required by the Board:

(a) The passing score for NAVLE shall be 425. If the National Board Examination (NBE) and/or Clinical Competency, (CCT) was taken December, 1992, or later, the candidate must receive a passing score according to the criterion-referenced scoring method implemented by the Professional Exam Service in December, 1992;

(b) The passing score on the Oregon Jurisprudence Exam shall be no less than 95 percent correct answers.

(5) Applications from individuals who have committed violations of veterinary practice laws and rules in other states, provinces or countries, or who have documented history of incompetence or engaging in acts involving dishonesty, violence against persons or animals, sale or use of illegal drugs, substance abuse, acts of unfairness, or disrespect for the rights of others or for the law may be denied.

(6) Making an intentional material false statement or omission on application or otherwise to the Board may be grounds for denial of application.

Stat. Auth.: ORS 686.210  
Stats. Implemented: ORS 686.075  
Hist.: VME 1-1987, f. & ef. 12-22-87; VME 2-1989, f. 8-29-89, cert. ef. 10-1-89; VME 2-1992, f. & cert. ef. 10-9-92; VME 1-1995, f. & cert. ef. 10-27-95; VMEB 2-1999, f. & cert. ef. 1-8-99; VMEB 4-1999, f. & cert. ef. 2-18-99; VMEB 3-2000, f. & cert. ef. 6-21-00; VMEB 2-2004, f. & cert. ef. 4-2-04

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

**Adm. Order No.:** WRD 1-2004  
**Filed with Sec. of State:** 3-17-2004  
**Certified to be Effective:** 3-17-04  
**Notice Publication Date:** 12-1-03  
**Rules Adopted:** 690-380-8002, 690-380-8004

**Rules Amended:** 690-380-2130, 690-380-8000, 690-380-8010

**Subject:** The Water Resources Commission has created and amended rules relating to water right transfers (OAR Chapter 690, Division 380) which implement statutory changes from the 2003 legislative session (SB 820, 2003 Oregon Laws). Specifically, the rules allow greater flexibility to change a point of diversion from surface

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water to ground water wells in the Deschutes Ground Water Study Area.\* The rules also establish the process for temporary changes in place of use and type of use from irrigation to municipal use in the Deschutes River Basin of all or a portion of a water right, for period not to exceed 25 years. The Department worked with a Rules Advisory Committee to develop these rules.

\*Deschutes Ground Water Study Area as designated in OAR Chapter 690, Division 505, Exhibit 1.

**Rules Coordinator:** Adam Sussman—(503) 986-0877

## 690-380-2130

### Change from a Surface Water Point of Diversion to a Groundwater Appropriation

(1) As provided in ORS 540.531, an owner of a surface water use subject to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground water, subject to the requirements for a transfer in point of diversion under this Division and the requirements under section (2) or (3) of this rule.

(2) The Department may allow the transfer of the point of diversion under section (1) of this rule if:

(a) The criteria in OAR 690-380-5000 are met;

(b) The new point of diversion appropriates ground water from an unconfined aquifer that is hydraulically connected to the authorized surface source; and

(c) The proposed change in point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and

(d) The withdrawal of groundwater at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or

(e) If the distance requirements in subsection (2)(d) of this rule are not met, the holder of a water use subject to transfer shall submit to the Department evidence prepared by a licensed geologist that demonstrates that the use of the groundwater at the new point of diversion will meet the criteria set forth in subsections (2)(a) to (c) of this rule.

(3) Notwithstanding section (2) of this rule, the Department shall allow a transfer of the point of diversion under section (1) of this rule in the Deschutes basin ground water study area if:

(a) The proposed transfer would not result in injury to an existing water right or enlargement of the water right proposed for transfer;

(b) The criteria in OAR 690-380-5000 are met;

(c) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source; and

(d) The use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer. The Department may not require that the use of the new point of diversion affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer under this subsection.

(4) A transfer application requesting to change the point of diversion from a surface water diversion to a groundwater appropriation for which evidence prepared by a licensed geologist is required under subsection (2)(e) of this rule shall be evaluated by the Department in the following manner:

(a) The change in point of diversion request shall be examined to determine the potential for injury as if the change is to be from the authorized point of diversion to a point on the stream nearest the proposed well;

(b) If potential injury is not found, the evidence prepared by a licensed geologist and submitted by the applicant shall be evaluated to determine whether the application meets the other requirements of subsection (2)(a) to (c) of this rule. The geologist's report shall examine the effect on the surface water source in the vicinity of the point on the stream nearest the proposed new point of diversion.

(5) The new point of diversion shall retain the original date of priority and all other applicable conditions and restrictions that existed at the original point of diversion shall apply at the new point of diversion authorized under the transfer.

(6) If within five years after approving a transfer under this rule, the Department finds that the transfer results in substantial or undue interference with an existing ground water right that would not have occurred in the absence of the transfer, the new point of diversion shall be subordinate

to the existing right injured by the transfer. This section applies only to wells with rights existing at the time the transfer was approved.

(7) The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion

(8) The Department shall approve a transfer application to return to the last authorized surface water point of diversion if the required transfer application is received within five years after the Department approves a transfer under this rule. It shall be presumed, for transfers under this subsection, that there is no injury, including injury to rights obtained or transferred after the approval of the first transfer.

(9) The Department shall approve an application to return to the last authorized surface water point of diversion after five years of the date the Department allows the transfer under section (3) of this rule if the Department receives the required application, and the return will not result in injury.

(10) For transfers allowed under this rule, the Department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right pursuant to ORS 540.531(6), except that the Department may not require mitigation measures if the transfer complies with section (3) of this rule.

(11) As used in this rule:

(a) "Existing ground water right" means a right that existed at the time a transfer was approved under sections (1) to (5) of this rule and does not include a right established after the transfer whether by permit or a change in point of appropriation regardless of priority date.

(b) "Similarly" means that the use of groundwater at the new point of diversion affects only the surface water source specified in the permit or certificated or decreed water right and would result in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous pumping.

(c) "Unconfined aquifer" means an aquifer in which the pressure at the upper surface of saturation is equal to atmospheric pressure.

(d) "Deschutes basin ground water study area" means the Deschutes River Basin drainage area indicated in OAR 690, Division 505, Exhibit 1.

(12) The Department shall provide notice and review of transfer applications under section 3 of this rule pursuant to OAR 690-380-4000 through 690-380-4200.

(13) Opportunities to protest a transfer under section 3 of this rule shall be pursuant to OAR 690-380-4030.

(14) The Department shall issue final orders on transfer applications under section 3 of this rule pursuant to OAR 690-380-5000.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.520, ORS 540.530 & ORS 540.531

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0210; WRD 1-2004, f. & cert. ef. 3-17-04

## 690-380-8000

### Temporary Transfers

Any person who holds a water use subject to transfer may request that the Department approve a temporary transfer of:

(1) Place of use or character of use identified in a right to store water for a period not to exceed five years or

(2) In the Deschutes River Basin, place of use, type of use, and point of diversion if necessary to convey water to the new temporary place of use, of all or a portion of a water right, for a period not to exceed 25 years.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 536.050, 540.520 & 540.523

Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f & cert. ef. 5-1-03; Renumbered from 690-015-0300; WRD 1-2004, f. & cert. ef. 3-17-04

## 690-380-8002

### Temporary Transfer Applications under OAR 690-380-8000(1)

(1) Applications for a temporary transfer under OAR 690-380-8000(1) shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:

(a) The information required in OAR 690-380-3000;

(b) The length of time for which the change is being requested;

(c) The appropriate fee pursuant to ORS 536.050; and

(d) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner.

(2) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if the Department determines that the temporary transfer will not injure any existing water right. In issuing the order, the Department may include any conditions necessary to protect other water rights.



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(3) All uses for which a temporary transfer is allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.

(4) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.

(5) The Department may revoke a prior approval of the temporary transfer at any time if the Department finds that the transfer is causing injury.

(6) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.

Stat. Auth.: ORS 536.025 & 536.027  
Stats. Implemented: SB 820, 2003 OL  
Hist.: WRD 1-2004, f. & cert. ef. 3-17-04

## 690-380-8004

### Temporary Transfer Applications under OAR 690-380-8000(2)

(1) Applications for a temporary transfer under OAR 690-380-8000(2) shall be on the Department's water right transfer application form, shall be clearly marked "Temporary Transfer," and shall include the following:

- (a) The information required in OAR 690-380-3000;
- (b) The length of time for which the change is being requested;
- (c) The appropriate fee for the transfer pursuant to ORS 536.050;
- (d) A map prepared pursuant to the requirements of OAR 690-380-3100, except it need not be prepared by a certified water right examiner;
- (e) Where applicable, a description of the use of any portion of the water right not proposed to be transferred under OAR 690-380-8000(2);
- (f) Evidence that an agreement exists between the landowner, district, and receiving municipality if the water right to be temporarily transferred is served by a district.

(2) Any portion of the use of a water right that is not temporarily transferred under OAR 690-380-8000(2) may be used on the designated part of the lands described in the original water right permit, certificate, or adjudication under ORS Chapter 539 as evidenced by a court decree, if the use:

- (a) Does not encompass more than the remaining portion of the lands,
- (b) Does not enlarge the water right or increase the rate, duty, total acreage benefited or season of use, and
- (c) Is within the same land ownership as the water right proposed for transfer.

(3) If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return the application.

(4) Notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if:

- (a) The proposed temporary transfer will not result in injury to any existing water right or enlargement of the water right;
- (b) The person holds a water right subject to transfer;
- (c) The type of use specified in the original water use subject to transfer is irrigation;
- (d) The person to whom the right is transferred is:
  - (A) Located with the Deschutes River Basin; and
  - (B) A city, a quasi-municipal corporation, a domestic water supply district formed under ORS Chapter 450, a water supplier as defined in ORS 448.115 or a water authority formed under ORS Chapter 450;
- (e) The proposed use is municipal use.

(5) In issuing the order, the Department may:

(a) Include any conditions necessary to protect existing water rights, including any reporting, measurement, and mapping requirements to ensure that use of any remaining portion of the right is consistent with the transfer; and

(b) Prescribe the duration of the temporary transfer period, up to 25 years.

(6) For temporary transfers proposing to use a remaining portion of the right under section 2 of this rule, the Department shall require the installation of a measuring device, monthly recording of water use, and annual reporting of water use.

(7) All temporary transfers allowed under this rule shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period, or earlier if requested in writing by the applicant.

(8) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.

(9) The Department may revoke a prior approval of the temporary transfer at any time if:

- (a) The Department finds that the transfer is causing injury or results in enlargement; or
- (b) Reporting, mapping, or measurement conditions associated with use of any remaining portion of the right under section 2 of this rule are not met.

(10) Prior to revoking a temporary transfer under this rule for failing to comply with any of the conditions of the transfer, the Department may seek compliance with the terms of the temporary transfer.

(11) The Department shall provide notice and review of temporary transfer applications under this rule pursuant to OAR 690-380-4000 through 690-380-4200.

(12) Opportunities to protest a temporary transfer under this rule shall be pursuant to OAR 690-380-4030.

(13) The Department shall issue final orders on temporary transfer applications under this rule pursuant to OAR 690-380-5000.

Stat. Auth.: ORS 536.025 & 536.027  
Stats. Implemented: SB 820, 2003 OL  
Hist.: WRD 1-2004, f. & cert. ef. 3-17-04

## 690-380-8010

### Seasonal Use

Except as provided in OAR 690-380-8004, the lands from which the water use subject to transfer is removed shall receive no water, under the appurtenant rights, during the period of a temporary transfer. In the case of a temporary transfer approved during the season for which there is a specified season of use, such as the irrigation season, the lands from which the water use subject to transfer is being removed shall have received no water, under the appurtenant rights, during that season, including water used prior to the approval of the temporary transfer. If the lands have received water, under the appurtenant rights, during that season, the temporary transfer may not take effect until the following season.

Stat. Auth.: ORS 536.025 & 536.027  
Stats. Implemented: ORS 540.523  
Hist.: WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03; Renumbered from 690-015-0310; WRD 1-2004, f. & cert. ef. 3-17-04

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**Adm. Order No.:** WRD 2-2004

**Filed with Sec. of State:** 4-1-2004

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 9-1-03

**Rules Adopted:** 690-200-0028

**Subject:** The Water Resources Commission adopted a rule under OAR Chapter 690, Division 200 that establishes special area standards for well construction. These special area standards apply to any new, altered, deepened or converted well in the sedimentary units (clay, sand, silt, gravel) in a specified area to the north of the Town of Lakeview, in Lake County. The rules include deeper casing and sealing requirements to prevent commingling of contaminated and uncontaminated aquifers and to ensure the safe development of ground water.

**Rules Coordinator:** Adam Sussman—(503) 986-0877

## 690-200-0028

### Designated Special Area Standards

(1) Special Area Standards for the Construction and Alteration of Water Supply Wells in the Lakeview Area.

(A) As used in this rule and illustrated in Figure 200-3, "The Lakeview Area" includes the area located in Sections 4, 5, 8 and 9 of Township 39 South, Range 20 East of the Willamette Meridian, Lake County, Oregon. Beginning at a point on the West line of Section 4, said point bears South 1°40'45" East - 2245.31 feet from the Northwest Corner of Section 4; thence South 89°54'45" East - 1907.04 feet to the West right of way line of the Fremont Logging Road; thence South 39°26'40" East along the West right of way line of the Fremont Logging Road - 3095.16 feet; thence South 1°53'14" East - 617.32 feet to the South line of Section 4; thence continuing in Section 9 - South 00°13'8" West parallel to the North South centerline of Section 9 - 2649.14 feet to the East West centerline of Section 9; thence South 89°45'31" West along the East West centerline of Section 9 - 3782.55 feet more or less to the West line of Section 9; thence West along the East West centerline of Section 8 - 1320.00 feet

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more or less to the center East 1/16 corner of Section 8; thence North 2640.00 feet more or less to the East 1/16 corner common to Sections 5 and 8; thence North 1°41'33" West - 2630.48 feet more or less to the center East 1/16 corner of Section 5; thence North 1°40'45" West - 410.32 feet; thence South 59°54'45" East - 1307.02 feet more or less to the point of beginning.

(B) Any new, altered, deepened or converted well in the sedimentary units (clay, sand, silt, gravel) in the Lakeview Area shall be cased and sealed according to OAR 690, Division 210 with the following additional requirements:

(a) Unperforated casing and seal shall extend from land surface to a depth of 250 feet below land surface; and

(b) Perforated casing may extend below the seal.

(C) Liner installed in any new, altered, deepened or converted well in the sedimentary units (clay, sand, silt, gravel) in the Lakeview Area shall not extend more than 10 feet above the bottom of the unperforated casing.

(D) Alternatives to the special area standards shall be approved only if it can be demonstrated that the alternative techniques proposed to be used are as effective as the techniques required in subsection (1)(B) and (1)(C) above. Such alternatives require prior written approval by the Department and follow-up testing as may be required by the Department.

(E) Except as they may conflict with subsection (1) (B) and (1)(C), all other provisions of Oregon Administrative Rules for Well Construction and Maintenance Standards apply.

(F) This rule is applicable to wells for which construction, alteration, deepening or conversion began on or after April 1, 2004.

(G) This special area standard may be revised at a future date when additional information and analysis is provided from other agencies including the Oregon Department of Environmental Quality.

Stat. Auth.: ORS 537.780, 536.027, 536.090

Stats. Implemented: ORS 537.505 - 537.795, 537.780(1)

Hist.: WRD 2-2004, f. & cert. ef. 4-1-04

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101-005-0010	12-4-03	Adopt	1-1-04	122-070-0080	12-4-03	Amend	1-1-04
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105-040-0050	3-15-04	Amend	4-1-04	123-035-0005	2-3-04	Adopt(T)	3-1-04
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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
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123-042-0140	2-3-04	Suspend	3-1-04	125-125-0250	3-5-04	Adopt(T)	4-1-04
123-042-0150	2-3-04	Amend(T)	3-1-04	125-125-0300	3-5-04	Adopt(T)	4-1-04
123-042-0160	2-3-04	Amend(T)	3-1-04	125-125-0350	3-5-04	Adopt(T)	4-1-04
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123-043-0055	3-22-04	Amend	5-1-04	137-003-0501	1-1-04	Amend	1-1-04
123-043-0075	3-22-04	Amend	5-1-04	137-003-0510	1-1-04	Amend	1-1-04
123-049-0005	2-3-04	Amend	3-1-04	137-003-0515	1-1-04	Amend	1-1-04
123-049-0010	2-3-04	Amend	3-1-04	137-003-0520	1-1-04	Amend	1-1-04
123-049-0020	2-3-04	Amend	3-1-04	137-003-0525	1-1-04	Amend	1-1-04
123-049-0030	2-3-04	Amend	3-1-04	137-003-0528	1-1-04	Amend	1-1-04
123-049-0040	2-3-04	Amend	3-1-04	137-003-0530	1-1-04	Amend	1-1-04
123-049-0050	2-3-04	Amend	3-1-04	137-003-0535	1-1-04	Amend	1-1-04
123-049-0060	2-3-04	Adopt	3-1-04	137-003-0540	1-1-04	Amend	1-1-04
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123-055-0120	2-3-04	Amend(T)	3-1-04	137-003-0555	1-1-04	Amend	1-1-04
123-055-0200	2-3-04	Amend(T)	3-1-04	137-003-0560	1-1-04	Amend	1-1-04
123-055-0240	2-3-04	Amend(T)	3-1-04	137-003-0565	1-1-04	Amend	1-1-04
123-055-0300	2-3-04	Amend(T)	3-1-04	137-003-0570	1-1-04	Amend	1-1-04
123-055-0340	2-3-04	Amend(T)	3-1-04	137-003-0572	1-1-04	Amend	1-1-04
123-055-0400	2-3-04	Amend(T)	3-1-04	137-003-0573	1-1-04	Amend	1-1-04
123-055-0420	2-3-04	Amend(T)	3-1-04	137-003-0575	1-1-04	Amend	1-1-04
123-055-0440	2-3-04	Amend(T)	3-1-04	137-003-0580	1-1-04	Amend	1-1-04
123-055-0460	2-3-04	Amend(T)	3-1-04	137-003-0585	1-1-04	Amend	1-1-04
123-055-0525	2-3-04	Amend(T)	3-1-04	137-003-0590	1-1-04	Amend	1-1-04
123-055-0600	2-3-04	Amend(T)	3-1-04	137-003-0595	1-1-04	Amend	1-1-04
123-055-0620	2-3-04	Amend(T)	3-1-04	137-003-0600	1-1-04	Amend	1-1-04
123-055-0900	2-3-04	Amend(T)	3-1-04	137-003-0605	1-1-04	Amend	1-1-04
123-057-0110	2-3-04	Amend(T)	3-1-04	137-003-0610	1-1-04	Amend	1-1-04
123-057-0130	2-3-04	Amend(T)	3-1-04	137-003-0615	1-1-04	Amend	1-1-04
123-057-0170	2-3-04	Amend(T)	3-1-04	137-003-0625	1-1-04	Amend	1-1-04
123-057-0190	2-3-04	Amend(T)	3-1-04	137-003-0630	1-1-04	Amend	1-1-04
123-057-0210	2-3-04	Amend(T)	3-1-04	137-003-0635	1-1-04	Amend	1-1-04
123-057-0230	2-3-04	Amend(T)	3-1-04	137-003-0640	1-1-04	Amend	1-1-04
123-057-0310	2-3-04	Amend(T)	3-1-04	137-003-0645	1-1-04	Amend	1-1-04
123-057-0330	2-3-04	Amend(T)	3-1-04	137-003-0650	1-1-04	Amend	1-1-04
123-057-0350	2-3-04	Amend(T)	3-1-04	137-003-0655	1-1-04	Amend	1-1-04
123-057-0410	2-3-04	Amend(T)	3-1-04	137-003-0660	1-1-04	Amend	1-1-04
123-057-0430	2-3-04	Amend(T)	3-1-04	137-003-0665	1-1-04	Amend	1-1-04
123-057-0450	2-3-04	Amend(T)	3-1-04	137-003-0670	1-1-04	Amend	1-1-04
123-057-0470	2-3-04	Amend(T)	3-1-04	137-003-0675	1-1-04	Amend	1-1-04
123-057-0510	2-3-04	Amend(T)	3-1-04	137-003-0690	1-1-04	Amend	1-1-04
123-057-0530	2-3-04	Amend(T)	3-1-04	137-003-0695	1-1-04	Amend	1-1-04
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137-040-0520	1-2-04	Amend	2-1-04	137-055-6025	1-5-04	Amend	2-1-04
137-040-0550	1-2-04	Amend	2-1-04	137-055-6110	1-5-04	Amend	2-1-04
137-040-0560	1-2-04	Amend	2-1-04	137-060-0010	2-11-04	Repeal	3-1-04
137-040-0565	1-2-04	Adopt	2-1-04	137-060-0011	2-11-04	Repeal	3-1-04
137-045-0010	12-9-03	Amend	1-1-04	137-060-0012	2-11-04	Repeal	3-1-04
137-045-0015	12-9-03	Amend	1-1-04	137-060-0013	2-11-04	Repeal	3-1-04
137-045-0030	12-9-03	Amend	1-1-04	137-060-0014	2-11-04	Repeal	3-1-04
137-045-0035	12-9-03	Amend	1-1-04	137-060-0015	2-11-04	Repeal	3-1-04
137-045-0050	12-9-03	Amend	1-1-04	137-060-0016	2-11-04	Repeal	3-1-04
137-045-0055	12-9-03	Adopt	1-1-04	137-060-0020	2-11-04	Repeal	3-1-04
137-045-0060	12-9-03	Amend	1-1-04	137-060-0021	2-11-04	Repeal	3-1-04
137-045-0070	12-9-03	Amend	1-1-04	137-060-0022	2-11-04	Repeal	3-1-04
137-045-0080	12-9-03	Amend	1-1-04	137-060-0023	2-11-04	Repeal	3-1-04
137-045-0090	12-9-03	Amend	1-1-04	137-060-0024	2-11-04	Repeal	3-1-04
137-055-1020	1-5-04	Amend	2-1-04	137-060-0025	2-11-04	Repeal	3-1-04
137-055-1140	4-1-04	Amend	5-1-04	137-060-0026	2-11-04	Repeal	3-1-04
137-055-1160	1-5-04	Amend	2-1-04	137-060-0030	2-11-04	Repeal	3-1-04
137-055-1320	4-1-04	Amend	5-1-04	137-060-0031	2-11-04	Repeal	3-1-04
137-055-1340	4-1-04	Repeal	5-1-04	137-060-0032	2-11-04	Repeal	3-1-04
137-055-1360	4-1-04	Amend	5-1-04	137-060-0033	2-11-04	Repeal	3-1-04
137-055-1600	4-1-04	Amend	5-1-04	137-060-0034	2-11-04	Repeal	3-1-04
137-055-2140	4-1-04	Amend	5-1-04	137-060-0035	2-11-04	Repeal	3-1-04
137-055-3200	1-5-04	Adopt	2-1-04	137-060-0036	2-11-04	Repeal	3-1-04
137-055-3220	1-5-04	Amend	2-1-04	137-060-0040	2-11-04	Repeal	3-1-04
137-055-3300	4-1-04	Amend	5-1-04	137-060-0041	2-11-04	Repeal	3-1-04
137-055-3360	1-5-04	Amend	2-1-04	137-060-0042	2-11-04	Repeal	3-1-04
137-055-3400	1-5-04	Amend	2-1-04	137-060-0043	2-11-04	Repeal	3-1-04
137-055-3420	1-5-04	Amend	2-1-04	137-060-0044	2-11-04	Repeal	3-1-04
137-055-3440	1-5-04	Amend	2-1-04	137-060-0045	2-11-04	Repeal	3-1-04
137-055-3480	4-1-04	Amend	5-1-04	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
137-055-4160	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
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137-084-0001	1-29-04	Adopt	3-1-04	141-040-0220	1-1-04	Amend	1-1-04
137-084-0005	1-29-04	Adopt	3-1-04	141-045-0005	1-1-04	Amend	1-1-04
137-084-0010	1-29-04	Adopt	3-1-04	141-045-0010	1-1-04	Amend	1-1-04
137-084-0020	1-29-04	Adopt	3-1-04	141-045-0015	1-1-04	Amend	1-1-04
137-084-0030	1-29-04	Adopt	3-1-04	141-045-0021	1-1-04	Amend	1-1-04
137-085-0001	2-1-04	Adopt(T)	3-1-04	141-045-0031	1-1-04	Amend	1-1-04
137-085-0010	2-1-04	Adopt(T)	3-1-04	141-045-0041	1-1-04	Amend	1-1-04
137-085-0020	2-1-04	Adopt(T)	3-1-04	141-045-0061	1-1-04	Amend	1-1-04
137-085-0030	2-1-04	Adopt(T)	3-1-04	141-045-0100	1-1-04	Amend	1-1-04
137-085-0040	2-1-04	Adopt(T)	3-1-04	141-045-0105	1-1-04	Amend	1-1-04
137-085-0050	2-1-04	Adopt(T)	3-1-04	141-045-0115	1-1-04	Amend	1-1-04
141-030-0010	1-1-04	Amend	1-1-04	141-045-0120	1-1-04	Amend	1-1-04
141-030-0015	1-1-04	Amend	1-1-04	141-045-0121	1-1-04	Amend	1-1-04
141-030-0025	1-1-04	Amend	1-1-04	141-045-0122	1-1-04	Amend	1-1-04
141-030-0034	1-1-04	Amend	1-1-04	141-045-0123	1-1-04	Amend	1-1-04
141-030-0035	1-1-04	Amend	1-1-04	141-045-0124	1-1-04	Amend	1-1-04
141-030-0036	1-1-04	Amend	1-1-04	141-045-0125	1-1-04	Amend	1-1-04
141-030-0037	1-1-04	Amend	1-1-04	141-045-0126	1-1-04	Amend	1-1-04
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141-030-0039	1-1-04	Am. & Ren.	1-1-04	141-045-0150	1-1-04	Amend	1-1-04
141-030-0039	1-1-04	Amend	1-1-04	141-045-0155	1-1-04	Amend	1-1-04
141-030-0040	1-1-04	Renumber	1-1-04	141-045-0160	1-1-04	Amend	1-1-04
141-030-0045	1-1-04	Adopt	1-1-04	141-045-0170	1-1-04	Amend	1-1-04
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141-035-0010	1-1-04	Repeal	1-1-04	141-045-0185	1-1-04	Amend	1-1-04
141-035-0011	1-1-04	Adopt	1-1-04	141-085-0010	11-26-03	Amend	1-1-04
141-035-0012	1-1-04	Adopt	1-1-04	141-085-0027	11-26-03	Amend	1-1-04
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
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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
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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	150-180.455	4-1-04	Adopt(T)	5-1-04
141-040-0035	1-1-04	Amend	1-1-04	150-294.175(2)-(A)	12-31-03	Adopt	2-1-04
141-040-0040	1-1-04	Amend	1-1-04	150-294.175(2)-(B)	12-31-03	Adopt	2-1-04
141-040-0200	1-1-04	Amend	1-1-04	150-294.187	12-31-03	Amend	2-1-04
141-040-0211	1-1-04	Amend	1-1-04	150-294.211(26)	12-31-03	Renumber	2-1-04
141-040-0212	1-1-04	Amend	1-1-04	150-294.435(1)-(C)	12-31-03	Adopt	2-1-04

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150-305.220(2)	12-31-03	Amend	2-1-04	150-321.430(3)-(A)	12-31-03	Repeal	2-1-04
150-306.115	12-31-03	Amend	2-1-04	150-321.430(3)-(B)	12-31-03	Repeal	2-1-04
150-308.156(5)-(B)	12-31-03	Amend	2-1-04	150-321.430(3)-(C)	12-31-03	Repeal	2-1-04
150-308.159	12-31-03	Adopt	2-1-04	150-321.430(3)-(D)	12-31-03	Repeal	2-1-04
150-308.219	12-31-03	Amend	2-1-04	150-321.432-(A)	12-31-03	Amend	2-1-04
150-308.250	12-31-03	Amend	2-1-04	150-321.434	12-31-03	Repeal	2-1-04
150-309.100(3)-(B)	12-31-03	Amend	2-1-04	150-321.434(1)	12-31-03	Repeal	2-1-04
150-309.100(3)-(C)	12-31-03	Amend	2-1-04	150-321.434(2)	12-31-03	Repeal	2-1-04
150-309.110(1)-(A)	12-31-03	Amend	2-1-04	150-321.515	12-31-03	Repeal	2-1-04
150-309.110(1)-(B)	12-31-03	Amend	2-1-04	150-321.815(2)(b)	12-31-03	Am. & Ren.	2-1-04
150-309.110(1)-(D)	12-31-03	Adopt	2-1-04	150-321.815(4)	12-31-03	Am. & Ren.	2-1-04
150-309.110(1)-(E)	12-31-03	Adopt	2-1-04	150-321.950	12-31-03	Repeal	2-1-04
150-309.115(1)-(C)	12-31-03	Adopt	2-1-04	150-323.160(3)-(A)	4-1-04	Adopt(T)	5-1-04
150-309.115(2)-(f)	12-31-03	Renumber	2-1-04	150-323.480(1)	4-1-04	Am. & Ren.(T)	5-1-04
150-311.205(1)(b)	12-31-03	Renumber	2-1-04	150-323.480(1)-(B)	4-1-04	Adopt(T)	5-1-04
150-311.205(1)(c)-(A)	12-31-03	Renumber	2-1-04	150-570.560	12-31-03	Renumber	2-1-04
150-311.205(1)(c)-(C)	12-31-03	Am. & Ren.	2-1-04	150-Ch. 1078	12-31-03	Renumber	2-1-04
150-311.672(1)(a)	12-31-03	Amend	2-1-04	Sec. 2 & 35 1999 Session			
150-311.708	12-31-03	Amend	2-1-04	150-Ch. 1078	12-31-03	Renumber	2-1-04
150-311.806-(A)	12-31-03	Amend	2-1-04	Sec. 2 & 35 1999 Session			
150-312.040(1)(b)	12-31-03	Amend	2-1-04	150-OL 2003	12-31-03	Adopt	2-1-04
150-314.295	12-31-03	Adopt	2-1-04	Ch. 454 Sec. 1(1)			
150-314.385(c)-(B)	12-31-03	Amend	2-1-04	150-OL 2003	12-31-03	Adopt	2-1-04
150-314.415(1)(b)	12-31-03	Am. & Ren.	2-1-04	Ch. 454 Sec. 1(12)			
150-314.415(1)(c)	12-31-03	Am. & Ren.	2-1-04	150-OL 2003	12-31-03	Adopt	2-1-04
150-314.505-(A)	12-31-03	Amend	2-1-04	Ch. 454 Sec. 1(13)			
150-314.610(1)-(A)	12-31-03	Amend	2-1-04	150-OL 2003	12-31-03	Adopt	2-1-04
150-314.610(1)-(B)	12-31-03	Amend	2-1-04	Ch. 454 Sec. 4(1)(c)			
150-314.610(1)-(C)	12-31-03	Amend	2-1-04	150-OL 2003	12-31-03	Adopt	2-1-04
150-314.615-(F)	12-31-03	Amend	2-1-04	Ch. 454 Sec. 4(3)			
150-314.655(2)-(B)	12-31-03	Amend	2-1-04	150-OL 2003	12-31-03	Adopt	2-1-04
150-314.665(6)(c)	12-31-03	Adopt	2-1-04	Ch. 541 Sec. 3			
150-314.840	12-31-03	Amend	2-1-04	150-OL 2003	12-31-03	Adopt	2-1-04
150-315.113	12-31-03	Adopt	2-1-04	Ch. 621 Sec. 109(1)			
150-315.262	12-31-03	Amend	2-1-04	150-OR Laws 2003,	1-1-04	Adopt(T)	1-1-04
150-316.054	12-31-03	Amend	2-1-04	Ch. 818			
150-316.127-(D)	12-31-03	Amend	2-1-04	161-002-0000	2-3-04	Amend	3-1-04
150-321.005	12-31-03	Amend	2-1-04	161-006-0160	11-24-03	Amend	1-1-04
150-321.045	12-31-03	Amend	2-1-04	161-015-0030	11-24-03	Amend	1-1-04
150-321.282(1)-(C)	12-31-03	Repeal	2-1-04	161-020-0045	11-24-03	Amend	1-1-04
150-321.282(1)-(D)	12-31-03	Repeal	2-1-04	161-020-0055	11-24-03	Amend	1-1-04
150-321.282(1)-(E)	12-31-03	Repeal	2-1-04	161-020-0140	11-24-03	Amend	1-1-04
150-321.282(1)-(I)	12-31-03	Repeal	2-1-04	161-025-0050	11-24-03	Amend	1-1-04
150-321.282(2)(a)	12-31-03	Repeal	2-1-04	161-025-0060	2-3-04	Amend	3-1-04
150-321.282(2)(c)	12-31-03	Repeal	2-1-04	161-050-0040	11-24-03	Amend	1-1-04
150-321.282(5)	12-31-03	Repeal	2-1-04	161-050-0050	11-24-03	Amend	1-1-04
150-321.282(6)(a)-(A)	12-31-03	Am. & Ren.	2-1-04	165-001-0090	12-31-03	Adopt	2-1-04
150-321.282(6)(a)-(D)	12-31-03	Am. & Ren.	2-1-04	165-002-0005	12-5-03	Amend	1-1-04
150-321.358(2)(b)	12-31-03	Am. & Ren.	2-1-04	165-002-0010	12-5-03	Amend	1-1-04
150-321.358(3)(b)	12-31-03	Am. & Ren.	2-1-04	165-002-0025	12-5-03	Amend	1-1-04
150-321.358(4)	12-31-03	Am. & Ren.	2-1-04	165-007-0030	12-31-03	Amend	2-1-04
150-321.379(1)-(A)	12-31-03	Repeal	2-1-04	165-010-0005	12-5-03	Amend	1-1-04
150-321.379(1)-(B)	12-31-03	Repeal	2-1-04	165-010-0005	4-9-04	Amend(T)	5-1-04
150-321.379(2)-(A)	12-31-03	Repeal	2-1-04	165-010-0060	12-5-03	Amend	1-1-04
150-321.379(2)-(C)	12-31-03	Repeal	2-1-04	165-010-0080	12-5-03	Amend	1-1-04

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165-012-0005	12-12-03	Amend	1-1-04	177-091-0020	12-19-03	Adopt	2-1-04
165-012-0050	12-5-03	Amend	1-1-04	177-091-0030	12-19-03	Adopt	2-1-04
165-012-0060	12-5-03	Amend	1-1-04	177-091-0040	12-19-03	Adopt	2-1-04
165-012-0210	12-5-03	Repeal	1-1-04	177-091-0050	12-19-03	Adopt	2-1-04
165-012-0230	12-5-03	Amend	1-1-04	177-091-0060	12-19-03	Adopt	2-1-04
165-012-0230	12-15-03	Amend(T)	1-1-04	177-091-0070	12-19-03	Adopt	2-1-04
165-012-1000	12-5-03	Repeal	1-1-04	177-091-0080	12-19-03	Adopt	2-1-04
165-013-0010	12-5-03	Amend	1-1-04	177-091-0090	12-19-03	Adopt	2-1-04
165-013-0010	2-13-04	Amend	3-1-04	177-091-0100	12-19-03	Adopt	2-1-04
165-013-0020	12-5-03	Amend	1-1-04	177-091-0110	12-19-03	Adopt	2-1-04
165-014-0005	12-5-03	Amend	1-1-04	177-099-0050	2-23-04	Amend(T)	4-1-04
165-014-0006	12-5-03	Repeal	1-1-04	213-001-0000	1-1-04	Amend	2-1-04
165-014-0030	4-15-04	Amend	5-1-04	213-001-0005	1-1-04	Amend	2-1-04
165-014-0080	12-5-03	Repeal	1-1-04	213-003-0001	1-1-04	Amend	2-1-04
165-014-0085	12-5-03	Repeal	1-1-04	213-005-0001	1-1-04	Amend	2-1-04
165-014-0110	4-15-04	Amend	5-1-04	213-005-0004	1-1-04	Amend	2-1-04
165-020-0005	12-5-03	Amend	1-1-04	213-005-0007	1-1-04	Amend	2-1-04
165-020-0050	4-15-04	Amend	5-1-04	213-011-0003	1-1-04	Amend	2-1-04
165-020-0060	4-15-04	Amend	5-1-04	213-017-0001	1-1-04	Amend	2-1-04
166-001-0000	11-24-03	Amend	1-1-04	213-017-0002	1-1-04	Amend	2-1-04
166-020-0011	3-3-04	Adopt	4-1-04	213-017-0003	1-1-04	Amend	2-1-04
166-101-0010	11-24-03	Amend	1-1-04	213-017-0004	1-1-04	Amend	2-1-04
166-200-0130	11-24-03	Amend	1-1-04	213-017-0005	1-1-04	Amend	2-1-04
166-475-0060	3-31-04	Amend	5-1-04	213-017-0006	1-1-04	Amend	2-1-04
166-500-0000	11-20-03	Amend	1-1-04	213-017-0007	1-1-04	Amend	2-1-04
166-500-0015	11-20-03	Amend	1-1-04	213-017-0008	1-1-04	Amend	2-1-04
166-500-0040	11-20-03	Amend	1-1-04	213-017-0009	1-1-04	Amend	2-1-04
166-500-0045	11-20-03	Amend	1-1-04	213-017-0010	1-1-04	Amend	2-1-04
166-500-0050	11-20-03	Amend	1-1-04	213-017-0011	1-1-04	Amend	2-1-04
166-500-0055	11-20-03	Amend	1-1-04	213-018-0038	1-1-04	Amend	2-1-04
170-060-1000	1-15-04	Adopt(T)	2-1-04	213-018-0047	1-1-04	Adopt	2-1-04
177-010-0003	4-6-04	Amend(T)	5-1-04	213-018-0048	1-1-04	Adopt	2-1-04
177-040-0000	4-6-04	Amend(T)	5-1-04	213-018-0050	1-1-04	Amend	2-1-04
177-040-0003	4-6-04	Amend(T)	5-1-04	213-018-0090	1-1-04	Amend	2-1-04
177-040-0025	4-6-04	Amend(T)	5-1-04	213-019-0007	1-1-04	Amend	2-1-04
177-040-0026	6-27-04	Adopt(T)	5-1-04	213-019-0008	1-1-04	Amend	2-1-04
177-040-0050	4-6-04	Amend(T)	5-1-04	213-019-0010	1-1-04	Amend	2-1-04
177-040-0052	4-6-04	Amend(T)	5-1-04	213-019-0011	1-1-04	Amend	2-1-04
177-045-0000	1-5-04	Amend(T)	2-1-04	255-032-0015	4-15-04	Amend(T)	5-1-04
177-045-0010	1-5-04	Amend(T)	2-1-04	255-060-0011	1-14-04	Amend(T)	2-1-04
177-045-0020	1-5-04	Suspend	2-1-04	255-070-0001	1-14-04	Amend	2-1-04
177-045-0030	1-5-04	Amend(T)	2-1-04	259-008-0010	12-22-03	Amend	2-1-04
177-045-0040	1-5-04	Amend(T)	2-1-04	259-008-0011	1-20-04	Amend	3-1-04
177-045-0050	1-5-04	Adopt(T)	2-1-04	259-008-0025	12-22-03	Amend	2-1-04
177-045-0050(T)	4-6-04	Suspend	5-1-04	259-008-0060	1-20-04	Amend	3-1-04
177-045-0060	1-5-04	Adopt(T)	2-1-04	259-008-0068	1-16-04	Adopt	3-1-04
177-045-0060	4-6-04	Adopt(T)	5-1-04	259-009-0062	4-9-04	Amend(T)	5-1-04
177-045-0060(T)	4-6-04	Suspend	5-1-04	274-020-0341	1-22-04	Amend(T)	3-1-04
177-045-0070	1-5-04	Adopt(T)	2-1-04	274-020-0341	3-26-04	Amend	5-1-04
177-045-0070(T)	4-6-04	Suspend	5-1-04	274-020-0341	4-8-04	Amend(T)	5-1-04
177-045-0080	1-5-04	Adopt(T)	2-1-04	274-020-0341(T)	1-22-04	Suspend	3-1-04
177-045-0080	4-6-04	Adopt(T)	5-1-04	274-020-0341(T)	3-26-04	Repeal	5-1-04
177-045-0080(T)	4-6-04	Suspend	5-1-04	274-020-0388	1-15-04	Amend(T)	2-1-04
177-082-0100	12-19-03	Repeal	2-1-04	274-020-0388	2-24-04	Amend	4-1-04
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274-040-0015(T)	12-31-03	Repeal	2-1-04	309-041-1760	12-28-03	Am. & Ren.	2-1-04
274-040-0030	12-31-03	Amend	2-1-04	309-041-1770	12-28-03	Am. & Ren.	2-1-04
274-040-0030(T)	12-31-03	Repeal	2-1-04	309-041-1780	12-28-03	Am. & Ren.	2-1-04
291-001-0020	12-12-03	Amend	1-1-04	309-041-1790	12-28-03	Am. & Ren.	2-1-04
291-001-0025	12-12-03	Amend	1-1-04	309-041-1800	12-28-03	Am. & Ren.	2-1-04
291-001-0070	12-12-03	Repeal	1-1-04	309-041-1810	12-28-03	Am. & Ren.	2-1-04
291-013-0010	1-27-04	Amend(T)	3-1-04	309-041-1820	12-28-03	Am. & Ren.	2-1-04
291-013-0100	1-27-04	Amend(T)	3-1-04	309-041-1830	12-28-03	Am. & Ren.	2-1-04
291-013-0215	1-27-04	Amend(T)	3-1-04	309-041-1840	12-28-03	Am. & Ren.	2-1-04
291-062-0010	1-14-04	Suspend	2-1-04	309-041-1850	12-28-03	Am. & Ren.	2-1-04
291-062-0020	1-14-04	Suspend	2-1-04	309-041-1860	12-28-03	Am. & Ren.	2-1-04
291-062-0030	1-14-04	Suspend	2-1-04	309-041-1870	12-28-03	Am. & Ren.	2-1-04
291-062-0040	1-14-04	Suspend	2-1-04	309-041-1880	12-28-03	Am. & Ren.	2-1-04
291-062-0050	1-14-04	Suspend	2-1-04	309-041-1890	12-28-03	Am. & Ren.	2-1-04
291-062-0060	1-14-04	Suspend	2-1-04	309-041-1900	12-28-03	Am. & Ren.	2-1-04
291-062-0070	1-14-04	Suspend	2-1-04	309-041-1910	12-28-03	Am. & Ren.	2-1-04
291-062-0080	1-14-04	Suspend	2-1-04	309-041-1920	12-28-03	Am. & Ren.	2-1-04
291-062-0100	1-14-04	Adopt(T)	2-1-04	309-041-2000	12-28-03	Am. & Ren.	2-1-04
291-062-0110	1-14-04	Adopt(T)	2-1-04	309-041-2010	12-28-03	Am. & Ren.	2-1-04
291-062-0120	1-14-04	Adopt(T)	2-1-04	309-041-2020	12-28-03	Am. & Ren.	2-1-04
291-062-0130	1-14-04	Adopt(T)	2-1-04	309-041-2030	12-28-03	Am. & Ren.	2-1-04
291-062-0140	1-14-04	Adopt(T)	2-1-04	309-041-2040	12-28-03	Am. & Ren.	2-1-04
291-062-0150	1-14-04	Adopt(T)	2-1-04	309-041-2050	12-28-03	Am. & Ren.	2-1-04
291-062-0160	1-14-04	Adopt(T)	2-1-04	309-041-2060	12-28-03	Am. & Ren.	2-1-04
291-064-0060	12-2-03	Amend	1-1-04	309-041-2070	12-28-03	Am. & Ren.	2-1-04
291-117-0020	1-20-04	Amend(T)	3-1-04	309-041-2080	12-28-03	Am. & Ren.	2-1-04
309-018-0100	3-1-04	Repeal	4-1-04	309-041-2090	12-28-03	Am. & Ren.	2-1-04
309-018-0110	3-1-04	Repeal	4-1-04	309-041-2110	12-28-03	Am. & Ren.	2-1-04
309-018-0120	3-1-04	Repeal	4-1-04	309-041-2120	12-28-03	Am. & Ren.	2-1-04
309-018-0130	3-1-04	Repeal	4-1-04	309-041-2130	12-28-03	Am. & Ren.	2-1-04
309-018-0140	3-1-04	Repeal	4-1-04	309-041-2140	12-28-03	Am. & Ren.	2-1-04
309-018-0150	3-1-04	Repeal	4-1-04	309-041-2150	12-28-03	Am. & Ren.	2-1-04
309-018-0160	3-1-04	Repeal	4-1-04	309-041-2160	12-28-03	Am. & Ren.	2-1-04
309-018-0170	3-1-04	Repeal	4-1-04	309-041-2170	12-28-03	Am. & Ren.	2-1-04
309-018-0180	3-1-04	Repeal	4-1-04	309-041-2180	12-28-03	Am. & Ren.	2-1-04
309-018-0190	3-1-04	Repeal	4-1-04	309-044-0100	12-11-03	Amend(T)	1-1-04
309-041-0300	1-1-04	Repeal	2-1-04	309-044-0110	12-11-03	Amend(T)	1-1-04
309-041-0305	1-1-04	Repeal	2-1-04	309-044-0120	12-11-03	Amend(T)	1-1-04
309-041-0310	1-1-04	Repeal	2-1-04	309-044-0130	12-11-03	Amend(T)	1-1-04
309-041-0315	1-1-04	Repeal	2-1-04	309-044-0140	12-11-03	Amend(T)	1-1-04
309-041-0320	1-1-04	Repeal	2-1-04	309-044-0150	12-11-03	Amend(T)	1-1-04
309-041-0375	1-1-04	Repeal	2-1-04	309-044-0160	12-11-03	Amend(T)	1-1-04
309-041-0400	1-1-04	Repeal	2-1-04	309-044-0170	12-11-03	Amend(T)	1-1-04
309-041-0405	1-1-04	Repeal	2-1-04	309-044-0180	12-11-03	Amend(T)	1-1-04
309-041-0410	1-1-04	Repeal	2-1-04	309-044-0190	12-11-03	Amend(T)	1-1-04
309-041-0415	1-1-04	Repeal	2-1-04	309-044-0200	12-11-03	Amend(T)	1-1-04
309-041-0435	1-1-04	Repeal	2-1-04	309-044-0210	12-11-03	Amend(T)	1-1-04
309-041-0445	1-1-04	Repeal	2-1-04	309-047-0000	12-28-03	Am. & Ren.	2-1-04
309-041-0450	1-1-04	Repeal	2-1-04	309-047-0005	12-28-03	Am. & Ren.	2-1-04
309-041-0455	1-1-04	Repeal	2-1-04	309-047-0010	12-28-03	Am. & Ren.	2-1-04
309-041-0460	1-1-04	Repeal	2-1-04	309-047-0015	12-28-03	Am. & Ren.	2-1-04
309-041-0465	1-1-04	Repeal	2-1-04	309-047-0018	12-28-03	Am. & Ren.	2-1-04
309-041-0470	1-1-04	Repeal	2-1-04	309-047-0025	12-28-03	Am. & Ren.	2-1-04
309-041-0475	1-1-04	Repeal	2-1-04	309-047-0030	12-28-03	Am. & Ren.	2-1-04
309-041-0480	1-1-04	Repeal	2-1-04	309-047-0035	12-28-03	Am. & Ren.	2-1-04

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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
309-047-0120	12-28-03	Am. & Ren.	2-1-04	330-070-0013	1-21-04	Amend	3-1-04
309-047-0125	12-28-03	Am. & Ren.	2-1-04	330-070-0014	1-21-04	Amend	3-1-04
309-047-0130	12-28-03	Am. & Ren.	2-1-04	330-070-0020	1-21-04	Amend	3-1-04
309-047-0133	12-28-03	Am. & Ren.	2-1-04	330-070-0021	1-21-04	Amend	3-1-04
309-047-0135	12-28-03	Am. & Ren.	2-1-04	330-070-0022	1-21-04	Amend	3-1-04
309-047-0140	12-28-03	Am. & Ren.	2-1-04	330-070-0024	1-21-04	Amend	3-1-04
309-048-0000	1-1-04	Repeal	2-1-04	330-070-0025	1-21-04	Amend	3-1-04
309-048-0005	1-1-04	Repeal	2-1-04	330-070-0026	1-21-04	Amend	3-1-04
309-048-0010	1-1-04	Repeal	2-1-04	330-070-0027	1-21-04	Amend	3-1-04
309-048-0015	1-1-04	Repeal	2-1-04	330-070-0040	1-21-04	Amend	3-1-04
309-048-0020	1-1-04	Repeal	2-1-04	330-070-0045	1-21-04	Amend	3-1-04
309-048-0025	1-1-04	Repeal	2-1-04	330-070-0048	1-21-04	Amend	3-1-04
309-048-0030	1-1-04	Repeal	2-1-04	330-070-0055	1-21-04	Amend	3-1-04
309-048-0035	1-1-04	Repeal	2-1-04	330-070-0059	1-21-04	Adopt	3-1-04
309-049-0030	1-1-04	Repeal	2-1-04	330-070-0060	1-21-04	Amend	3-1-04
309-049-0035	1-1-04	Repeal	2-1-04	330-070-0062	1-21-04	Amend	3-1-04
309-049-0040	1-1-04	Repeal	2-1-04	330-070-0063	1-21-04	Amend	3-1-04
309-049-0045	1-1-04	Repeal	2-1-04	330-070-0064	1-21-04	Adopt	3-1-04
309-049-0050	1-1-04	Repeal	2-1-04	330-070-0070	1-21-04	Amend	3-1-04
309-049-0055	1-1-04	Repeal	2-1-04	330-070-0073	1-21-04	Amend	3-1-04
309-049-0060	1-1-04	Repeal	2-1-04	330-070-0085	1-21-04	Amend	3-1-04
309-049-0065	1-1-04	Repeal	2-1-04	330-070-0089	1-21-04	Amend	3-1-04
309-049-0070	1-1-04	Repeal	2-1-04	330-070-0091	1-21-04	Amend	3-1-04
309-049-0075	1-1-04	Repeal	2-1-04	330-070-0097	1-21-04	Amend	3-1-04
309-049-0080	1-1-04	Repeal	2-1-04	330-090-0105	1-21-04	Amend	3-1-04
309-049-0085	1-1-04	Repeal	2-1-04	330-090-0110	1-21-04	Amend	3-1-04
309-049-0090	1-1-04	Repeal	2-1-04	330-090-0120	1-21-04	Amend	3-1-04
309-049-0095	1-1-04	Repeal	2-1-04	330-090-0130	1-21-04	Amend	3-1-04
309-049-0100	1-1-04	Repeal	2-1-04	330-090-0135	1-21-04	Amend	3-1-04
309-049-0105	1-1-04	Repeal	2-1-04	330-090-0140	1-21-04	Amend	3-1-04
309-049-0110	1-1-04	Repeal	2-1-04	330-090-0150	1-21-04	Amend	3-1-04
309-049-0115	1-1-04	Repeal	2-1-04	331-001-0000	2-13-04	Adopt	3-1-04
309-049-0120	1-1-04	Repeal	2-1-04	331-001-0010	2-13-04	Adopt	3-1-04
309-049-0130	1-1-04	Repeal	2-1-04	331-001-0020	2-13-04	Adopt	3-1-04
309-049-0135	1-1-04	Repeal	2-1-04	331-010-0000	2-13-04	Adopt	3-1-04
309-049-0140	1-1-04	Repeal	2-1-04	331-010-0010	2-13-04	Adopt	3-1-04
309-049-0145	1-1-04	Repeal	2-1-04	331-010-0020	2-13-04	Adopt	3-1-04
309-049-0150	1-1-04	Repeal	2-1-04	331-010-0030	2-13-04	Adopt	3-1-04
309-049-0155	1-1-04	Repeal	2-1-04	331-010-0040	2-13-04	Adopt	3-1-04
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331-020-0020	2-13-04	Adopt	3-1-04	333-025-0110(T)	3-23-04	Repeal	5-1-04
331-020-0030	2-13-04	Adopt	3-1-04	333-025-0115	3-23-04	Adopt	5-1-04
331-020-0040	2-13-04	Adopt	3-1-04	333-025-0115(T)	3-23-04	Repeal	5-1-04
331-020-0050	2-13-04	Adopt	3-1-04	333-025-0120	3-23-04	Adopt	5-1-04
331-020-0060	2-13-04	Adopt	3-1-04	333-025-0120(T)	3-23-04	Repeal	5-1-04
331-020-0070	2-13-04	Adopt	3-1-04	333-025-0125	3-23-04	Adopt	5-1-04
331-030-0000	2-13-04	Adopt	3-1-04	333-025-0125(T)	3-23-04	Repeal	5-1-04
331-030-0010	2-13-04	Adopt	3-1-04	333-025-0130	3-23-04	Adopt	5-1-04
331-030-0020	2-13-04	Adopt	3-1-04	333-025-0130(T)	3-23-04	Repeal	5-1-04
331-030-0030	2-13-04	Adopt	3-1-04	333-025-0135(T)	3-23-04	Repeal	5-1-04
333-005-0000	3-29-04	Adopt	5-1-04	333-025-0140(T)	3-23-04	Repeal	5-1-04
333-005-0010	3-29-04	Adopt	5-1-04	333-025-0145(T)	3-23-04	Repeal	5-1-04
333-005-0020	3-29-04	Adopt	5-1-04	333-025-0150(T)	3-23-04	Repeal	5-1-04
333-005-0030	3-29-04	Adopt	5-1-04	333-025-0155(T)	3-23-04	Repeal	5-1-04
333-005-0040	3-29-04	Adopt	5-1-04	333-025-0160(T)	3-23-04	Repeal	5-1-04
333-005-0050	3-29-04	Adopt	5-1-04	333-029-0105	2-13-04	Amend(T)	3-1-04
333-005-0060	3-29-04	Adopt	5-1-04	333-029-0105	4-9-04	Amend	5-1-04
333-008-0030	4-1-04	Amend(T)	5-1-04	333-029-0105(T)	4-9-04	Repeal	5-1-04
333-012-0050	4-9-04	Amend	5-1-04	333-029-0110	2-13-04	Amend(T)	3-1-04
333-012-0053	4-9-04	Adopt	5-1-04	333-029-0110	4-9-04	Amend	5-1-04
333-012-0055	4-9-04	Amend	5-1-04	333-029-0110(T)	4-9-04	Repeal	5-1-04
333-012-0057	4-9-04	Amend	5-1-04	333-030-0095	2-13-04	Amend(T)	3-1-04
333-012-0060	4-9-04	Amend	5-1-04	333-030-0095	4-9-04	Amend	5-1-04
333-012-0061	4-9-04	Adopt	5-1-04	333-030-0095(T)	4-9-04	Repeal	5-1-04
333-012-0063	4-9-04	Adopt	5-1-04	333-040-0135	4-9-04	Amend	5-1-04
333-012-0065	4-9-04	Amend	5-1-04	333-040-0135(T)	4-9-04	Repeal	5-1-04
333-012-0067	4-9-04	Adopt	5-1-04	333-054-0000	1-5-04	Amend	2-1-04
333-012-0070	4-9-04	Amend	5-1-04	333-054-0000(T)	1-5-04	Repeal	2-1-04
333-013-0006	1-2-04	Repeal	2-1-04	333-054-0010	1-5-04	Amend	2-1-04
333-013-0026	1-2-04	Repeal	2-1-04	333-054-0010(T)	1-5-04	Repeal	2-1-04
333-020-0125	12-16-03	Amend	2-1-04	333-054-0020	1-5-04	Amend	2-1-04
333-020-0127	12-16-03	Adopt	2-1-04	333-054-0020(T)	1-5-04	Repeal	2-1-04
333-020-0130	12-16-03	Amend	2-1-04	333-054-0030	1-5-04	Amend	2-1-04
333-020-0135	12-16-03	Amend	2-1-04	333-054-0030(T)	1-5-04	Repeal	2-1-04
333-020-0140	12-16-03	Amend	2-1-04	333-054-0040	1-5-04	Amend	2-1-04
333-020-0145	12-16-03	Amend	2-1-04	333-054-0040(T)	1-5-04	Repeal	2-1-04
333-020-0147	12-16-03	Adopt	2-1-04	333-054-0050	1-5-04	Amend	2-1-04
333-020-0149	12-16-03	Adopt	2-1-04	333-054-0050(T)	1-5-04	Repeal	2-1-04
333-020-0150	12-16-03	Amend	2-1-04	333-054-0060	1-5-04	Amend	2-1-04
333-020-0151	12-16-03	Adopt	2-1-04	333-054-0060(T)	1-5-04	Repeal	2-1-04
333-020-0153	12-16-03	Adopt	2-1-04	333-054-0070	1-5-04	Amend	2-1-04
333-020-0155	12-16-03	Amend	2-1-04	333-054-0070(T)	1-5-04	Repeal	2-1-04
333-020-0160	12-16-03	Amend	2-1-04	333-054-0090	1-5-04	Repeal	2-1-04
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333-024-0510	3-23-04	Am. & Ren.	5-1-04	333-055-0015	3-23-04	Amend	5-1-04
333-024-0520	3-23-04	Renumber	5-1-04	333-055-0030	3-23-04	Amend	5-1-04
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333-061-0085	4-9-04	Amend(T)	5-1-04	333-162-0930	4-9-04	Amend	5-1-04
333-061-0087	4-9-04	Amend(T)	5-1-04	333-162-0930(T)	4-9-04	Repeal	5-1-04
333-061-0090	4-9-04	Amend(T)	5-1-04	333-162-1005	2-13-04	Adopt(T)	3-1-04
333-061-0205	4-9-04	Amend(T)	5-1-04	333-162-1005	4-9-04	Adopt	5-1-04
333-061-0210	4-9-04	Amend(T)	5-1-04	333-162-1005(T)	4-9-04	Repeal	5-1-04
333-061-0215	4-9-04	Amend(T)	5-1-04	333-170-0010	2-13-04	Amend(T)	3-1-04
333-061-0220	4-9-04	Amend(T)	5-1-04	333-170-0010	4-9-04	Amend	5-1-04
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333-061-0230	4-9-04	Amend(T)	5-1-04	333-170-0020	4-9-04	Amend	5-1-04
333-061-0235	4-9-04	Amend(T)	5-1-04	333-170-0020(T)	4-9-04	Repeal	5-1-04
333-061-0240	4-9-04	Suspend	5-1-04	333-170-0030	2-13-04	Amend(T)	3-1-04
333-061-0245	4-9-04	Amend(T)	5-1-04	333-170-0030	4-9-04	Amend	5-1-04
333-061-0250	4-9-04	Amend(T)	5-1-04	333-170-0030(T)	4-9-04	Repeal	5-1-04
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333-061-0265	4-9-04	Amend(T)	5-1-04	333-170-0040(T)	4-9-04	Repeal	5-1-04
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333-061-0290	4-9-04	Amend(T)	5-1-04	333-170-0050(T)	4-9-04	Repeal	5-1-04
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333-064-0040	12-8-03	Amend	1-1-04	333-170-0100	2-13-04	Amend(T)	3-1-04
333-064-0040(T)	12-8-03	Repeal	1-1-04	333-170-0100	4-9-04	Amend	5-1-04
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333-157-0045	4-9-04	Amend	5-1-04	333-535-0060	3-17-04	Repeal	5-1-04
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333-157-0050	4-9-04	Repeal	5-1-04	333-536-0005	2-6-04	Adopt(T)	3-1-04
333-157-0060	2-13-04	Suspend	3-1-04	333-536-0010	2-6-04	Adopt(T)	3-1-04
333-157-0060	4-9-04	Repeal	5-1-04	333-536-0015	2-6-04	Adopt(T)	3-1-04
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333-157-0090	4-9-04	Repeal	5-1-04	333-536-0025	2-6-04	Adopt(T)	3-1-04
333-162-0300	2-13-04	Amend(T)	3-1-04	333-536-0030	2-6-04	Adopt(T)	3-1-04
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333-536-0045	2-6-04	Adopt(T)	3-1-04	340-011-0550	12-12-03	Adopt	1-1-04
333-536-0050	2-6-04	Adopt(T)	3-1-04	340-011-0555	12-12-03	Adopt	1-1-04
333-536-0055	2-6-04	Adopt(T)	3-1-04	340-011-0580	12-12-03	Adopt	1-1-04
333-536-0060	2-6-04	Adopt(T)	3-1-04	340-011-0585	12-12-03	Adopt	1-1-04
333-536-0065	2-6-04	Adopt(T)	3-1-04	340-041-0001	12-9-03	Amend	1-1-04
333-536-0070	2-6-04	Adopt(T)	3-1-04	340-041-0002	12-9-03	Adopt	1-1-04
333-536-0075	2-6-04	Adopt(T)	3-1-04	340-041-0004	12-9-03	Adopt	1-1-04
333-536-0080	2-6-04	Adopt(T)	3-1-04	340-041-0006	12-9-03	Repeal	1-1-04
333-536-0085	2-6-04	Adopt(T)	3-1-04	340-041-0007	12-9-03	Adopt	1-1-04
333-536-0090	2-6-04	Adopt(T)	3-1-04	340-041-0009	12-9-03	Adopt	1-1-04
333-536-0095	2-6-04	Adopt(T)	3-1-04	340-041-0016	12-9-03	Adopt	1-1-04
333-536-0100	2-6-04	Adopt(T)	3-1-04	340-041-0021	12-9-03	Adopt	1-1-04
333-560-0010	1-16-04	Amend	3-1-04	340-041-0026	12-9-03	Repeal	1-1-04
333-635-0000	1-16-04	Repeal	3-1-04	340-041-0027	12-9-03	Am. & Ren.	1-1-04
333-635-0010	1-16-04	Repeal	3-1-04	340-041-0028	12-9-03	Adopt	1-1-04
333-635-0020	1-16-04	Repeal	3-1-04	340-041-0031	12-9-03	Adopt	1-1-04
333-635-0030	1-16-04	Repeal	3-1-04	340-041-0032	12-9-03	Adopt	1-1-04
333-675-0000	3-11-04	Amend	4-1-04	340-041-0033	12-9-03	Adopt	1-1-04
333-675-0010	3-11-04	Am. & Ren.	4-1-04	340-041-0034	12-9-03	Repeal	1-1-04
333-675-0020	3-11-04	Amend	4-1-04	340-041-0036	12-9-03	Adopt	1-1-04
333-675-0030	3-11-04	Amend	4-1-04	340-041-0046	12-9-03	Adopt	1-1-04
333-675-0040	3-11-04	Amend	4-1-04	340-041-0053	12-9-03	Adopt	1-1-04
334-010-0005	2-23-04	Amend	4-1-04	340-041-0057	12-9-03	Adopt	1-1-04
334-010-0010	2-23-04	Amend	4-1-04	340-041-0061	12-9-03	Adopt	1-1-04
334-010-0015	2-23-04	Amend	4-1-04	340-041-0101	12-9-03	Adopt	1-1-04
334-010-0017	2-23-04	Amend	4-1-04	340-041-0103	12-9-03	Adopt	1-1-04
334-010-0025	2-23-04	Amend	4-1-04	340-041-0104	12-9-03	Adopt	1-1-04
334-010-0050	2-23-04	Amend	4-1-04	340-041-0120	12-9-03	Repeal	1-1-04
334-010-0050	3-16-04	Amend(T)	5-1-04	340-041-0121	12-9-03	Adopt	1-1-04
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335-070-0030	2-6-04	Amend	3-1-04	340-041-0124	12-9-03	Adopt	1-1-04
335-070-0060	2-6-04	Amend	3-1-04	340-041-0130	12-9-03	Adopt	1-1-04
335-095-0020	2-6-04	Amend	3-1-04	340-041-0133	12-9-03	Adopt	1-1-04
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337-021-0050	4-15-04	Repeal	5-1-04	340-041-0143	12-9-03	Adopt	1-1-04
338-010-0015	3-1-04	Amend(T)	4-1-04	340-041-0145	12-9-03	Adopt	1-1-04
338-010-0025	3-1-04	Amend(T)	4-1-04	340-041-0150	12-9-03	Am. & Ren.	1-1-04
338-010-0030	3-1-04	Amend(T)	4-1-04	340-041-0151	12-9-03	Adopt	1-1-04
338-010-0035	3-1-04	Amend(T)	4-1-04	340-041-0154	12-9-03	Adopt	1-1-04
338-010-0050	3-1-04	Amend(T)	4-1-04	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
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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
340-011-0122	12-12-03	Renumber	1-1-04	340-041-0184	12-9-03	Adopt	1-1-04
340-011-0124	12-12-03	Am. & Ren.	1-1-04	340-041-0185	12-9-03	Adopt	1-1-04
340-011-0131	12-12-03	Am. & Ren.	1-1-04	340-041-0190	12-9-03	Adopt	1-1-04
340-011-0132	12-12-03	Am. & Ren.	1-1-04	340-041-0194	12-9-03	Adopt	1-1-04
340-011-0136	12-12-03	Am. & Ren.	1-1-04	340-041-0195	12-9-03	Adopt	1-1-04
340-011-0520	12-12-03	Adopt	1-1-04	340-041-0201	12-9-03	Adopt	1-1-04
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340-041-0205	12-9-03	Repeal	1-1-04	340-041-0485	12-9-03	Repeal	1-1-04
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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
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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
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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
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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
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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
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340-041-0350	12-9-03	Adopt	1-1-04	340-200-0040	12-12-03	Amend	1-1-04
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340-224-0080	4-14-04	Amend	5-1-04	410-120-1280	4-1-04	Amend	4-1-04
340-225-0020	4-14-04	Amend	5-1-04	410-120-1295	3-22-04	Amend	5-1-04
340-225-0050	4-14-04	Amend	5-1-04	410-120-1295	3-23-04	Amend(T)	5-1-04
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340-228-0400	12-12-03	Adopt	1-1-04	410-120-1360	4-1-04	Amend	4-1-04
340-228-0410	12-12-03	Adopt	1-1-04	410-120-1520	4-1-04	Amend	4-1-04
340-228-0420	12-12-03	Adopt	1-1-04	410-120-1540	4-1-04	Amend	4-1-04
340-228-0430	12-12-03	Adopt	1-1-04	410-120-1570	4-1-04	Amend	4-1-04
340-228-0440	12-12-03	Adopt	1-1-04	410-121-0000	4-1-04	Amend	4-1-04
340-228-0450	12-12-03	Adopt	1-1-04	410-121-0021	12-1-03	Adopt	1-1-04
340-228-0460	12-12-03	Adopt	1-1-04	410-121-0030	3-1-04	Amend	4-1-04
340-228-0470	12-12-03	Adopt	1-1-04	410-121-0033	2-1-04	Adopt	3-1-04
340-228-0480	12-12-03	Adopt	1-1-04	410-121-0040	12-1-03	Amend	1-1-04
340-228-0490	12-12-03	Adopt	1-1-04	410-121-0040	12-15-03	Amend(T)	1-1-04
340-228-0500	12-12-03	Adopt	1-1-04	410-121-0040	3-1-04	Amend	4-1-04
340-228-0510	12-12-03	Adopt	1-1-04	410-121-0040(T)	3-1-04	Repeal	4-1-04
340-228-0520	12-12-03	Adopt	1-1-04	410-121-0060	4-1-04	Amend	4-1-04
340-228-0530	12-12-03	Adopt	1-1-04	410-121-0061	4-1-04	Amend	4-1-04
350-120-0010	4-1-04	Amend	4-1-04	410-121-0100	4-1-04	Amend	4-1-04
350-120-0015	4-1-04	Adopt	4-1-04	410-121-0135	4-1-04	Amend	4-1-04
350-120-0020	4-1-04	Amend	4-1-04	410-121-0140	12-1-03	Amend	1-1-04
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350-120-0040	4-1-04	Amend	4-1-04	410-121-0144	4-1-04	Amend	4-1-04
350-120-0050	4-1-04	Adopt	4-1-04	410-121-0145	4-1-04	Amend	4-1-04
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410-007-0010	3-1-04	Repeal	4-1-04	410-121-0146	3-15-04	Amend(T)	4-1-04
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410-007-0030	3-1-04	Repeal	4-1-04	410-121-0148	4-1-04	Amend	4-1-04
410-007-0040	3-1-04	Repeal	4-1-04	410-121-0150	4-1-04	Amend	4-1-04
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410-007-0070	3-1-04	Repeal	4-1-04	410-121-0157	3-30-04	Amend	5-1-04
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410-007-0230	3-1-04	Adopt	4-1-04	410-121-0180	4-1-04	Repeal	4-1-04
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410-007-0250	3-1-04	Adopt	4-1-04	410-121-0190	4-1-04	Amend	4-1-04
410-007-0260	3-1-04	Adopt	4-1-04	410-121-0200	4-1-04	Amend	4-1-04
410-007-0270	3-1-04	Adopt	4-1-04	410-121-0300	12-1-03	Amend(T)	1-1-04
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410-007-0290	3-1-04	Adopt	4-1-04	410-121-0320	2-1-04	Amend	3-1-04
410-007-0300	3-1-04	Adopt	4-1-04	410-121-0420	4-1-04	Amend	4-1-04
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410-007-0340	3-1-04	Adopt	4-1-04	410-122-0040	3-15-04	Amend	3-1-04
410-007-0350	3-1-04	Adopt	4-1-04	410-122-0040	3-15-04	Amend(T)	4-1-04
410-007-0360	3-1-04	Adopt	4-1-04	410-122-0040	4-1-04	Amend	5-1-04
410-007-0370	3-1-04	Adopt	4-1-04	410-122-0040	5-1-04	Amend	5-1-04
410-007-0380	3-1-04	Adopt	4-1-04	410-122-0060	4-1-04	Amend	5-1-04
410-120-1160	4-1-04	Amend	4-1-04	410-122-0080	4-1-04	Amend	5-1-04
410-120-1195	1-1-04	Amend	2-1-04	410-122-0105	4-1-04	Repeal	5-1-04

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410-122-0120	4-1-04	Repeal	5-1-04	410-141-0520	4-1-04	Amend(T)	4-1-04
410-122-0140	4-1-04	Repeal	5-1-04	410-142-0300	12-1-03	Amend	1-1-04
410-122-0180	4-1-04	Amend	5-1-04	410-148-0000	4-1-04	Amend	4-1-04
410-122-0190	4-1-04	Amend	5-1-04	410-148-0020	4-1-04	Amend	4-1-04
410-122-0200	4-1-04	Amend	5-1-04	410-148-0080	4-1-04	Amend	4-1-04
410-122-0202	4-1-04	Amend	5-1-04	410-148-0120	4-1-04	Amend	4-1-04
410-122-0203	4-1-04	Amend	5-1-04	410-148-0260	4-1-04	Amend	4-1-04
410-122-0205	4-1-04	Amend	5-1-04	410-148-0280	4-1-04	Amend	4-1-04
410-122-0209	4-1-04	Amend	5-1-04	410-148-0300	4-1-04	Amend	4-1-04
410-122-0210	4-1-04	Amend	5-1-04	411-009-0000	3-1-04	Repeal	4-1-04
410-122-0340	4-1-04	Amend	5-1-04	411-009-0005	3-1-04	Repeal	4-1-04
410-122-0365	4-1-04	Amend	5-1-04	411-009-0015	3-1-04	Repeal	4-1-04
410-122-0375	4-1-04	Amend	5-1-04	411-009-0021	3-1-04	Repeal	4-1-04
410-122-0380	4-1-04	Amend	5-1-04	411-009-0040	3-1-04	Repeal	4-1-04
410-122-0525	4-1-04	Amend	5-1-04	411-009-0050	3-1-04	Repeal	4-1-04
410-122-0540	4-1-04	Amend	5-1-04	411-009-0060	3-1-04	Repeal	4-1-04
410-122-0560	4-1-04	Amend	5-1-04	411-009-0070	3-1-04	Repeal	4-1-04
410-122-0580	4-1-04	Amend	5-1-04	411-009-0080	3-1-04	Repeal	4-1-04
410-122-0620	4-1-04	Amend	5-1-04	411-009-0090	3-1-04	Repeal	4-1-04
410-122-0625	4-1-04	Amend	5-1-04	411-009-0100	3-1-04	Repeal	4-1-04
410-122-0660	4-1-04	Amend	5-1-04	411-009-0110	3-1-04	Repeal	4-1-04
410-122-0700	4-1-04	Amend	5-1-04	411-015-0015	3-23-04	Amend(T)	5-1-04
410-125-0080	4-1-04	Amend	4-1-04	411-030-0020	12-11-03	Amend(T)	1-1-04
410-125-0115	3-15-04	Amend(T)	4-1-04	411-030-0033	12-11-03	Amend(T)	1-1-04
410-125-0121	3-15-04	Amend(T)	4-1-04	411-030-0040	12-11-03	Amend(T)	1-1-04
410-125-0141	1-1-04	Amend	2-1-04	411-030-0060	12-11-03	Amend(T)	1-1-04
410-125-0181	1-1-04	Amend	2-1-04	411-030-0065	12-11-03	Amend(T)	1-1-04
410-125-0181	3-15-04	Amend(T)	4-1-04	411-055-0000	2-4-04	Amend	3-1-04
410-125-0195	1-1-04	Amend	2-1-04	411-055-0000	4-1-04	Amend	5-1-04
410-125-0225	4-1-04	Repeal	4-1-04	411-055-0003	2-4-04	Amend	3-1-04
410-125-0410	4-1-04	Amend	4-1-04	411-055-0003	4-1-04	Amend	5-1-04
410-125-2000	4-1-04	Amend	4-1-04	411-055-0005	4-1-04	Amend	5-1-04
410-127-0080	1-1-04	Amend	2-1-04	411-055-0010	4-1-04	Amend	5-1-04
410-129-0080	12-1-03	Amend	1-1-04	411-055-0015	4-1-04	Amend	5-1-04
410-129-0100	4-1-04	Amend	4-1-04	411-055-0019	4-1-04	Amend	5-1-04
410-129-0200	4-1-04	Amend	4-1-04	411-055-0024	4-1-04	Amend	5-1-04
410-129-0260	4-1-04	Amend	4-1-04	411-055-0029	4-1-04	Amend	5-1-04
410-130-0000	4-1-04	Amend	4-1-04	411-055-0034	4-1-04	Amend	5-1-04
410-130-0180	4-1-04	Amend	4-1-04	411-055-0039	4-1-04	Amend	5-1-04
410-130-0200	4-1-04	Amend	4-1-04	411-055-0045	4-1-04	Amend	5-1-04
410-130-0220	4-1-04	Amend	4-1-04	411-055-0051	4-1-04	Amend	5-1-04
410-130-0240	4-1-04	Amend	4-1-04	411-055-0061	4-1-04	Amend	5-1-04
410-130-0255	4-1-04	Amend	4-1-04	411-055-0081	4-1-04	Amend	5-1-04
410-130-0585	4-1-04	Amend	4-1-04	411-055-0085	4-1-04	Amend	5-1-04
410-130-0587	4-1-04	Amend	4-1-04	411-055-0091	4-1-04	Amend	5-1-04
410-130-0680	4-1-04	Amend	4-1-04	411-055-0101	4-1-04	Amend	5-1-04
410-130-0700	4-1-04	Amend	4-1-04	411-055-0111	4-1-04	Amend	5-1-04
410-131-0160	1-1-04	Amend	2-1-04	411-055-0115	4-1-04	Amend	5-1-04
410-131-0280	4-1-04	Amend	4-1-04	411-055-0121	4-1-04	Amend	5-1-04
410-132-0100	1-1-04	Amend	2-1-04	411-055-0131	4-1-04	Amend	5-1-04
410-133-0090	12-15-03	Amend(T)	1-1-04	411-055-0141	4-1-04	Amend	5-1-04
410-133-0090	2-1-04	Amend	3-1-04	411-055-0151	4-1-04	Amend	5-1-04
410-141-0420	3-23-04	Amend(T)	5-1-04	411-055-0161	4-1-04	Amend	5-1-04
410-141-0480	1-1-04	Amend	2-1-04	411-055-0170	4-1-04	Amend	5-1-04
410-141-0500	1-1-04	Amend	2-1-04	411-055-0180	4-1-04	Amend	5-1-04
410-141-0520	1-1-04	Amend	2-1-04	411-055-0190	4-1-04	Amend	5-1-04



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411-055-0200	4-1-04	Amend	5-1-04	411-325-0210	1-1-04	Adopt	2-1-04
411-055-0210	4-1-04	Amend	5-1-04	411-325-0220	1-1-04	Adopt	2-1-04
411-055-0220	4-1-04	Amend	5-1-04	411-325-0230	1-1-04	Adopt	2-1-04
411-055-0230	4-1-04	Amend	5-1-04	411-325-0240	1-1-04	Adopt	2-1-04
411-055-0240	4-1-04	Amend	5-1-04	411-325-0250	1-1-04	Adopt	2-1-04
411-055-0250	4-1-04	Amend	5-1-04	411-325-0260	1-1-04	Adopt	2-1-04
411-055-0260	4-1-04	Amend	5-1-04	411-325-0270	1-1-04	Adopt	2-1-04
411-055-0270	4-1-04	Amend	5-1-04	411-325-0280	1-1-04	Adopt	2-1-04
411-055-0280	4-1-04	Amend	5-1-04	411-325-0290	1-1-04	Adopt	2-1-04
411-056-0005	2-4-04	Amend	3-1-04	411-325-0300	1-1-04	Adopt	2-1-04
411-056-0007	2-4-04	Amend	3-1-04	411-325-0310	1-1-04	Adopt	2-1-04
411-056-0010	3-23-04	Amend(T)	5-1-04	411-325-0320	1-1-04	Adopt	2-1-04
411-056-0018	3-23-04	Amend(T)	5-1-04	411-325-0330	1-1-04	Adopt	2-1-04
411-056-0030	3-23-04	Amend(T)	5-1-04	411-325-0340	1-1-04	Adopt	2-1-04
411-200-0010	3-24-04	Amend	5-1-04	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
411-320-0170	1-1-04	Adopt	2-1-04	411-330-0050	12-28-03	Adopt	2-1-04
411-320-0180	1-1-04	Adopt	2-1-04	411-330-0060	12-28-03	Adopt	2-1-04
411-320-0190	1-1-04	Adopt	2-1-04	411-330-0070	12-28-03	Adopt	2-1-04
411-320-0200	1-1-04	Adopt	2-1-04	411-330-0080	12-28-03	Adopt	2-1-04
411-325-0010	1-1-04	Adopt	2-1-04	411-330-0090	12-28-03	Adopt	2-1-04
411-325-0020	1-1-04	Adopt	2-1-04	411-330-0100	12-28-03	Adopt	2-1-04
411-325-0030	1-1-04	Adopt	2-1-04	411-330-0110	12-28-03	Adopt	2-1-04
411-325-0040	1-1-04	Adopt	2-1-04	411-330-0120	12-28-03	Adopt	2-1-04
411-325-0050	1-1-04	Adopt	2-1-04	411-330-0130	12-28-03	Adopt	2-1-04
411-325-0060	1-1-04	Adopt	2-1-04	411-330-0140	12-28-03	Adopt	2-1-04
411-325-0070	1-1-04	Adopt	2-1-04	411-330-0150	12-28-03	Adopt	2-1-04
411-325-0080	1-1-04	Adopt	2-1-04	411-330-0160	12-28-03	Adopt	2-1-04
411-325-0090	1-1-04	Adopt	2-1-04	411-330-0170	12-28-03	Adopt	2-1-04
411-325-0100	1-1-04	Adopt	2-1-04	413-010-0700	1-1-04	Amend	2-1-04
411-325-0110	1-1-04	Adopt	2-1-04	413-010-0705	1-1-04	Amend	2-1-04
411-325-0120	1-1-04	Adopt	2-1-04	413-010-0712	1-1-04	Amend	2-1-04
411-325-0130	1-1-04	Adopt	2-1-04	413-010-0714	1-1-04	Amend	2-1-04
411-325-0140	1-1-04	Adopt	2-1-04	413-010-0715	1-1-04	Amend	2-1-04
411-325-0150	1-1-04	Adopt	2-1-04	413-010-0716	1-1-04	Amend	2-1-04
411-325-0160	1-1-04	Adopt	2-1-04	413-010-0717	1-1-04	Amend	2-1-04
411-325-0170	1-1-04	Adopt	2-1-04	413-010-0718	1-1-04	Amend	2-1-04
411-325-0180	1-1-04	Adopt	2-1-04	413-010-0719	1-1-04	Repeal	2-1-04
411-325-0190	1-1-04	Adopt	2-1-04	413-010-0720	1-1-04	Amend	2-1-04
411-325-0200	1-1-04	Adopt	2-1-04	413-010-0721	1-1-04	Amend	2-1-04

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413-010-0723	1-1-04	Amend	2-1-04	413-070-0937	4-1-04	Amend	5-1-04
413-010-0732	1-1-04	Amend	2-1-04	413-070-0937(T)	4-1-04	Repeal	5-1-04
413-010-0735	1-1-04	Amend	2-1-04	413-070-0940	4-1-04	Amend	5-1-04
413-010-0738	1-1-04	Amend	2-1-04	413-070-0945	4-1-04	Amend	5-1-04
413-010-0740	1-1-04	Amend	2-1-04	413-070-0950	4-1-04	Amend	5-1-04
413-010-0743	1-1-04	Amend	2-1-04	413-070-0955	4-1-04	Amend	5-1-04
413-010-0745	1-1-04	Amend	2-1-04	413-070-0960	4-1-04	Amend	5-1-04
413-010-0746	1-1-04	Amend	2-1-04	413-070-0965	4-1-04	Amend	5-1-04
413-010-0748	1-1-04	Adopt	2-1-04	413-070-0970	4-1-04	Amend	5-1-04
413-010-0750	1-1-04	Amend	2-1-04	413-070-0980	1-1-04	Amend(T)	2-1-04
413-040-0200	1-1-04	Amend	2-1-04	413-070-0980	4-1-04	Amend	5-1-04
413-040-0205	1-1-04	Adopt	2-1-04	413-070-0980(T)	4-1-04	Repeal	5-1-04
413-040-0210	1-1-04	Amend	2-1-04	413-070-0981	1-1-04	Amend(T)	2-1-04
413-040-0215	1-1-04	Adopt	2-1-04	413-070-0981	4-1-04	Amend	5-1-04
413-040-0220	1-1-04	Repeal	2-1-04	413-070-0981(T)	1-1-04	Suspend	2-1-04
413-040-0230	1-1-04	Amend	2-1-04	413-070-0981(T)	4-1-04	Repeal	5-1-04
413-040-0240	1-1-04	Amend	2-1-04	413-070-0982	1-1-04	Adopt(T)	2-1-04
413-040-0250	1-1-04	Am. & Ren.	2-1-04	413-070-0982	4-1-04	Adopt	5-1-04
413-040-0260	1-1-04	Amend	2-1-04	413-070-0982(T)	4-1-04	Repeal	5-1-04
413-040-0265	1-1-04	Adopt	2-1-04	413-080-0040	3-1-04	Adopt(T)	4-1-04
413-040-0270	1-1-04	Amend	2-1-04	413-080-0045	3-1-04	Adopt(T)	4-1-04
413-040-0280	1-1-04	Amend	2-1-04	413-080-0050	3-1-04	Adopt(T)	4-1-04
413-040-0290	1-1-04	Amend	2-1-04	413-080-0055	3-1-04	Adopt(T)	4-1-04
413-040-0300	1-1-04	Amend	2-1-04	413-080-0060	3-1-04	Adopt(T)	4-1-04
413-040-0310	1-1-04	Amend	2-1-04	413-090-0010	4-1-04	Amend	5-1-04
413-040-0320	1-1-04	Amend	2-1-04	413-090-0010(T)	4-1-04	Repeal	5-1-04
413-040-0330	1-1-04	Amend	2-1-04	413-090-0160	4-1-04	Amend	5-1-04
413-050-0200	12-12-03	Amend	1-1-04	413-090-0160(T)	4-1-04	Repeal	5-1-04
413-050-0210	12-12-03	Amend	1-1-04	413-100-0020	2-10-04	Amend	3-1-04
413-050-0220	12-12-03	Amend	1-1-04	413-100-0030	2-10-04	Amend	3-1-04
413-050-0230	12-12-03	Amend	1-1-04	413-100-0030(T)	2-10-04	Repeal	3-1-04
413-050-0240	12-12-03	Amend	1-1-04	413-100-0040	2-10-04	Amend	3-1-04
413-050-0250	12-12-03	Amend	1-1-04	413-100-0040(T)	2-10-04	Repeal	3-1-04
413-050-0260	12-12-03	Amend	1-1-04	413-100-0050	2-10-04	Amend	3-1-04
413-050-0270	12-12-03	Amend	1-1-04	413-100-0050(T)	2-10-04	Repeal	3-1-04
413-050-0280	12-12-03	Amend	1-1-04	413-100-0070	2-10-04	Amend	3-1-04
413-050-0290	12-12-03	Amend	1-1-04	413-100-0070(T)	2-10-04	Repeal	3-1-04
413-050-0300	12-12-03	Amend	1-1-04	413-100-0080	2-10-04	Amend	3-1-04
413-070-0500	1-1-04	Amend	2-1-04	413-100-0080(T)	2-10-04	Repeal	3-1-04
413-070-0505	1-1-04	Amend	2-1-04	413-100-0110	2-10-04	Amend	3-1-04
413-070-0510	1-1-04	Amend	2-1-04	413-100-0110(T)	2-10-04	Repeal	3-1-04
413-070-0515	1-1-04	Amend	2-1-04	413-100-0130	2-10-04	Amend	3-1-04
413-070-0517	1-1-04	Amend	2-1-04	413-100-0130(T)	2-10-04	Repeal	3-1-04
413-070-0900	4-1-04	Amend	5-1-04	413-100-0135	2-10-04	Amend	3-1-04
413-070-0905	4-1-04	Amend	5-1-04	413-100-0135(T)	2-10-04	Repeal	3-1-04
413-070-0915	1-1-04	Amend(T)	2-1-04	413-100-0150	2-10-04	Amend	3-1-04
413-070-0915	4-1-04	Amend	5-1-04	413-100-0150(T)	2-10-04	Repeal	3-1-04
413-070-0915(T)	4-1-04	Repeal	5-1-04	413-100-0160	2-10-04	Amend	3-1-04
413-070-0917	4-1-04	Amend	5-1-04	413-100-0160(T)	2-10-04	Repeal	3-1-04
413-070-0920	4-1-04	Amend	5-1-04	413-100-0240	2-10-04	Amend	3-1-04
413-070-0925	4-1-04	Amend	5-1-04	413-100-0240(T)	2-10-04	Repeal	3-1-04
413-070-0930	4-1-04	Amend	5-1-04	413-100-0276	2-10-04	Amend	3-1-04
413-070-0935	1-1-04	Amend(T)	2-1-04	413-100-0276(T)	2-10-04	Repeal	3-1-04
413-070-0935	4-1-04	Amend	5-1-04	413-100-0290	2-10-04	Amend	3-1-04
413-070-0935(T)	4-1-04	Repeal	5-1-04	413-100-0290(T)	2-10-04	Repeal	3-1-04

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OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
413-110-0000	1-1-04	Amend	2-1-04	413-330-0980	1-1-04	Amend(T)	2-1-04
413-110-0010	1-1-04	Amend	2-1-04	413-330-0990	1-1-04	Amend(T)	2-1-04
413-110-0020	1-1-04	Amend	2-1-04	413-330-1000	1-1-04	Amend(T)	2-1-04
413-110-0030	1-1-04	Amend	2-1-04	413-330-1010	1-1-04	Amend(T)	2-1-04
413-110-0040	1-1-04	Amend	2-1-04	414-050-0010	12-28-03	Adopt(T)	2-1-04
413-110-0100	1-1-04	Amend	2-1-04	414-050-0010	3-28-04	Adopt	5-1-04
413-110-0110	1-1-04	Amend	2-1-04	414-050-0010(T)	3-28-04	Repeal	5-1-04
413-110-0120	1-1-04	Amend	2-1-04	414-061-0000	12-7-03	Amend	1-1-04
413-110-0130	1-1-04	Amend	2-1-04	414-061-0010	12-7-03	Amend	1-1-04
413-110-0140	1-1-04	Amend	2-1-04	414-061-0020	12-7-03	Amend	1-1-04
413-110-0300	1-1-04	Amend	2-1-04	414-061-0030	12-7-03	Amend	1-1-04
413-110-0310	1-1-04	Amend	2-1-04	414-061-0040	12-7-03	Amend	1-1-04
413-110-0320	1-1-04	Amend	2-1-04	414-061-0050	12-7-03	Amend	1-1-04
413-110-0330	1-1-04	Amend	2-1-04	414-061-0060	12-7-03	Amend	1-1-04
413-110-0340	1-1-04	Amend	2-1-04	414-061-0070	12-7-03	Amend	1-1-04
413-110-0350	1-1-04	Amend	2-1-04	414-061-0080	12-7-03	Amend	1-1-04
413-110-0360	1-1-04	Amend	2-1-04	414-061-0090	12-7-03	Amend	1-1-04
413-120-0100	4-1-04	Amend	5-1-04	414-061-0100	12-7-03	Amend	1-1-04
413-120-0105	4-1-04	Amend	5-1-04	414-061-0110	12-7-03	Amend	1-1-04
413-120-0115	11-25-03	Amend(T)	1-1-04	414-061-0120	12-7-03	Amend	1-1-04
413-120-0115	4-1-04	Amend	5-1-04	414-150-0055	12-28-03	Amend	2-1-04
413-120-0115(T)	4-1-04	Repeal	5-1-04	414-150-0080	12-28-03	Amend	2-1-04
413-120-0150	4-1-04	Amend	5-1-04	414-150-0120	12-28-03	Amend	2-1-04
413-120-0155	4-1-04	Amend	5-1-04	414-205-0000	12-28-03	Amend	2-1-04
413-120-0165	4-1-04	Amend	5-1-04	414-300-0000	12-28-03	Amend	2-1-04
413-120-0175	11-25-03	Amend(T)	1-1-04	414-300-0005	12-28-03	Amend	2-1-04
413-120-0175	4-1-04	Amend	5-1-04	414-300-0010	12-28-03	Amend	2-1-04
413-120-0175(T)	4-1-04	Repeal	5-1-04	414-300-0180	12-28-03	Amend	2-1-04
413-120-0500	1-1-04	Amend	2-1-04	414-300-0190	12-28-03	Amend	2-1-04
413-120-0510	1-1-04	Amend	2-1-04	414-300-0200	12-28-03	Amend	2-1-04
413-120-0520	1-1-04	Amend	2-1-04	414-300-0210	12-28-03	Amend	2-1-04
413-120-0530	1-1-04	Amend	2-1-04	414-300-0280	12-28-03	Amend	2-1-04
413-120-0540	1-1-04	Amend	2-1-04	414-300-0360	12-28-03	Amend	2-1-04
413-120-0550	1-1-04	Adopt	2-1-04	414-350-0010	12-28-03	Amend	2-1-04
413-130-0125	11-19-03	Amend(T)	1-1-04	414-350-0010	12-28-03	Amend	2-1-04
413-130-0125	4-1-04	Amend	5-1-04	414-350-0020	12-28-03	Amend	2-1-04
413-130-0125(T)	4-1-04	Repeal	5-1-04	414-350-0210	12-28-03	Amend	2-1-04
413-130-0127	4-1-04	Adopt	5-1-04	414-350-0235	12-28-03	Amend	2-1-04
413-130-0127(T)	4-1-04	Repeal	5-1-04	414-500-0030	12-28-03	Amend	2-1-04
413-210-0800	1-9-04	Amend	2-1-04	414-600-0000	12-7-03	Suspend	1-1-04
413-210-0806	1-9-04	Amend	2-1-04	414-600-0000	3-28-04	Repeal	5-1-04
413-210-0821	1-9-04	Amend	2-1-04	414-600-0010	12-7-03	Suspend	1-1-04
413-330-0085	12-17-03	Amend(T)	2-1-04	414-600-0010	3-28-04	Repeal	5-1-04
413-330-0087	12-17-03	Amend(T)	2-1-04	414-600-0020	12-7-03	Suspend	1-1-04
413-330-0090	12-17-03	Amend(T)	2-1-04	414-600-0020	3-28-04	Repeal	5-1-04
413-330-0095	12-17-03	Amend(T)	2-1-04	414-600-0030	12-7-03	Suspend	1-1-04
413-330-0097	12-17-03	Adopt(T)	2-1-04	414-600-0030	3-28-04	Repeal	5-1-04
413-330-0098	12-17-03	Adopt(T)	2-1-04	414-600-0040	12-7-03	Suspend	1-1-04
413-330-0900	1-1-04	Amend(T)	2-1-04	414-600-0040	3-28-04	Repeal	5-1-04
413-330-0910	1-1-04	Amend(T)	2-1-04	414-600-0050	12-7-03	Suspend	1-1-04
413-330-0920	1-1-04	Amend(T)	2-1-04	414-600-0050	3-28-04	Repeal	5-1-04
413-330-0930	1-1-04	Amend(T)	2-1-04	414-600-0060	12-7-03	Suspend	1-1-04
413-330-0940	1-1-04	Amend(T)	2-1-04	414-600-0060	3-28-04	Repeal	5-1-04
413-330-0950	1-1-04	Amend(T)	2-1-04	414-600-0070	12-7-03	Suspend	1-1-04
413-330-0960	1-1-04	Suspend	2-1-04	414-600-0070	3-28-04	Repeal	5-1-04
413-330-0970	1-1-04	Amend(T)	2-1-04	414-600-0080	12-7-03	Suspend	1-1-04

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414-600-0080	3-28-04	Repeal	5-1-04	436-001-0300	4-1-04	Adopt	4-1-04
414-600-0090	12-7-03	Suspend	1-1-04	436-009-0003	4-1-04	Amend	4-1-04
414-600-0090	3-28-04	Repeal	5-1-04	436-009-0004	4-1-04	Amend	4-1-04
414-600-0100	12-7-03	Suspend	1-1-04	436-009-0005	4-1-04	Amend	4-1-04
414-600-0100	3-28-04	Repeal	5-1-04	436-009-0008	1-1-04	Amend(T)	1-1-04
414-700-0000	12-7-03	Adopt	1-1-04	436-009-0008	4-1-04	Amend	4-1-04
414-700-0010	12-7-03	Adopt	1-1-04	436-009-0010	4-1-04	Amend	4-1-04
414-700-0020	12-7-03	Adopt	1-1-04	436-009-0015	1-1-04	Amend(T)	1-1-04
414-700-0030	12-7-03	Adopt	1-1-04	436-009-0015	4-1-04	Amend	4-1-04
414-700-0040	12-7-03	Adopt	1-1-04	436-009-0020	4-1-04	Amend	4-1-04
414-700-0050	12-7-03	Adopt	1-1-04	436-009-0022	4-1-04	Amend	4-1-04
414-700-0060	12-7-03	Adopt	1-1-04	436-009-0025	4-1-04	Amend	4-1-04
414-700-0070	12-7-03	Adopt	1-1-04	436-009-0030	4-1-04	Amend	4-1-04
414-700-0080	12-7-03	Adopt	1-1-04	436-009-0040	4-1-04	Amend	4-1-04
414-700-0090	12-7-03	Adopt	1-1-04	436-009-0050	4-1-04	Amend	4-1-04
436-001-0000	4-1-04	Amend	4-1-04	436-009-0060	1-1-04	Amend(T)	1-1-04
436-001-0001	4-1-04	Amend	4-1-04	436-009-0060	4-1-04	Amend	4-1-04
436-001-0003	4-1-04	Amend	4-1-04	436-009-0070	1-1-04	Amend(T)	1-1-04
436-001-0004	4-1-04	Amend	4-1-04	436-009-0070	4-1-04	Amend	4-1-04
436-001-0005	4-1-04	Amend	4-1-04	436-009-0080	1-1-04	Amend(T)	1-1-04
436-001-0007	4-1-04	Amend	4-1-04	436-009-0080	4-1-04	Amend	4-1-04
436-001-0008	4-1-04	Amend	4-1-04	436-009-0090	4-1-04	Amend	4-1-04
436-001-0025	4-1-04	Repeal	4-1-04	436-010-0003	4-1-04	Amend	4-1-04
436-001-0030	4-1-04	Amend	4-1-04	436-010-0005	1-1-04	Amend(T)	1-1-04
436-001-0045	4-1-04	Repeal	4-1-04	436-010-0005	4-1-04	Amend	4-1-04
436-001-0055	4-1-04	Repeal	4-1-04	436-010-0008	1-1-04	Amend(T)	1-1-04
436-001-0065	4-1-04	Repeal	4-1-04	436-010-0008	4-1-04	Amend	4-1-04
436-001-0090	4-1-04	Repeal	4-1-04	436-010-0210	1-1-04	Amend(T)	1-1-04
436-001-0105	4-1-04	Repeal	4-1-04	436-010-0210	4-1-04	Amend	4-1-04
436-001-0110	4-1-04	Amend	4-1-04	436-010-0220	1-1-04	Amend(T)	1-1-04
436-001-0120	4-1-04	Repeal	4-1-04	436-010-0220	4-1-04	Amend	4-1-04
436-001-0135	4-1-04	Repeal	4-1-04	436-010-0230	1-1-04	Amend(T)	1-1-04
436-001-0140	4-1-04	Repeal	4-1-04	436-010-0230	4-1-04	Amend	4-1-04
436-001-0150	4-1-04	Amend	4-1-04	436-010-0240	1-1-04	Amend(T)	1-1-04
436-001-0155	4-1-04	Amend	4-1-04	436-010-0240	4-1-04	Amend	4-1-04
436-001-0160	4-1-04	Amend	4-1-04	436-010-0250	1-1-04	Amend(T)	1-1-04
436-001-0170	4-1-04	Amend	4-1-04	436-010-0250	4-1-04	Amend	4-1-04
436-001-0171	4-1-04	Repeal	4-1-04	436-010-0265	1-1-04	Amend(T)	1-1-04
436-001-0175	4-1-04	Repeal	4-1-04	436-010-0265	4-1-04	Amend	4-1-04
436-001-0185	4-1-04	Amend	4-1-04	436-010-0270	1-1-04	Amend(T)	1-1-04
436-001-0191	4-1-04	Repeal	4-1-04	436-010-0270	4-1-04	Amend	4-1-04
436-001-0195	4-1-04	Repeal	4-1-04	436-010-0275	1-1-04	Amend(T)	1-1-04
436-001-0201	4-1-04	Amend	4-1-04	436-010-0275	4-1-04	Amend	4-1-04
436-001-0205	4-1-04	Repeal	4-1-04	436-010-0280	1-1-04	Amend(T)	1-1-04
436-001-0210	4-1-04	Amend	4-1-04	436-010-0280	4-1-04	Amend	4-1-04
436-001-0225	4-1-04	Amend	4-1-04	436-010-0340	1-1-04	Amend(T)	1-1-04
436-001-0226	4-1-04	Amend	4-1-04	436-010-0340	4-1-04	Amend	4-1-04
436-001-0231	4-1-04	Repeal	4-1-04	436-010-0350	4-1-04	Repeal	4-1-04
436-001-0240	4-1-04	Amend	4-1-04	436-015-0008	1-1-04	Amend(T)	1-1-04
436-001-0255	4-1-04	Repeal	4-1-04	436-015-0030	1-1-04	Amend(T)	1-1-04
436-001-0260	4-1-04	Amend	4-1-04	436-015-0050	1-1-04	Amend(T)	1-1-04
436-001-0265	1-1-04	Amend(T)	1-1-04	436-015-0060	1-1-04	Amend(T)	1-1-04
436-001-0265	4-1-04	Amend	4-1-04	436-015-0070	1-1-04	Amend(T)	1-1-04
436-001-0275	4-1-04	Amend	4-1-04	436-015-0090	1-1-04	Amend(T)	1-1-04
436-001-0285	4-1-04	Repeal	4-1-04	436-030-0002	2-29-04	Amend	4-1-04
436-001-0295	4-1-04	Repeal	4-1-04	436-030-0003	1-1-04	Amend(T)	1-1-04

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436-030-0003	2-29-04	Amend	4-1-04	436-050-0005	1-1-04	Amend	1-1-04
436-030-0003(T)	2-29-04	Repeal	4-1-04	436-050-0006	1-1-04	Amend	1-1-04
436-030-0005	1-1-04	Amend(T)	1-1-04	436-050-0008	1-1-04	Amend	1-1-04
436-030-0005	2-29-04	Amend	4-1-04	436-050-0020	1-1-04	Repeal	1-1-04
436-030-0005(T)	2-29-04	Repeal	4-1-04	436-050-0040	1-1-04	Amend	1-1-04
436-030-0007	1-1-04	Amend(T)	1-1-04	436-050-0050	1-1-04	Amend	1-1-04
436-030-0007	2-29-04	Amend	4-1-04	436-050-0055	1-1-04	Amend	1-1-04
436-030-0007(T)	2-29-04	Repeal	4-1-04	436-050-0060	1-1-04	Amend	1-1-04
436-030-0009	1-1-04	Amend(T)	1-1-04	436-050-0080	1-1-04	Amend	1-1-04
436-030-0009	2-29-04	Amend	4-1-04	436-050-0090	1-1-04	Amend	1-1-04
436-030-0009(T)	2-29-04	Repeal	4-1-04	436-050-0100	1-1-04	Amend	1-1-04
436-030-0010	1-1-04	Amend(T)	1-1-04	436-050-0110	1-1-04	Amend	1-1-04
436-030-0010	2-29-04	Amend	4-1-04	436-050-0120	1-1-04	Amend	1-1-04
436-030-0010(T)	2-29-04	Repeal	4-1-04	436-050-0150	1-1-04	Amend	1-1-04
436-030-0015	2-29-04	Amend	4-1-04	436-050-0150(T)	1-1-04	Repeal	1-1-04
436-030-0017	2-29-04	Amend	4-1-04	436-050-0160	1-1-04	Amend	1-1-04
436-030-0020	2-29-04	Amend	4-1-04	436-050-0160(T)	1-1-04	Repeal	1-1-04
436-030-0023	2-29-04	Adopt	4-1-04	436-050-0165	1-1-04	Adopt	1-1-04
436-030-0034	1-1-04	Amend(T)	1-1-04	436-050-0165(T)	1-1-04	Repeal	1-1-04
436-030-0034	2-29-04	Amend	4-1-04	436-050-0170	1-1-04	Amend	1-1-04
436-030-0034(T)	2-29-04	Repeal	4-1-04	436-050-0175	1-1-04	Amend	1-1-04
436-030-0035	1-1-04	Amend(T)	1-1-04	436-050-0180	1-1-04	Amend	1-1-04
436-030-0035	2-29-04	Amend	4-1-04	436-050-0185	1-1-04	Amend	1-1-04
436-030-0035(T)	2-29-04	Repeal	4-1-04	436-050-0190	1-1-04	Amend	1-1-04
436-030-0036	2-29-04	Amend	4-1-04	436-050-0195	1-1-04	Amend	1-1-04
436-030-0038	2-29-04	Amend	4-1-04	436-050-0200	1-1-04	Amend	1-1-04
436-030-0045	2-29-04	Am. & Ren.	4-1-04	436-050-0210	1-1-04	Amend	1-1-04
436-030-0055	2-29-04	Amend	4-1-04	436-050-0220	1-1-04	Amend	1-1-04
436-030-0065	2-29-04	Amend	4-1-04	436-050-0260	1-1-04	Amend	1-1-04
436-030-0066	2-29-04	Amend	4-1-04	436-050-0270	1-1-04	Amend	1-1-04
436-030-0115	1-1-04	Amend(T)	1-1-04	436-050-0280	1-1-04	Amend	1-1-04
436-030-0115	2-29-04	Amend	4-1-04	436-050-0290	1-1-04	Amend	1-1-04
436-030-0115(T)	2-29-04	Repeal	4-1-04	436-050-0400	1-1-04	Amend	1-1-04
436-030-0125	1-1-04	Amend(T)	1-1-04	436-050-0440	1-1-04	Amend	1-1-04
436-030-0125	2-29-04	Amend	4-1-04	436-050-0480	1-1-04	Adopt	1-1-04
436-030-0125(T)	2-29-04	Repeal	4-1-04	436-055-0008	1-1-04	Amend	1-1-04
436-030-0135	1-1-04	Amend(T)	1-1-04	436-060-0005	1-1-04	Amend(T)	1-1-04
436-030-0135	2-29-04	Amend	4-1-04	436-060-0005	2-29-04	Amend	4-1-04
436-030-0135(T)	2-29-04	Repeal	4-1-04	436-060-0008	1-1-04	Amend	1-1-04
436-030-0145	1-1-04	Amend(T)	1-1-04	436-060-0008	2-29-04	Amend	4-1-04
436-030-0145	2-29-04	Amend	4-1-04	436-060-0009	2-29-04	Amend	4-1-04
436-030-0145(T)	2-29-04	Repeal	4-1-04	436-060-0010	1-1-04	Amend(T)	1-1-04
436-030-0155	2-29-04	Amend	4-1-04	436-060-0010	2-29-04	Amend	4-1-04
436-030-0165	1-1-04	Amend(T)	1-1-04	436-060-0010(T)	1-1-04	Suspend	1-1-04
436-030-0165	2-29-04	Amend	4-1-04	436-060-0015	2-29-04	Amend	4-1-04
436-030-0165(T)	2-29-04	Repeal	4-1-04	436-060-0017	2-29-04	Amend	4-1-04
436-030-0175	2-29-04	Amend	4-1-04	436-060-0019	1-1-04	Amend(T)	1-1-04
436-030-0185	1-1-04	Amend(T)	1-1-04	436-060-0019	2-29-04	Amend	4-1-04
436-030-0185	2-29-04	Amend	4-1-04	436-060-0019(T)	1-1-04	Suspend	1-1-04
436-030-0185(T)	2-29-04	Repeal	4-1-04	436-060-0020	1-1-04	Amend(T)	1-1-04
436-030-0575	2-29-04	Amend	4-1-04	436-060-0020	2-29-04	Amend	4-1-04
436-030-0580	2-29-04	Amend	4-1-04	436-060-0025	2-29-04	Amend	4-1-04
436-030-0581	2-29-04	Repeal	4-1-04	436-060-0030	1-1-04	Amend(T)	1-1-04
436-035-0500	1-21-04	Amend(T)	3-1-04	436-060-0030	2-29-04	Amend	4-1-04
436-045-0008	1-1-04	Amend	1-1-04	436-060-0035	1-1-04	Amend(T)	1-1-04
436-050-0003	1-1-04	Amend	1-1-04	436-060-0035	2-29-04	Amend	4-1-04

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436-060-0040	2-29-04	Amend	4-1-04	436-160-0320	1-1-04	Amend	1-1-04
436-060-0060	2-29-04	Amend	4-1-04	436-160-0340	1-1-04	Amend	1-1-04
436-060-0095	1-1-04	Amend(T)	1-1-04	436-160-0350	1-1-04	Amend	1-1-04
436-060-0095	2-29-04	Amend	4-1-04	436-160-0360	1-1-04	Amend	1-1-04
436-060-0105	1-1-04	Amend(T)	1-1-04	437-001-0015	11-26-03	Amend	1-1-04
436-060-0105	2-29-04	Amend	4-1-04	437-001-0096	11-26-03	Amend	1-1-04
436-060-0135	2-29-04	Amend	4-1-04	437-001-0171	11-26-03	Amend	1-1-04
436-060-0140	1-1-04	Amend(T)	1-1-04	437-001-0203	11-26-03	Amend	1-1-04
436-060-0140	2-29-04	Amend	4-1-04	437-001-0265	11-26-03	Amend	1-1-04
436-060-0147	2-29-04	Amend	4-1-04	437-001-0270	11-26-03	Amend	1-1-04
436-060-0150	1-1-04	Amend(T)	1-1-04	437-001-0430	11-26-03	Amend	1-1-04
436-060-0150	2-29-04	Amend	4-1-04	437-001-0700	11-26-03	Amend	1-1-04
436-060-0180	2-29-04	Amend	4-1-04	437-001-0765	11-26-03	Amend	1-1-04
436-060-0190	2-29-04	Amend	4-1-04	437-002-0120	7-1-04	Amend	5-1-04
436-060-0195	2-29-04	Amend	4-1-04	437-002-0133	7-1-04	Repeal	5-1-04
436-060-0200	2-29-04	Amend	4-1-04	437-002-0220	12-5-03	Amend	1-1-04
436-060-0210	2-29-04	Repeal	4-1-04	437-003-0001	12-5-03	Amend	1-1-04
436-060-0500	2-29-04	Amend	4-1-04	437-003-0001	1-1-04	Amend	2-1-04
436-070-0008	1-1-04	Amend	1-1-04	437-003-0754	1-1-04	Repeal	2-1-04
436-075-0008	1-1-04	Amend	1-1-04	437-003-1754	1-1-04	Adopt	2-1-04
436-080-0001	1-1-04	Amend	1-1-04	437-003-1760	1-1-04	Repeal	2-1-04
436-080-0002	1-1-04	Amend	1-1-04	438-006-0064	1-1-04	Adopt	1-1-04
436-080-0003	1-1-04	Amend	1-1-04	438-015-0110	1-1-04	Adopt	1-1-04
436-080-0005	1-1-04	Amend	1-1-04	440-020-0010	1-1-04	Adopt	2-1-04
436-080-0006	1-1-04	Amend	1-1-04	440-020-0015	1-1-04	Adopt	2-1-04
436-080-0010	1-1-04	Amend	1-1-04	440-055-0000	1-1-04	Repeal	2-1-04
436-080-0020	1-1-04	Amend	1-1-04	440-055-0005	1-1-04	Repeal	2-1-04
436-080-0030	1-1-04	Amend	1-1-04	440-055-0008	1-1-04	Adopt	2-1-04
436-080-0040	1-1-04	Amend	1-1-04	440-100-0010	1-1-04	Adopt	2-1-04
436-080-0050	1-1-04	Repeal	1-1-04	441-001-0005	1-1-04	Adopt	2-1-04
436-080-0060	1-1-04	Amend	1-1-04	441-001-0010	1-1-04	Adopt	2-1-04
436-080-0065	1-1-04	Amend	1-1-04	441-001-0020	1-1-04	Adopt	2-1-04
436-080-0070	1-1-04	Amend	1-1-04	441-001-0030	1-1-04	Adopt	2-1-04
436-080-0080	1-1-04	Amend	1-1-04	441-001-0040	1-1-04	Adopt	2-1-04
436-085-0008	1-1-04	Amend	1-1-04	441-001-0050	1-1-04	Adopt	2-1-04
436-105-0003	4-1-04	Amend(T)	5-1-04	441-002-0005	1-1-04	Adopt	2-1-04
436-105-0500	4-1-04	Amend(T)	5-1-04	441-002-0010	1-1-04	Adopt	2-1-04
436-105-0540	4-1-04	Amend(T)	5-1-04	441-002-0020	1-1-04	Adopt	2-1-04
436-120-0003	4-1-04	Amend	4-1-04	441-002-0030	1-1-04	Adopt	2-1-04
436-120-0004	4-1-04	Amend	4-1-04	441-002-0040	1-1-04	Adopt	2-1-04
436-120-0008	1-1-04	Amend(T)	1-1-04	441-035-0045	11-26-03	Amend(T)	1-1-04
436-120-0008	4-1-04	Amend	4-1-04	441-049-1001	11-26-03	Adopt(T)	1-1-04
436-120-0320	4-1-04	Amend	4-1-04	441-049-1021	11-26-03	Amend(T)	1-1-04
436-120-0340	4-1-04	Amend	4-1-04	441-049-1031	11-26-03	Amend(T)	1-1-04
436-120-0350	4-1-04	Amend	4-1-04	441-049-1041	11-26-03	Amend(T)	1-1-04
436-120-0360	4-1-04	Amend	4-1-04	441-049-1051	11-26-03	Amend(T)	1-1-04
436-120-0410	4-1-04	Amend	4-1-04	441-065-0001	11-26-03	Adopt(T)	1-1-04
436-120-0500	4-1-04	Amend	4-1-04	441-065-0015	11-26-03	Amend(T)	1-1-04
436-120-0710	4-1-04	Amend	4-1-04	441-065-0020	11-26-03	Amend(T)	1-1-04
436-120-0720	4-1-04	Amend	4-1-04	441-065-0035	11-26-03	Amend(T)	1-1-04
436-120-0830	4-1-04	Amend	4-1-04	441-065-0170	11-26-03	Amend(T)	1-1-04
436-120-0840	4-1-04	Amend	4-1-04	441-065-0180	11-26-03	Amend(T)	1-1-04
436-120-0920	4-1-04	Repeal	4-1-04	441-065-0270	11-26-03	Amend(T)	1-1-04
436-150-0008	1-1-04	Amend	1-1-04	441-075-0020	11-26-03	Amend(T)	1-1-04
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441-175-0010	1-1-04	Amend	2-1-04	459-007-0090	4-1-04	Amend	1-1-04
441-175-0015	11-26-03	Amend(T)	1-1-04	459-007-0095	12-15-03	Adopt	1-1-04
441-175-0035	1-1-04	Repeal	2-1-04	459-007-0100	12-15-03	Repeal	1-1-04
441-175-0055	1-1-04	Amend	2-1-04	459-007-0210	4-15-04	Repeal	5-1-04
441-175-0060	11-26-03	Amend(T)	1-1-04	459-007-0300	4-15-04	Amend	5-1-04
441-175-0080	11-26-03	Amend(T)	1-1-04	459-007-0510	4-15-04	Amend	5-1-04
441-175-0085	11-26-03	Amend(T)	1-1-04	459-007-0520	4-15-04	Repeal	5-1-04
441-175-0100	11-26-03	Amend(T)	1-1-04	459-009-0100	1-1-04	Amend	2-1-04
441-175-0120	11-26-03	Amend(T)	1-1-04	459-009-0110	1-1-04	Repeal	2-1-04
441-175-0130	11-26-03	Amend(T)	1-1-04	459-011-0100	1-22-04	Amend	3-1-04
441-175-0130	1-1-04	Amend	2-1-04	459-011-0110	1-22-04	Amend	3-1-04
441-175-0160	11-26-03	Amend(T)	1-1-04	459-013-0280	7-1-04	Adopt(T)	5-1-04
441-175-0165	11-26-03	Amend(T)	1-1-04	459-013-0300	12-15-03	Adopt	1-1-04
441-175-0171	11-26-03	Amend(T)	1-1-04	459-017-0060	12-15-03	Amend(T)	1-1-04
441-195-0035	1-1-04	Repeal	2-1-04	459-035-0050	1-1-04	Amend	1-1-04
441-730-0030	1-1-04	Amend	2-1-04	459-045-0001	11-20-03	Amend	1-1-04
441-740-0030	1-1-04	Adopt	2-1-04	459-045-0001(T)	11-20-03	Repeal	1-1-04
441-810-0200	1-1-04	Adopt	2-1-04	459-060-0001	12-15-03	Amend	1-1-04
441-810-0210	1-1-04	Adopt	2-1-04	459-060-0010	12-15-03	Amend	1-1-04
441-810-0220	1-1-04	Adopt	2-1-04	459-060-0020	12-15-03	Amend	1-1-04
441-810-0230	1-1-04	Adopt	2-1-04	459-070-0001	2-18-04	Adopt	4-1-04
441-810-0240	1-1-04	Adopt	2-1-04	459-070-0100	1-1-04	Adopt	2-1-04
441-810-0250	1-1-04	Adopt	2-1-04	459-070-0110	1-1-04	Adopt	2-1-04
441-810-0260	1-1-04	Adopt	2-1-04	459-070-0900	2-18-04	Adopt(T)	4-1-04
441-860-0020	1-1-04	Amend	2-1-04	459-075-0010	2-18-04	Adopt	4-1-04
441-860-0050	1-1-04	Amend	2-1-04	459-075-0030	1-1-04	Adopt	2-1-04
441-880-0050	1-1-04	Adopt	2-1-04	459-075-0100	1-22-04	Adopt	3-1-04
445-050-0005	2-15-04	Amend	2-1-04	459-075-0150	2-18-04	Adopt	4-1-04
445-050-0020	2-15-04	Amend	2-1-04	459-080-0010	1-1-04	Adopt	1-1-04
445-050-0030	2-15-04	Amend	2-1-04	459-080-0100	1-22-04	Adopt	3-1-04
445-050-0040	2-15-04	Amend	2-1-04	459-080-0200	1-1-04	Adopt(T)	1-1-04
445-050-0050	2-15-04	Amend	2-1-04	459-080-0500	1-1-04	Adopt	1-1-04
445-050-0060	2-15-04	Amend	2-1-04	461-025-0311	1-1-04	Amend	2-1-04
445-050-0080	2-15-04	Amend	2-1-04	461-101-0010	4-1-04	Amend	5-1-04
445-050-0090	2-15-04	Amend	2-1-04	461-110-0030	1-1-04	Amend	2-1-04
445-050-0155	2-15-04	Amend	2-1-04	461-110-0350	12-17-03	Amend(T)	2-1-04
459-005-0001	11-20-03	Amend	1-1-04	461-110-0350	4-1-04	Amend	5-1-04
459-005-0001	12-15-03	Amend	1-1-04	461-110-0390	4-1-04	Amend	5-1-04
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459-005-0001(T)	11-20-03	Repeal	1-1-04	461-110-0750	4-1-04	Amend	5-1-04
459-005-0055	2-18-04	Amend	4-1-04	461-115-0015	1-1-04	Amend	2-1-04
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459-007-0003	12-15-03	Adopt	1-1-04	461-120-0125	4-1-04	Amend	5-1-04
459-007-0005	4-15-04	Adopt	5-1-04	461-120-0125	4-9-04	Amend(T)	5-1-04
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459-007-0050	12-15-03	Amend	1-1-04	461-120-0345	1-1-04	Amend	2-1-04
459-007-0050(T)	12-15-03	Repeal	1-1-04	461-120-0345	4-1-04	Amend	5-1-04
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461-125-0660	4-1-04	Repeal	5-1-04	461-155-0150	4-1-04	Amend	5-1-04
461-125-0690	4-1-04	Repeal	5-1-04	461-155-0210	4-1-04	Amend	5-1-04
461-125-0890	4-1-04	Repeal	5-1-04	461-155-0225	2-13-04	Amend(T)	3-1-04
461-125-0910	4-1-04	Repeal	5-1-04	461-155-0225	4-1-04	Amend	5-1-04
461-125-0930	4-1-04	Repeal	5-1-04	461-155-0235	3-1-04	Amend(T)	4-1-04
461-135-0010	1-1-04	Amend	2-1-04	461-155-0235	4-1-04	Amend	5-1-04
461-135-0180	1-1-04	Repeal	2-1-04	461-155-0250	1-1-04	Amend	2-1-04
461-135-0301	12-1-03	Amend(T)	1-1-04	461-155-0250	4-1-04	Amend	5-1-04
461-135-0301	4-1-04	Amend	5-1-04	461-155-0270	1-1-04	Amend	2-1-04
461-135-0301(T)	4-1-04	Repeal	5-1-04	461-155-0290	4-1-04	Amend	5-1-04
461-135-0400	1-1-04	Amend	2-1-04	461-155-0291	4-1-04	Amend	5-1-04
461-135-0400	4-1-04	Amend	5-1-04	461-155-0295	4-1-04	Amend	5-1-04
461-135-0401	1-1-04	Amend	2-1-04	461-155-0300	1-1-04	Amend	2-1-04
461-135-0401	4-1-04	Amend	5-1-04	461-155-0526	1-1-04	Amend	2-1-04
461-135-0700	1-1-04	Amend(T)	2-1-04	461-155-0526	1-1-04	Amend	2-1-04
461-135-0700	4-1-04	Amend	5-1-04	461-155-0526	4-1-04	Amend	5-1-04
461-135-0700	4-15-04	Amend(T)	5-1-04	461-155-0551	4-1-04	Amend	5-1-04
461-135-0700(T)	1-1-04	Suspend	2-1-04	461-155-0680	1-1-04	Amend	2-1-04
461-135-0701	4-1-04	Amend	5-1-04	461-160-0015	4-1-04	Amend	5-1-04
461-135-0705	4-1-04	Amend	5-1-04	461-160-0060	4-1-04	Amend	5-1-04
461-135-0730	1-1-04	Amend	2-1-04	461-160-0500	4-1-04	Amend	5-1-04
461-135-0730	4-1-04	Amend(T)	5-1-04	461-160-0510	4-1-04	Repeal	5-1-04
461-135-0780	1-1-04	Amend	2-1-04	461-160-0520	4-1-04	Repeal	5-1-04
461-135-0830	1-1-04	Amend	2-1-04	461-160-0550	4-1-04	Amend	5-1-04
461-135-0832	1-1-04	Amend	2-1-04	461-160-0560	4-1-04	Amend	5-1-04
461-135-0845	2-5-04	Amend(T)	3-1-04	461-160-0580	1-1-04	Amend	2-1-04
461-135-0847	1-1-04	Adopt	2-1-04	461-160-0620	1-1-04	Amend	2-1-04
461-135-1120	1-1-04	Amend	2-1-04	461-165-0030	1-1-04	Amend	2-1-04
461-135-1120	2-19-04	Amend(T)	4-1-04	461-165-0400	3-1-04	Repeal	4-1-04
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461-135-1130	1-1-04	Amend	2-1-04	461-180-0070	1-1-04	Amend	2-1-04
461-135-1130	2-19-04	Amend(T)	4-1-04	461-180-0105	12-1-03	Amend(T)	1-1-04
461-135-1130	4-1-04	Amend	5-1-04	461-180-0105	1-1-04	Amend	2-1-04
461-135-1130	4-1-04	Amend(T)	5-1-04	461-190-0110	1-1-04	Amend	2-1-04
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461-135-1230	4-1-04	Amend	5-1-04	461-190-0360	1-1-04	Amend	2-1-04
461-135-1235	4-1-04	Amend	5-1-04	461-193-0560	1-1-04	Amend	2-1-04
461-140-0120	4-1-04	Amend	5-1-04	461-195-0501	1-1-04	Amend	2-1-04
461-140-0130	4-1-04	Amend	5-1-04	461-195-0531	4-1-04	Amend	5-1-04
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461-145-0050	4-1-04	Amend	5-1-04	461-195-0561	1-1-04	Amend	2-1-04
461-145-0150	4-1-04	Amend	5-1-04	461-195-0601	4-1-04	Amend	5-1-04
461-145-0190	4-1-04	Amend	5-1-04	461-195-0621	4-1-04	Amend	5-1-04
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461-145-0360	4-1-04	Amend	5-1-04	462-120-0020	3-3-04	Amend	4-1-04
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461-155-0020	1-1-04	Amend	2-1-04	462-140-0420	4-8-04	Amend	5-1-04
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462-180-0060	4-8-04	Amend	5-1-04	573-020-0085	4-5-04	Repeal	5-1-04
471-010-0050	1-4-04	Amend	2-1-04	573-020-0090	4-5-04	Repeal	5-1-04
471-010-0051	1-4-04	Amend	2-1-04	573-020-0095	4-5-04	Repeal	5-1-04
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471-012-0010	12-14-03	Amend	1-1-04	573-020-0110	4-5-04	Repeal	5-1-04
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471-015-0005	12-14-03	Amend	1-1-04	573-020-0125	4-5-04	Repeal	5-1-04
471-015-0010	12-14-03	Amend	1-1-04	573-020-0130	4-5-04	Repeal	5-1-04
471-015-0015	12-14-03	Amend	1-1-04	573-040-0005	4-5-04	Amend	5-1-04
471-015-0020	12-14-03	Amend	1-1-04	573-042-0005	4-5-04	Amend	5-1-04
471-030-0040	12-14-03	Amend	1-1-04	573-050-0005	4-5-04	Amend	5-1-04
471-030-0045	12-14-03	Amend	1-1-04	573-050-0010	4-5-04	Amend	5-1-04
471-030-0125	1-4-04	Adopt	2-1-04	573-050-0020	4-5-04	Amend	5-1-04
471-030-0126	4-11-04	Adopt(T)	5-1-04	573-050-0025	4-5-04	Amend	5-1-04
471-030-0130	1-4-04	Repeal	2-1-04	573-050-0030	4-5-04	Amend	5-1-04
471-030-0135	1-4-04	Repeal	2-1-04	573-050-0035	4-5-04	Amend	5-1-04
471-030-0140	1-4-04	Repeal	2-1-04	573-050-0040	4-5-04	Amend	5-1-04
471-030-0145	1-4-04	Repeal	2-1-04	573-050-0045	4-5-04	Amend	5-1-04
471-031-0076	12-14-03	Amend	1-1-04	573-070-0001	4-5-04	Amend	5-1-04
471-031-0077	12-14-03	Adopt	1-1-04	573-070-0004	4-5-04	Amend	5-1-04
471-031-0140	12-14-03	Amend	1-1-04	573-070-0011	4-5-04	Amend	5-1-04
471-031-0141	12-14-03	Amend	1-1-04	573-070-0067	4-5-04	Amend	5-1-04
471-031-0142	12-14-03	Adopt	1-1-04	573-070-0068	4-5-04	Amend	5-1-04
471-060-0005	1-4-04	Amend	2-1-04	573-075-0000	4-5-04	Adopt	5-1-04
543-050-0000	1-1-04	Repeal	1-1-04	573-075-0010	4-5-04	Adopt	5-1-04
543-050-0020	1-1-04	Repeal	1-1-04	573-075-0020	4-5-04	Adopt	5-1-04
543-050-0030	1-1-04	Repeal	1-1-04	573-075-0030	4-5-04	Adopt	5-1-04
543-050-0040	1-1-04	Repeal	1-1-04	573-075-0040	4-5-04	Adopt	5-1-04
543-050-0050	1-1-04	Repeal	1-1-04	573-075-0050	4-5-04	Adopt	5-1-04
543-060-0000	1-1-04	Adopt	1-1-04	573-075-0060	4-5-04	Adopt	5-1-04
543-060-0010	1-1-04	Adopt	1-1-04	573-075-0070	4-5-04	Adopt	5-1-04
543-060-0020	1-1-04	Adopt	1-1-04	573-075-0080	4-5-04	Adopt	5-1-04
543-060-0030	1-1-04	Adopt	1-1-04	573-075-0090	4-5-04	Adopt	5-1-04
543-060-0040	1-1-04	Adopt	1-1-04	573-075-0100	4-5-04	Adopt	5-1-04
543-060-0060	1-1-04	Adopt	1-1-04	573-075-0110	4-5-04	Adopt	5-1-04
573-001-0000	4-5-04	Amend	5-1-04	573-075-0120	4-5-04	Adopt	5-1-04
573-001-0015	4-5-04	Amend	5-1-04	573-075-0130	4-5-04	Adopt	5-1-04
573-020-0000	4-5-04	Repeal	5-1-04	573-075-0140	4-5-04	Adopt	5-1-04
573-020-0005	4-5-04	Repeal	5-1-04	573-075-0150	4-5-04	Adopt	5-1-04
573-020-0010	4-5-04	Repeal	5-1-04	573-075-0160	4-5-04	Adopt	5-1-04
573-020-0015	4-5-04	Repeal	5-1-04	573-075-0170	4-5-04	Adopt	5-1-04
573-020-0021	4-5-04	Repeal	5-1-04	573-075-0180	4-5-04	Adopt	5-1-04
573-020-0024	4-5-04	Repeal	5-1-04	573-075-0190	4-5-04	Adopt	5-1-04
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573-020-0030	4-5-04	Repeal	5-1-04	573-075-0210	4-5-04	Adopt	5-1-04
573-020-0035	4-5-04	Repeal	5-1-04	573-075-0220	4-5-04	Adopt	5-1-04
573-020-0037	4-5-04	Repeal	5-1-04	573-075-0230	4-5-04	Adopt	5-1-04
573-020-0049	4-5-04	Repeal	5-1-04	573-075-0240	4-5-04	Adopt	5-1-04
573-020-0052	4-5-04	Repeal	5-1-04	573-075-0250	4-5-04	Adopt	5-1-04
573-020-0060	4-5-04	Repeal	5-1-04	573-075-0260	4-5-04	Adopt	5-1-04
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573-090-0010	4-5-04	Repeal	5-1-04	582-020-0005	1-30-04	Adopt	3-1-04
574-020-0020	3-24-04	Amend	5-1-04	582-020-0010	1-30-04	Amend	3-1-04
574-050-0005	3-24-04	Amend	5-1-04	582-020-0015	1-30-04	Adopt	3-1-04
575-030-0005	2-12-04	Amend	3-1-04	582-020-0020	1-30-04	Amend	3-1-04
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580-010-0029	12-3-03	Amend	1-1-04	582-020-0050	1-30-04	Amend	3-1-04
580-010-0030	12-3-03	Amend	1-1-04	582-020-0060	1-30-04	Amend	3-1-04
580-010-0031	12-3-03	Amend	1-1-04	582-020-0070	1-30-04	Amend	3-1-04
580-010-0033	12-3-03	Amend	1-1-04	582-020-0080	1-30-04	Amend	3-1-04
580-010-0035	12-3-03	Amend	1-1-04	582-020-0090	1-30-04	Amend	3-1-04
580-010-0037	12-3-03	Amend	1-1-04	582-020-0100	1-30-04	Amend	3-1-04
580-010-0040	12-3-03	Amend	1-1-04	582-020-0110	1-30-04	Amend	3-1-04
580-010-0041	12-3-03	Amend	1-1-04	582-020-0120	1-30-04	Amend	3-1-04
580-010-0045	12-3-03	Amend	1-1-04	582-020-0125	1-30-04	Adopt	3-1-04
580-020-0006	12-1-03	Adopt(T)	1-1-04	582-030-0000	3-12-04	Amend	4-1-04
580-020-0006	4-8-04	Adopt	5-1-04	582-030-0005	3-12-04	Amend	4-1-04
580-021-0041	4-6-04	Adopt(T)	5-1-04	582-030-0008	3-12-04	Amend	4-1-04
580-021-0044	12-1-03	Adopt(T)	1-1-04	582-030-0010	3-12-04	Amend	4-1-04
580-021-0044	4-8-04	Adopt	5-1-04	582-030-0020	3-12-04	Amend	4-1-04
580-040-0035	12-24-03	Amend	2-1-04	582-030-0025	3-12-04	Adopt	4-1-04
581-001-0120	3-5-04	Adopt(T)	4-1-04	582-030-0030	3-12-04	Amend	4-1-04
581-015-0075	1-15-04	Amend	2-1-04	582-030-0040	3-12-04	Amend	4-1-04
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581-015-0935	1-15-04	Amend	2-1-04	582-070-0030	3-9-04	Amend	4-1-04
581-015-0938	1-15-04	Amend	2-1-04	582-080-0020	12-31-03	Amend	2-1-04
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581-015-0964	1-15-04	Amend	2-1-04	582-090-0020	4-2-04	Amend	5-1-04
581-015-0968	1-15-04	Amend	2-1-04	582-090-0030	4-2-04	Amend	5-1-04
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584-100-0036	3-17-04	Adopt	5-1-04	603-052-0425	2-13-04	Repeal	3-1-04
584-100-0041	3-17-04	Adopt	5-1-04	603-052-0810	2-13-04	Repeal	3-1-04
584-100-0046	3-17-04	Adopt	5-1-04	603-052-1000	2-13-04	Repeal	3-1-04
584-100-0051	3-17-04	Adopt	5-1-04	603-052-1010	2-13-04	Repeal	3-1-04
584-100-0056	3-17-04	Adopt	5-1-04	603-054-0010	2-13-04	Repeal	3-1-04
584-100-0061	3-17-04	Adopt	5-1-04	603-054-0027	3-12-04	Adopt	4-1-04
584-100-0066	3-17-04	Adopt	5-1-04	603-057-0006	12-23-03	Amend	2-1-04
584-100-0071	3-17-04	Adopt	5-1-04	603-057-0006(T)	12-23-03	Repeal	2-1-04
584-100-0091	3-17-04	Adopt	5-1-04	603-059-0020	7-1-04	Amend	5-1-04
584-100-0096	3-17-04	Adopt	5-1-04	603-095-0140	1-23-03	Amend	3-1-04
584-100-0101	3-17-04	Adopt	5-1-04	603-095-3600	1-12-04	Adopt	2-1-04
584-100-0106	3-17-04	Adopt	5-1-04	603-095-3620	1-12-04	Adopt	2-1-04
584-100-0111	3-17-04	Adopt	5-1-04	603-095-3640	1-12-04	Adopt	2-1-04
589-020-0220	11-20-03	Adopt(T)	1-1-04	603-095-3660	1-12-04	Adopt	2-1-04
603-001-0001	2-10-04	Amend	3-1-04	603-095-3700	1-23-04	Adopt	3-1-04
603-013-0600	2-13-04	Amend	3-1-04	603-095-3720	1-23-04	Adopt	3-1-04
603-013-0602	2-13-04	Amend	3-1-04	603-095-3740	1-23-04	Adopt	3-1-04
603-013-0604	2-13-04	Amend	3-1-04	603-095-3760	1-23-04	Adopt	3-1-04
603-013-0616	2-13-04	Amend	3-1-04	603-095-3800	3-22-04	Adopt	5-1-04
603-014-0016	1-23-04	Amend	3-1-04	603-095-3820	3-22-04	Adopt	5-1-04
603-016-0471	2-13-04	Repeal	3-1-04	603-095-3840	3-22-04	Adopt	5-1-04
603-016-0476	2-13-04	Repeal	3-1-04	603-095-3860	3-22-04	Adopt	5-1-04
603-016-0481	2-13-04	Repeal	3-1-04	604-030-0010	1-1-04	Adopt	1-1-04
603-016-0486	2-13-04	Repeal	3-1-04	604-030-0020	1-1-04	Adopt	1-1-04
603-016-0491	2-13-04	Repeal	3-1-04	604-030-0030	1-1-04	Adopt	1-1-04
603-016-0496	2-13-04	Repeal	3-1-04	604-030-0040	1-1-04	Adopt	1-1-04
603-016-0500	2-13-04	Repeal	3-1-04	605-030-0010	1-15-04	Adopt	2-1-04
603-016-0505	2-13-04	Repeal	3-1-04	605-030-0020	1-15-04	Adopt	2-1-04
603-016-0510	2-13-04	Repeal	3-1-04	605-030-0030	1-15-04	Adopt	2-1-04
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603-027-0405	3-26-04	Repeal	5-1-04	606-010-0025	1-15-04	Amend	2-1-04
603-027-0640	3-26-04	Amend	5-1-04	606-030-0010	1-15-04	Adopt	2-1-04
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603-051-0802	2-13-04	Repeal	3-1-04	606-030-0040	1-15-04	Adopt	2-1-04
603-051-0810	2-13-04	Repeal	3-1-04	607-030-0010	1-1-04	Adopt	1-1-04
603-051-0812	2-13-04	Repeal	3-1-04	607-030-0020	1-1-04	Adopt	1-1-04
603-051-0814	2-13-04	Repeal	3-1-04	607-030-0030	1-1-04	Adopt	1-1-04
603-051-0816	2-13-04	Repeal	3-1-04	607-030-0040	1-1-04	Adopt	1-1-04
603-051-0818	2-13-04	Repeal	3-1-04	608-010-0015	1-2-04	Amend	2-1-04
603-051-0819	2-13-04	Repeal	3-1-04	608-010-0020	1-2-04	Amend	2-1-04
603-051-0821	2-13-04	Repeal	3-1-04	608-030-0010	1-2-04	Adopt	2-1-04
603-051-0823	2-13-04	Repeal	3-1-04	608-030-0020	1-2-04	Adopt	2-1-04
603-051-0825	2-13-04	Repeal	3-1-04	608-030-0030	1-2-04	Adopt	2-1-04
603-051-0827	2-13-04	Repeal	3-1-04	608-030-0040	1-2-04	Adopt	2-1-04
603-051-0829	2-13-04	Repeal	3-1-04	611-030-0010	1-15-04	Adopt	2-1-04
603-051-0950	2-13-04	Repeal	3-1-04	611-030-0020	1-15-04	Adopt	2-1-04
603-052-0325	2-13-04	Repeal	3-1-04	611-030-0030	1-15-04	Adopt	2-1-04
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603-052-0332	2-13-04	Repeal	3-1-04	617-030-0020	1-16-04	Adopt	2-1-04
603-052-0333	2-13-04	Repeal	3-1-04	617-030-0030	1-16-04	Adopt	2-1-04
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623-030-0030	12-8-03	Adopt	1-1-04	635-017-0080	1-1-04	Amend	1-1-04
624-010-0000	1-16-04	Amend	2-1-04	635-017-0090	1-1-04	Amend	1-1-04
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624-030-0020	1-16-04	Adopt	2-1-04	635-021-0080	1-1-04	Amend	1-1-04
624-030-0030	1-16-04	Adopt	2-1-04	635-021-0090	1-1-04	Amend	1-1-04
624-030-0040	1-16-04	Adopt	2-1-04	635-023-0080	1-1-04	Amend	1-1-04
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629-001-0025	2-10-04	Amend	3-1-04	635-023-0090	2-1-04	Amend(T)	3-1-04
629-001-0040	2-10-04	Amend	3-1-04	635-023-0100	2-13-04	Repeal	3-1-04
629-001-0045	2-10-04	Amend	3-1-04	635-023-0125	2-13-04	Adopt	3-1-04
629-001-0055	2-10-04	Adopt	3-1-04	635-023-0125	3-10-04	Amend(T)	4-1-04
629-001-0055(T)	2-10-04	Repeal	3-1-04	635-023-0125	4-22-04	Amend(T)	5-1-04
629-043-0041	1-30-04	Amend	3-1-04	635-039-0080	1-1-04	Amend	1-1-04
629-670-0300	2-10-04	Amend	3-1-04	635-039-0090	11-21-03	Amend(T)	1-1-04
629-670-0310	2-10-04	Amend	3-1-04	635-039-0090	1-1-04	Amend	1-1-04
629-670-0315	2-10-04	Amend	3-1-04	635-039-0090	1-1-04	Amend	1-1-04
629-672-0210	2-10-04	Amend	3-1-04	635-04-0033	1-1-04	Amend	1-1-04
629-672-0220	2-10-04	Amend	3-1-04	635-041-0060	12-1-03	Amend(T)	1-1-04
629-672-0310	2-10-04	Amend	3-1-04	635-041-0065	1-1-04	Amend(T)	2-1-04
635-001-0105	1-1-04	Amend	1-1-04	635-041-0065	2-2-04	Amend(T)	3-1-04
635-004-0005	1-1-04	Amend	1-1-04	635-041-0065	3-10-04	Amend(T)	4-1-04
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635-004-0036	1-1-04	Amend	1-1-04	635-042-0022	3-3-04	Amend(T)	4-1-04
635-005-0045	12-1-03	Amend(T)	1-1-04	635-042-0022	3-8-04	Amend(T)	4-1-04
635-005-0048	12-1-03	Adopt(T)	1-1-04	635-042-0022	3-10-04	Amend(T)	4-1-04
635-005-0048	2-13-04	Adopt	3-1-04	635-042-0022	3-15-04	Amend(T)	4-1-04
635-005-0048(T)	2-13-04	Repeal	3-1-04	635-042-0022	3-18-04	Amend(T)	5-1-04
635-005-0205	11-21-03	Amend(T)	1-1-04	635-042-0022	3-23-04	Amend(T)	5-1-04
635-006-0140	1-1-04	Amend	1-1-04	635-042-0022	3-25-04	Amend(T)	5-1-04
635-006-0150	1-1-04	Amend	1-1-04	635-042-0022	3-29-04	Amend(T)	5-1-04
635-006-0210	12-1-03	Amend(T)	1-1-04	635-042-0110	2-13-04	Amend	3-1-04
635-006-0210	2-13-04	Amend	3-1-04	635-042-0130	1-1-04	Amend(T)	2-1-04
635-006-0210(T)	2-13-04	Repeal	3-1-04	635-042-0130	3-18-04	Amend(T)	5-1-04
635-006-0232	2-1-04	Amend	2-1-04	635-042-0135	1-1-04	Amend(T)	2-1-04
635-006-0850	1-1-04	Amend	1-1-04	635-042-0135	2-2-04	Amend(T)	3-1-04
635-006-0850	3-23-04	Amend	5-1-04	635-042-0145	2-13-04	Amend	3-1-04
635-006-0910	1-31-04	Amend(T)	3-1-04	635-042-0145	3-12-04	Amend(T)	4-1-04
635-006-0910	3-23-04	Amend	5-1-04	635-042-0145	3-18-04	Amend(T)	5-1-04
635-006-0910(T)	3-23-04	Repeal	5-1-04	635-042-0145	4-12-04	Amend(T)	5-1-04
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635-011-0101	1-1-04	Amend	1-1-04	635-042-0160	3-12-04	Amend(T)	4-1-04
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635-013-0004	1-1-04	Amend	1-1-04	635-042-0160	4-12-04	Amend(T)	5-1-04
635-014-0080	1-1-04	Amend	1-1-04	635-042-0180	2-13-04	Amend	3-1-04
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635-053-0000	1-16-04	Amend(T)	2-1-04	635-120-0005	3-5-04	Amend	4-1-04
635-053-0015	1-16-04	Amend(T)	2-1-04	635-120-0010	3-5-04	Amend	4-1-04
635-053-0025	1-16-04	Amend(T)	2-1-04	635-120-0015	3-5-04	Amend	4-1-04
635-060-0000	1-1-04	Amend	1-1-04	635-120-0020	3-5-04	Amend	4-1-04
635-060-0005	1-1-04	Amend	1-1-04	635-500-1820	12-15-03	Amend	1-1-04
635-060-0008	1-1-04	Amend	1-1-04	635-500-1830	12-15-03	Amend	1-1-04
635-060-0030	1-1-04	Amend	1-1-04	635-500-1850	12-15-03	Amend	1-1-04
635-060-0046	1-1-04	Amend	1-1-04	635-500-1920	12-15-03	Amend	1-1-04
635-060-0055	4-1-04	Amend	1-1-04	635-500-1930	12-15-03	Amend	1-1-04
635-065-0001	1-1-04	Amend	1-1-04	635-500-3120	12-15-03	Amend	1-1-04
635-065-0015	1-1-04	Amend	1-1-04	635-500-6000	12-15-03	Adopt	1-1-04
635-065-0401	1-1-04	Amend	1-1-04	635-500-6010	12-15-03	Adopt	1-1-04
635-065-0501	1-1-04	Amend	1-1-04	635-500-6020	12-15-03	Adopt	1-1-04
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635-065-0705	1-1-04	Amend	1-1-04	635-500-6040	12-15-03	Adopt	1-1-04
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635-065-0740	1-1-04	Amend	1-1-04	635-500-6060	12-15-03	Adopt	1-1-04
635-065-0760	11-25-03	Amend(T)	1-1-04	641-030-0010	1-15-04	Adopt	1-1-04
635-065-0760	6-16-04	Amend	1-1-04	641-030-0020	1-15-04	Adopt	1-1-04
635-065-0765	1-1-04	Amend	1-1-04	641-030-0030	1-15-04	Adopt	1-1-04
635-066-0000	1-1-04	Amend	1-1-04	642-010-0020	1-15-04	Amend	1-1-04
635-066-0010	1-1-04	Amend	1-1-04	642-030-0010	1-15-04	Adopt	1-1-04
635-067-0000	1-1-04	Amend	1-1-04	642-030-0020	1-15-04	Adopt	1-1-04
635-067-0015	1-1-04	Amend	1-1-04	642-030-0030	1-15-04	Adopt	1-1-04
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635-067-0028	1-1-04	Adopt	1-1-04	643-030-0010	1-16-04	Adopt	3-1-04
635-067-0029	1-1-04	Adopt	1-1-04	643-030-0020	1-16-04	Adopt	3-1-04
635-067-0032	1-1-04	Amend	1-1-04	643-030-0030	1-16-04	Adopt	3-1-04
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635-068-0000	1-19-04	Amend	1-1-04	644-010-0010	1-8-04	Amend	2-1-04
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635-070-0000	4-1-04	Amend	1-1-04	644-030-0010	1-8-04	Adopt	2-1-04
635-070-0005	2-2-04	Amend(T)	3-1-04	644-030-0020	1-8-04	Adopt	2-1-04
635-070-0010	12-24-03	Amend(T)	2-1-04	644-030-0030	1-8-04	Adopt	2-1-04
635-071-0000	1-1-04	Amend	1-1-04	644-030-0040	1-8-04	Adopt	2-1-04
635-071-0000	1-13-04	Amend(T)	2-1-04	645-010-0020	1-16-04	Amend	2-1-04
635-071-0005	1-13-04	Amend(T)	2-1-04	645-030-0010	1-16-04	Adopt	2-1-04
635-072-0000	1-1-04	Amend	1-1-04	645-030-0020	1-16-04	Adopt	2-1-04
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635-073-0000	2-2-04	Amend	1-1-04	645-030-0040	1-16-04	Adopt	2-1-04
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656-030-0020	1-1-04	Adopt	1-1-04	690-502-0160	12-4-03	Am. & Ren.	1-1-04
656-030-0030	1-1-04	Adopt	1-1-04	690-502-0160	12-4-03	Amend	1-1-04
656-030-0040	1-1-04	Adopt	1-1-04	690-502-0210	12-4-03	Adopt	1-1-04
657-030-0010	1-15-04	Adopt	1-1-04	695-020-0020	1-26-04	Amend	3-1-04
657-030-0020	1-15-04	Adopt	1-1-04	695-020-0020	4-12-04	Amend	5-1-04
657-030-0030	1-15-04	Adopt	1-1-04	695-020-0056	4-12-04	Repeal	5-1-04
658-010-0005	12-4-03	Amend	1-1-04	695-020-0057	4-12-04	Repeal	5-1-04
658-010-0006	12-4-03	Amend	1-1-04	695-020-0058	4-12-04	Repeal	5-1-04
658-010-0007	12-4-03	Adopt	1-1-04	695-020-0092	1-26-04	Amend	3-1-04
658-030-0010	12-4-03	Adopt	1-1-04	695-020-0093	1-26-04	Amend	3-1-04
658-030-0020	12-4-03	Adopt	1-1-04	695-020-0094	1-26-04	Amend	3-1-04
658-030-0030	12-4-03	Adopt	1-1-04	695-020-0095	1-26-04	Amend	3-1-04
664-010-0020	1-15-04	Amend	1-1-04	695-020-0096	1-26-04	Amend	3-1-04
664-015-0010	1-15-04	Adopt	1-1-04	695-020-0097	1-26-04	Amend	3-1-04
664-015-0020	1-15-04	Adopt	1-1-04	695-020-0098	1-26-04	Adopt	3-1-04
664-015-0030	1-15-04	Adopt	1-1-04	695-040-0020	4-12-04	Adopt	5-1-04
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734-051-0310	3-1-04	Am. & Ren.	4-1-04	735-060-0070	11-18-03	Repeal	1-1-04
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734-051-0440	3-1-04	Am. & Ren.	4-1-04	735-060-0170	11-18-03	Am. & Ren.	1-1-04
734-051-0450	3-1-04	Am. & Ren.	4-1-04	735-061-0010	1-15-04	Repeal	2-1-04
734-051-0460	3-1-04	Am. & Ren.	4-1-04	735-061-0020	1-15-04	Repeal	2-1-04
734-051-0470	3-1-04	Am. & Ren.	4-1-04	735-061-0030	1-15-04	Repeal	2-1-04
734-051-0480	3-1-04	Repeal	4-1-04	735-061-0040	1-15-04	Repeal	2-1-04
734-060-0025	1-1-04	Amend	1-1-04	735-061-0050	1-15-04	Repeal	2-1-04
734-082-0080	2-25-04	Adopt	4-1-04	735-061-0060	1-15-04	Repeal	2-1-04
735-010-0070	1-1-04	Amend	1-1-04	735-061-0070	1-15-04	Repeal	2-1-04
735-018-0020	12-15-03	Amend	1-1-04	735-061-0080	1-15-04	Repeal	2-1-04
735-018-0070	12-15-03	Amend	1-1-04	735-061-0090	1-15-04	Repeal	2-1-04
735-018-0080	12-15-03	Amend	1-1-04	735-061-0100	1-15-04	Repeal	2-1-04
735-018-0110	12-15-03	Amend	1-1-04	735-061-0110	1-15-04	Repeal	2-1-04
735-018-0120	1-1-04	Adopt(T)	1-1-04	735-061-0120	1-15-04	Repeal	2-1-04
735-020-0070	1-1-04	Adopt(T)	1-1-04	735-061-0130	1-15-04	Repeal	2-1-04
735-020-0080	1-1-04	Adopt(T)	1-1-04	735-061-0140	1-15-04	Repeal	2-1-04
735-024-0010	1-1-04	Amend(T)	1-1-04	735-061-0150	1-15-04	Repeal	2-1-04
735-024-0020	1-1-04	Amend(T)	1-1-04	735-061-0160	1-15-04	Repeal	2-1-04
735-024-0045	1-1-04	Adopt(T)	1-1-04	735-061-0170	1-15-04	Repeal	2-1-04
735-032-0010	1-1-04	Amend(T)	1-1-04	735-061-0180	1-15-04	Repeal	2-1-04
735-034-0010	1-1-04	Amend(T)	1-1-04	735-061-0190	1-15-04	Repeal	2-1-04
735-040-0050	1-1-04	Amend(T)	1-1-04	735-061-0200	1-15-04	Repeal	2-1-04
735-040-0055	1-1-04	Amend(T)	1-1-04	735-062-0005	1-1-04	Amend	1-1-04
735-040-0061	1-1-04	Amend(T)	1-1-04	735-062-0020	1-1-04	Amend	1-1-04
735-040-0080	1-1-04	Amend(T)	1-1-04	735-062-0020	3-25-04	Amend	5-1-04
735-040-0095	1-1-04	Amend(T)	1-1-04	735-062-0020(T)	3-25-04	Repeal	5-1-04
735-040-0097	1-1-04	Amend(T)	1-1-04	735-062-0030	1-1-04	Amend(T)	1-1-04
735-040-0100	1-1-04	Amend(T)	1-1-04	735-062-0030	3-25-04	Amend	5-1-04
735-050-0060	1-1-04	Amend	1-1-04	735-062-0030(T)	3-25-04	Repeal	5-1-04
735-050-0062	1-1-04	Amend	1-1-04	735-062-0075	1-1-04	Amend	1-1-04
735-050-0064	1-1-04	Amend	1-1-04	735-062-0095	1-1-04	Amend	1-1-04
735-050-0070	1-1-04	Amend	1-1-04	735-062-0110	1-1-04	Amend	1-1-04
735-050-0080	1-1-04	Amend	1-1-04	735-064-0020	1-1-04	Amend	1-1-04
735-050-0120	1-1-04	Amend	1-1-04	735-064-0060	1-1-04	Amend	1-1-04
735-060-0000	11-18-03	Amend	1-1-04	735-064-0220	1-1-04	Amend(T)	1-1-04
735-060-0015	11-18-03	Am. & Ren.	1-1-04	735-064-0220	2-23-04	Amend	4-1-04
735-060-0017	11-18-03	Am. & Ren.	1-1-04	735-064-0220(T)	2-23-04	Repeal	4-1-04
735-060-0030	11-18-03	Amend	1-1-04	735-070-0130	1-1-04	Amend	1-1-04

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735-080-0030	11-18-03	Amend	1-1-04	738-100-0010	2-17-04	Amend	4-1-04
735-116-0000	1-15-04	Amend	2-1-04	738-110-0010	2-17-04	Repeal	4-1-04
735-150-0040	1-1-04	Amend(T)	1-1-04	738-110-0020	2-17-04	Repeal	4-1-04
735-150-0070	1-1-04	Amend(T)	1-1-04	738-110-0030	2-17-04	Repeal	4-1-04
735-150-0250	12-15-03	Adopt(T)	1-1-04	738-110-0040	2-17-04	Repeal	4-1-04
735-150-0260	12-15-03	Adopt(T)	1-1-04	738-110-0050	2-17-04	Repeal	4-1-04
735-154-0005	1-1-04	Adopt(T)	1-1-04	740-060-0030	1-1-04	Amend(T)	1-1-04
735-170-0000	1-1-04	Amend	1-1-04	740-060-0050	1-1-04	Amend(T)	1-1-04
735-170-0010	1-1-04	Amend	1-1-04	740-060-0055	1-1-04	Adopt(T)	1-1-04
735-170-0020	1-1-04	Amend	1-1-04	740-100-0010	1-1-04	Amend	1-1-04
735-170-0030	1-1-04	Amend	1-1-04	740-100-0015	1-15-04	Adopt	2-1-04
735-170-0050	1-1-04	Amend	1-1-04	740-100-0060	1-1-04	Amend	1-1-04
735-170-0060	1-1-04	Amend	1-1-04	740-100-0070	1-1-04	Amend	1-1-04
735-170-0070	1-1-04	Amend	1-1-04	740-100-0080	1-1-04	Amend	1-1-04
735-170-0090	1-1-04	Amend	1-1-04	740-100-0090	1-1-04	Amend	1-1-04
735-170-0100	1-1-04	Amend	1-1-04	740-110-0010	1-1-04	Amend	1-1-04
735-170-0110	1-1-04	Adopt	1-1-04	740-110-0080	3-26-04	Amend	5-1-04
735-170-0120	1-1-04	Adopt	1-1-04	740-110-0090	3-26-04	Amend	5-1-04
735-170-0140	1-1-04	Adopt	1-1-04	740-115-0010	1-1-04	Repeal	1-1-04
735-174-0000	1-1-04	Amend	1-1-04	740-115-0020	1-1-04	Repeal	1-1-04
735-174-0010	1-1-04	Amend	1-1-04	740-115-0030	1-1-04	Repeal	1-1-04
735-174-0020	1-1-04	Amend	1-1-04	740-115-0040	1-1-04	Repeal	1-1-04
735-174-0030	1-1-04	Amend	1-1-04	740-115-0050	1-1-04	Repeal	1-1-04
735-174-0040	1-1-04	Adopt(T)	1-1-04	740-115-0060	1-1-04	Repeal	1-1-04
735-176-0000	1-15-04	Amend	2-1-04	740-115-0070	1-1-04	Repeal	1-1-04
735-176-0010	1-15-04	Amend	2-1-04	740-120-0010	1-1-04	Repeal	1-1-04
735-176-0015	1-15-04	Adopt	2-1-04	740-120-0020	1-1-04	Repeal	1-1-04
735-176-0018	1-15-04	Adopt	2-1-04	740-120-0030	1-1-04	Repeal	1-1-04
735-176-0020	1-15-04	Amend	2-1-04	740-120-0040	1-1-04	Repeal	1-1-04
735-176-0030	1-15-04	Amend	2-1-04	740-125-0010	1-1-04	Repeal	1-1-04
735-176-0040	1-15-04	Amend	2-1-04	740-125-0020	1-1-04	Repeal	1-1-04
736-001-0000	1-15-04	Amend	2-1-04	740-125-0030	1-1-04	Repeal	1-1-04
736-002-0020	1-15-04	Adopt	2-1-04	740-125-0040	1-1-04	Repeal	1-1-04
736-002-0030	1-15-04	Adopt	2-1-04	740-130-0010	1-1-04	Repeal	1-1-04
736-002-0040	1-15-04	Adopt	2-1-04	740-130-0020	1-1-04	Repeal	1-1-04
736-002-0060	1-15-04	Adopt	2-1-04	740-130-0030	1-1-04	Repeal	1-1-04
736-002-0070	1-15-04	Adopt	2-1-04	740-130-0040	1-1-04	Repeal	1-1-04
736-002-0080	1-15-04	Adopt	2-1-04	740-130-0050	1-1-04	Repeal	1-1-04
736-002-0090	1-15-04	Adopt	2-1-04	740-130-0060	1-1-04	Repeal	1-1-04
736-002-0100	1-15-04	Adopt	2-1-04	740-130-0070	1-1-04	Repeal	1-1-04
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736-010-0022	4-15-04	Amend	4-1-04	740-130-0090	1-1-04	Repeal	1-1-04
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738-001-0030	2-17-04	Amend	4-1-04	740-135-0040	1-1-04	Repeal	1-1-04
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738-025-0010	2-17-04	Amend	4-1-04	740-140-0030	1-1-04	Repeal	1-1-04
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740-145-0060	1-1-04	Repeal	1-1-04	800-025-0025	2-1-04	Amend	3-1-04
740-150-0010	1-1-04	Repeal	1-1-04	800-030-0025	2-1-04	Amend	3-1-04
740-150-0020	1-1-04	Repeal	1-1-04	801-001-0005	1-1-04	Amend	2-1-04
740-150-0030	1-1-04	Repeal	1-1-04	801-001-0010	1-1-04	Amend	2-1-04
740-150-0040	1-1-04	Repeal	1-1-04	801-001-0015	1-1-04	Amend	2-1-04
740-150-0050	1-1-04	Repeal	1-1-04	801-001-0020	1-1-04	Amend	2-1-04
740-155-0010	1-1-04	Repeal	1-1-04	801-001-0035	1-1-04	Adopt	2-1-04
740-155-0020	1-1-04	Repeal	1-1-04	801-001-0050	1-1-04	Adopt	2-1-04
740-155-0030	1-1-04	Repeal	1-1-04	801-005-0010	1-1-04	Amend	2-1-04
740-155-0040	1-1-04	Repeal	1-1-04	801-010-0010	1-1-04	Amend	2-1-04
740-155-0050	1-1-04	Repeal	1-1-04	801-010-0045	1-1-04	Amend	2-1-04
740-155-0060	1-1-04	Repeal	1-1-04	801-010-0050	1-1-04	Amend	2-1-04
740-160-0010	1-1-04	Repeal	1-1-04	801-010-0050	3-15-04	Amend(T)	4-1-04
740-160-0020	1-1-04	Repeal	1-1-04	801-010-0060	1-1-04	Amend	2-1-04
740-160-0030	1-1-04	Repeal	1-1-04	801-010-0075	1-1-04	Amend	2-1-04
740-160-0040	1-1-04	Repeal	1-1-04	801-010-0080	1-1-04	Amend	2-1-04
740-160-0050	1-1-04	Repeal	1-1-04	801-010-0085	1-1-04	Amend	2-1-04
740-160-0060	1-1-04	Repeal	1-1-04	801-010-0110	1-1-04	Amend	2-1-04
740-160-0070	1-1-04	Repeal	1-1-04	801-010-0115	1-1-04	Amend	2-1-04
740-165-0010	1-1-04	Repeal	1-1-04	801-010-0125	1-1-04	Amend	2-1-04
740-165-0020	1-1-04	Repeal	1-1-04	801-010-0345	1-1-04	Amend	2-1-04
740-165-0030	1-1-04	Repeal	1-1-04	801-020-0700	1-1-04	Amend	2-1-04
740-165-0040	1-1-04	Repeal	1-1-04	801-030-0005	1-1-04	Amend	2-1-04
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740-200-0020	1-1-04	Amend	1-1-04	801-030-0020	1-1-04	Amend	2-1-04
740-200-0040	1-1-04	Amend	1-1-04	801-040-0070	1-1-04	Amend	2-1-04
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741-050-0020	3-24-04	Repeal	5-1-04	801-040-0160	1-1-04	Amend	2-1-04
741-050-0030	3-24-04	Repeal	5-1-04	801-050-0080	1-1-04	Amend	2-1-04
741-050-0040	3-24-04	Repeal	5-1-04	806-010-0035	3-2-04	Amend	4-1-04
741-050-0050	3-24-04	Repeal	5-1-04	806-010-0037	3-2-04	Adopt	4-1-04
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741-050-0070	3-24-04	Repeal	5-1-04	806-020-0080	1-28-04	Amend	3-1-04
741-050-0080	3-24-04	Repeal	5-1-04	808-002-0100	2-1-04	Amend	3-1-04
741-050-0090	3-24-04	Repeal	5-1-04	808-002-0200	2-1-04	Amend	3-1-04
741-050-0100	3-24-04	Repeal	5-1-04	808-002-0210	2-1-04	Adopt	3-1-04
741-050-0110	3-24-04	Repeal	5-1-04	808-002-0220	2-1-04	Amend	3-1-04
741-050-0120	3-24-04	Repeal	5-1-04	808-002-0298	2-1-04	Adopt	3-1-04
741-050-0130	3-24-04	Repeal	5-1-04	808-002-0448	2-1-04	Repeal	3-1-04
741-050-0140	3-24-04	Repeal	5-1-04	808-002-0500	2-1-04	Amend	3-1-04
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741-050-0160	3-24-04	Repeal	5-1-04	808-002-0620	2-1-04	Amend	3-1-04
741-050-0170	3-24-04	Repeal	5-1-04	808-002-0665	2-1-04	Amend	3-1-04
741-050-0180	3-24-04	Repeal	5-1-04	808-002-0880	2-1-04	Amend	3-1-04
741-050-0190	3-24-04	Repeal	5-1-04	808-002-0890	2-1-04	Adopt	3-1-04
741-050-0200	3-24-04	Repeal	5-1-04	808-002-0920	2-1-04	Amend	3-1-04
741-050-0210	3-24-04	Repeal	5-1-04	808-003-0010	2-1-04	Amend	3-1-04
741-050-0220	3-24-04	Repeal	5-1-04	808-003-0015	2-1-04	Amend	3-1-04
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808-004-0210	1-1-04	Adopt	2-1-04	812-003-0020(T)	12-5-03	Repeal	1-1-04
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808-008-0050	1-1-04	Adopt	2-1-04	812-004-0110(T)	3-1-04	Repeal	4-1-04
808-008-0060	1-1-04	Amend(T)	2-1-04	812-004-0210	12-5-03	Adopt	1-1-04
808-008-0085	1-1-04	Amend(T)	2-1-04	812-004-0250	1-1-04	Amend(T)	2-1-04
808-008-0140	1-1-04	Amend(T)	2-1-04	812-004-0250	3-1-04	Amend	4-1-04
808-008-0240	1-1-04	Suspend	2-1-04	812-004-0250(T)	3-1-04	Repeal	4-1-04
808-008-0280	1-1-04	Amend(T)	2-1-04	812-004-0320	12-5-03	Amend	1-1-04
808-008-0290	1-1-04	Adopt(T)	2-1-04	812-004-0340	12-5-03	Amend	1-1-04
808-008-0400	1-1-04	Amend(T)	2-1-04	812-004-0400	12-5-03	Amend	1-1-04
808-008-0420	1-1-04	Amend(T)	2-1-04	812-004-0440	1-1-04	Amend(T)	2-1-04
808-008-0425	1-1-04	Amend(T)	2-1-04	812-004-0440	3-1-04	Amend	4-1-04
808-008-0430	1-1-04	Amend(T)	2-1-04	812-004-0440(T)	3-1-04	Repeal	4-1-04
808-008-0440	1-1-04	Amend(T)	2-1-04	812-004-0535	12-5-03	Amend	1-1-04
808-008-0460	1-1-04	Amend(T)	2-1-04	812-004-0535	3-1-04	Amend	4-1-04
808-008-0500	1-1-04	Amend(T)	2-1-04	812-004-0540	3-1-04	Amend	4-1-04
808-008-0510	1-1-04	Adopt(T)	2-1-04	812-004-0550	3-1-04	Amend	4-1-04
808-008-0520	1-1-04	Adopt(T)	2-1-04	812-005-0005	12-5-03	Amend	1-1-04
808-009-0020	2-1-04	Amend	3-1-04	812-006-0020	12-5-03	Amend	1-1-04
809-001-0005	4-6-04	Amend	5-1-04	812-008-0050	3-1-04	Amend	4-1-04
809-001-0035	4-6-04	Adopt(T)	5-1-04	812-009-0100	3-1-04	Amend	4-1-04
811-010-0085	12-11-03	Amend	1-1-04	812-009-0120	3-1-04	Amend	4-1-04
811-010-0095	12-11-03	Amend	1-1-04	812-010-0020	12-5-03	Amend	1-1-04
811-015-0010	12-11-03	Amend	1-1-04	812-010-0030	12-5-03	Amend	1-1-04
811-035-0005	12-11-03	Amend	1-1-04	812-010-0050	12-5-03	Adopt	1-1-04
811-035-0015	12-11-03	Amend	1-1-04	812-010-0060	12-5-03	Amend	1-1-04
812-001-0000	3-1-04	Amend	4-1-04	812-010-0085	12-5-03	Amend	1-1-04
812-001-0015	3-1-04	Amend	4-1-04	812-010-0140	12-5-03	Amend	1-1-04
812-001-0020	12-5-03	Amend	1-1-04	812-010-0240	12-5-03	Repeal	1-1-04
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812-001-0020	1-1-04	Amend(T)	2-1-04	812-010-0290	12-5-03	Adopt	1-1-04
812-001-0020	3-1-04	Amend	4-1-04	812-010-0400	12-5-03	Amend	1-1-04
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812-001-0022	1-1-04	Adopt(T)	2-1-04	812-010-0425	12-5-03	Amend	1-1-04
812-001-0022	3-1-04	Adopt	4-1-04	812-010-0430	12-5-03	Amend	1-1-04
812-001-0022(T)	3-1-04	Repeal	4-1-04	812-010-0440	12-5-03	Amend	1-1-04
812-002-0130	12-5-03	Adopt	1-1-04	812-010-0460	12-5-03	Amend	1-1-04
812-002-0200	12-5-03	Amend	1-1-04	812-010-0500	12-5-03	Amend	1-1-04
812-002-0240	12-5-03	Repeal	1-1-04	812-010-0510	12-5-03	Adopt	1-1-04

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813-300-0010	12-19-03	Amend	2-1-04	839-020-0115	1-1-04	Amend	2-1-04
813-300-0120	12-19-03	Amend	2-1-04	839-020-0125	1-1-04	Amend	2-1-04
813-350-0030	4-8-04	Amend	5-1-04	839-020-0150	2-1-04	Amend	2-1-04
813-350-0030(T)	4-8-04	Repeal	5-1-04	845-003-0590	2-10-04	Amend	1-1-04
820-010-0010	1-26-04	Amend	3-1-04	845-003-0670	12-1-03	Amend	1-1-04
820-010-0200	1-26-04	Amend	3-1-04	845-005-0304	1-1-04	Amend	2-1-04
820-010-0225	1-26-04	Amend	3-1-04	845-005-0445	1-1-04	Amend(T)	2-1-04
820-010-0450	1-26-04	Amend	3-1-04	845-006-0335	4-9-04	Amend	5-1-04
820-010-0500	1-26-04	Amend	3-1-04	845-006-0430	4-1-04	Amend	5-1-04
820-010-0623	1-26-04	Adopt	3-1-04	845-006-0441	12-1-03	Amend	1-1-04
820-015-0026	1-26-04	Amend	3-1-04	845-007-0015	6-1-04	Amend	4-1-04
836-009-0007	12-19-03	Amend	1-1-04	845-009-0015	12-1-03	Amend	1-1-04
836-011-0000	12-3-03	Amend	1-1-04	845-015-0140	3-21-04	Amend	3-1-04
836-031-0755	1-1-04	Amend	2-1-04	847-008-0015	1-27-04	Amend	3-1-04
836-031-0760	1-1-04	Amend	2-1-04	847-008-0050	12-8-03	Amend	1-1-04
836-031-0855	11-26-03	Adopt(T)	1-1-04	847-008-0055	1-27-04	Amend	3-1-04
836-042-0045	1-1-04	Amend	1-1-04	847-012-0000	1-27-04	Amend	3-1-04
836-051-0101	1-1-04	Amend	2-1-04	847-020-0170	1-27-04	Amend	3-1-04
836-051-0106	1-1-04	Adopt	2-1-04	847-020-0180	1-27-04	Amend	3-1-04
836-052-0700	2-3-04	Amend	3-1-04	847-035-0030	1-27-04	Amend	3-1-04
836-053-0430	2-20-04	Amend	4-1-04	850-010-0130	2-11-04	Amend	3-1-04
836-071-0180	12-19-03	Amend	1-1-04	850-010-0215	4-14-04	Amend	5-1-04
837-012-0645	1-14-04	Amend	2-1-04	850-010-0225	12-5-03	Amend	1-1-04
837-012-0720	1-14-04	Amend	2-1-04	850-010-0226	12-5-03	Amend	1-1-04
837-012-0830	1-14-04	Amend	2-1-04	851-002-0040	2-26-04	Amend	4-1-04
837-012-0850	1-14-04	Amend	2-1-04	851-021-0010	12-9-03	Amend	1-1-04
837-012-1210	1-14-04	Amend	2-1-04	851-031-0010	12-9-03	Amend	1-1-04
837-012-1220	1-14-04	Amend	2-1-04	851-047-0000	2-26-04	Amend	4-1-04
837-012-1260	1-14-04	Amend	2-1-04	851-047-0010	2-26-04	Amend	4-1-04
837-012-1290	1-14-04	Amend	2-1-04	851-047-0020	2-26-04	Amend	4-1-04
837-012-1300	1-14-04	Amend	2-1-04	851-047-0030	2-26-04	Amend	4-1-04
837-012-1320	1-14-04	Amend	2-1-04	851-047-0040	2-26-04	Amend	4-1-04
837-012-1340	1-14-04	Amend	2-1-04	851-050-0131	12-9-03	Amend	1-1-04
837-030-0130	1-14-04	Amend	2-1-04	851-050-0131	2-26-04	Amend	4-1-04
837-030-0220	1-14-04	Amend	2-1-04	851-050-0133	12-23-03	Amend(T)	2-1-04
837-030-0230	1-14-04	Amend	2-1-04	851-050-0134	12-23-03	Amend(T)	2-1-04
837-030-0240	1-14-04	Amend	2-1-04	851-050-0145	12-23-03	Amend(T)	2-1-04
837-030-0250	1-14-04	Amend	2-1-04	851-050-0150	12-23-03	Suspend	2-1-04
837-030-0280	1-14-04	Amend	2-1-04	851-050-0155	12-23-03	Amend(T)	2-1-04
837-040-0001	10-1-04	Amend	5-1-04	851-050-0161	12-23-03	Adopt(T)	2-1-04
837-040-0010	10-1-04	Amend	5-1-04	851-050-0170	12-23-03	Amend(T)	2-1-04
837-040-0140	10-1-04	Amend	5-1-04	851-061-0010	2-12-04	Amend	3-1-04
839-001-0200	1-1-04	Adopt	2-1-04	851-061-0020	2-12-04	Amend	3-1-04
839-001-0420	1-1-04	Amend	2-1-04	851-061-0030	2-12-04	Amend	3-1-04
839-001-0470	1-1-04	Amend	2-1-04	851-061-0040	2-12-04	Amend	3-1-04
839-001-0490	1-1-04	Adopt	2-1-04	851-061-0050	2-12-04	Amend	3-1-04
839-016-0700	1-5-04	Amend	2-1-04	851-061-0070	2-12-04	Amend	3-1-04
839-016-0700	4-15-04	Amend	5-1-04	851-061-0080	2-12-04	Amend	3-1-04
839-017-0004	1-1-04	Amend	2-1-04	851-061-0090	2-12-04	Amend	3-1-04
839-017-0500	1-1-04	Adopt	2-1-04	851-061-0100	2-12-04	Amend	3-1-04
839-017-0505	1-1-04	Adopt	2-1-04	851-061-0110	2-12-04	Amend	3-1-04
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839-017-0515	1-1-04	Adopt	2-1-04	851-062-0005	2-12-04	Adopt	3-1-04
839-017-0520	1-1-04	Adopt	2-1-04	851-062-0010	2-12-04	Amend	3-1-04
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851-062-0016	2-12-04	Adopt	3-1-04	860-035-0100	1-15-04	Repeal	2-1-04
851-062-0020	2-12-04	Amend	3-1-04	860-035-0110	1-15-04	Repeal	2-1-04
851-062-0040	2-12-04	Repeal	3-1-04	860-035-0120	1-15-04	Repeal	2-1-04
851-062-0050	2-12-04	Amend	3-1-04	860-035-0130	1-15-04	Repeal	2-1-04
851-062-0055	2-12-04	Adopt	3-1-04	860-036-0010	12-10-03	Amend(T)	1-1-04
851-062-0060	2-12-04	Repeal	3-1-04	860-036-0010	4-9-04	Amend	5-1-04
851-062-0070	2-12-04	Amend	3-1-04	860-036-0030	4-9-04	Amend	5-1-04
851-062-0070	2-20-04	Amend	4-1-04	860-036-0040	1-9-04	Amend(T)	2-1-04
851-062-0075	2-12-04	Adopt	3-1-04	860-036-0080	4-9-04	Amend	5-1-04
851-062-0080	2-12-04	Amend	3-1-04	860-036-0120	4-9-04	Amend	5-1-04
851-062-0090	2-12-04	Amend	3-1-04	860-036-0330	12-10-03	Suspend	1-1-04
851-062-0100	2-12-04	Amend	3-1-04	860-036-0330	4-9-04	Repeal	5-1-04
851-062-0110	2-12-04	Amend	3-1-04	860-036-0370	12-10-03	Adopt(T)	1-1-04
851-062-0120	2-12-04	Amend	3-1-04	860-036-0370	4-9-04	Adopt	5-1-04
851-062-0130	2-12-04	Amend	3-1-04	860-036-0380	12-10-03	Adopt(T)	1-1-04
851-063-0010	2-12-04	Amend	3-1-04	860-036-0380	4-9-04	Adopt	5-1-04
851-063-0020	2-12-04	Amend	3-1-04	860-036-0410	4-9-04	Amend	5-1-04
851-063-0030	2-12-04	Amend	3-1-04	860-036-0412	12-10-03	Adopt(T)	1-1-04
851-063-0040	2-12-04	Amend	3-1-04	860-036-0412	4-9-04	Adopt	5-1-04
851-063-0050	2-12-04	Amend	3-1-04	860-036-0420	12-10-03	Adopt(T)	1-1-04
851-063-0060	2-12-04	Amend	3-1-04	860-036-0420	4-9-04	Adopt	5-1-04
851-063-0070	2-12-04	Amend	3-1-04	860-036-0505	4-9-04	Amend	5-1-04
851-063-0080	2-12-04	Amend	3-1-04	860-036-0739	4-9-04	Adopt	5-1-04
851-063-0100	2-12-04	Amend	3-1-04	860-036-0757	12-10-03	Adopt(T)	1-1-04
852-001-0001	3-8-04	Amend	4-1-04	860-036-0757	4-9-04	Adopt	5-1-04
852-001-0002	3-8-04	Amend	4-1-04	860-036-0900	12-10-03	Amend(T)	1-1-04
852-020-0029	3-8-04	Adopt	4-1-04	860-036-0900	4-9-04	Amend	5-1-04
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852-020-0060	3-8-04	Amend	4-1-04	860-036-0905	4-9-04	Amend	5-1-04
853-010-0060	1-30-04	Amend	3-1-04	860-036-0910	12-10-03	Amend(T)	1-1-04
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855-031-0045	3-12-04	Amend	4-1-04	860-036-0915	12-10-03	Amend(T)	1-1-04
855-043-0210	12-31-03	Adopt(T)	2-1-04	860-036-0915	4-9-04	Amend	5-1-04
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860-012-0100	1-8-04	Adopt	2-1-04	860-037-0015	1-29-04	Amend	3-1-04
860-012-0190	1-8-04	Adopt	2-1-04	860-037-0020	1-29-04	Amend	3-1-04
860-021-0200	1-9-04	Amend(T)	2-1-04	860-037-0025	1-29-04	Amend	3-1-04
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860-032-0520	1-15-04	Adopt	2-1-04	860-037-0055	1-29-04	Amend	3-1-04
860-034-0010	1-9-04	Amend(T)	2-1-04	860-037-0060	1-29-04	Amend	3-1-04
860-034-0140	1-9-04	Amend(T)	2-1-04	860-037-0065	1-29-04	Amend	3-1-04
860-035-0010	1-15-04	Repeal	2-1-04	860-037-0067	1-29-04	Adopt	3-1-04
860-035-0020	1-15-04	Repeal	2-1-04	860-037-0070	1-29-04	Amend	3-1-04
860-035-0030	1-15-04	Repeal	2-1-04	860-037-0075	1-29-04	Amend	3-1-04
860-035-0040	1-15-04	Repeal	2-1-04	860-037-0080	1-29-04	Amend	3-1-04
860-035-0050	1-15-04	Repeal	2-1-04	860-037-0101	1-29-04	Adopt	3-1-04
860-035-0060	1-15-04	Repeal	2-1-04	860-037-0105	1-29-04	Amend	3-1-04
860-035-0070	1-15-04	Repeal	2-1-04	860-037-0110	1-29-04	Amend	3-1-04
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860-037-0205	1-29-04	Amend	3-1-04	863-015-0055	1-15-04	Amend(T)	2-1-04
860-037-0210	1-29-04	Amend	3-1-04	863-015-0080	1-1-04	Amend(T)	2-1-04
860-037-0215	1-29-04	Amend	3-1-04	863-015-0200	1-1-04	Amend(T)	2-1-04
860-037-0220	1-29-04	Amend	3-1-04	863-050-0000	1-1-04	Adopt	2-1-04
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860-037-0230	1-29-04	Amend	3-1-04	863-050-0020	1-1-04	Amend	2-1-04
860-037-0235	1-29-04	Amend	3-1-04	863-050-0025	1-1-04	Amend	2-1-04
860-037-0240	1-29-04	Amend	3-1-04	863-050-0035	1-15-04	Adopt(T)	2-1-04
860-037-0245	1-29-04	Amend	3-1-04	863-050-0040	1-1-04	Adopt	2-1-04
860-037-0305	1-29-04	Repeal	3-1-04	863-050-0050	1-1-04	Amend	2-1-04
860-037-0307	1-29-04	Adopt	3-1-04	863-050-0055	1-1-04	Amend	2-1-04
860-037-0308	12-10-03	Adopt(T)	1-1-04	863-050-0060	1-1-04	Amend	2-1-04
860-037-0308	4-9-04	Adopt	5-1-04	863-050-0065	1-1-04	Amend	2-1-04
860-037-0309	12-10-03	Adopt(T)	1-1-04	863-050-0100	1-1-04	Amend	2-1-04
860-037-0309	4-9-04	Adopt	5-1-04	863-050-0108	1-1-04	Repeal	2-1-04
860-037-0310	1-29-04	Amend	3-1-04	863-050-0110	1-1-04	Repeal	2-1-04
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860-037-0405	1-29-04	Amend	3-1-04	863-050-0150	1-1-04	Amend	2-1-04
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860-037-0407	4-9-04	Adopt	5-1-04	875-010-0070	4-2-04	Amend	5-1-04
860-037-0410	1-29-04	Amend	3-1-04	877-020-0020	12-1-03	Amend	1-1-04
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860-037-0430	1-29-04	Amend	3-1-04	918-030-0900	4-1-04	Adopt	3-1-04
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860-037-0445	1-29-04	Amend	3-1-04	918-225-0691	3-8-04	Amend(T)	4-1-04
860-037-0450	1-29-04	Amend	3-1-04	918-225-0920	3-8-04	Amend(T)	4-1-04
860-037-0505	1-29-04	Amend	3-1-04	918-251-0090	4-1-04	Amend	5-1-04
860-037-0510	1-29-04	Amend	3-1-04	918-261-0036	4-1-04	Adopt	5-1-04
860-037-0515	1-29-04	Amend	3-1-04	918-261-0037	4-1-04	Adopt	5-1-04
860-037-0517	1-29-04	Adopt	3-1-04	918-261-0038	4-1-04	Adopt	5-1-04
860-037-0520	1-29-04	Amend	3-1-04	918-261-0039	4-1-04	Adopt	5-1-04
860-037-0525	1-29-04	Amend	3-1-04	918-306-0010	4-1-04	Amend	5-1-04
860-037-0530	1-29-04	Amend	3-1-04	918-306-0340	4-1-04	Amend	5-1-04
860-037-0535	1-29-04	Amend	3-1-04	918-306-0350	4-1-04	Amend	5-1-04
860-037-0540	1-29-04	Amend	3-1-04	918-306-0360	4-1-04	Amend	5-1-04
860-037-0545	1-29-04	Amend	3-1-04	918-306-0370	4-1-04	Repeal	5-1-04
860-037-0547	12-10-03	Adopt(T)	1-1-04	918-306-0380	4-1-04	Amend	5-1-04
860-037-0547	4-9-04	Adopt	5-1-04	918-306-0390	4-1-04	Amend	5-1-04
860-037-0550	1-29-04	Amend	3-1-04	918-306-0400	4-1-04	Amend	5-1-04
860-037-0555	1-29-04	Amend	3-1-04	918-306-0410	4-1-04	Amend	5-1-04
860-037-0560	1-29-04	Amend	3-1-04	918-309-0000	4-1-04	Amend	5-1-04
860-037-0565	1-29-04	Amend	3-1-04	918-309-0040	4-1-04	Amend	5-1-04
860-037-0567	1-29-04	Adopt	3-1-04	918-309-0210	4-1-04	Amend	5-1-04
860-037-0570	12-10-03	Adopt(T)	1-1-04	918-309-0220	4-1-04	Amend	5-1-04
860-037-0570	4-9-04	Adopt	5-1-04	918-440-0015	1-1-04	Amend	1-1-04
860-037-0605	1-29-04	Amend	3-1-04	918-440-0040	1-1-04	Amend	1-1-04
860-037-0610	1-29-04	Amend	3-1-04	918-440-0050	1-1-04	Amend	1-1-04
860-037-0615	1-29-04	Amend	3-1-04	918-460-0015	4-1-04	Amend	5-1-04
860-037-0620	1-29-04	Amend	3-1-04	918-674-0025	1-1-04	Amend	1-1-04
860-037-0625	1-29-04	Amend	3-1-04	918-674-0033	1-1-04	Amend	1-1-04
860-037-0630	1-29-04	Amend	3-1-04	918-780-0035	1-1-04	Adopt	2-1-04
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